



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 03.01.2024

+ **CRL.REV.P. 7/2024, CRL.M.A. 89/2024 & CRL.M.A. 90/2024**

IN THE MATTER OF:

PRANKUR MISHRA

..... Petitioner

Through: Mr. Javed Ali and Ms. Farheen Jahan,  
Advocates.

Versus

STATE NCT OF DELHI & ANR.

..... Respondent

Through: Mr. Naval Kishore Jha, APP for State  
with SI Suresh Kumar PS New  
Usman Pur, Delhi.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT (ORAL)**

1. By way of present petition filed under Sections 397, 401 read with Section 482 Cr.P.C, petitioner seeks to assail the order dated 13.10.2023 passed by the learned Trial Court vide which, the learned Trial Court had framed charge against the petitioner under Section 308 IPC on the ground that (i) the petitioner is not named in the FIR, (ii) the injuries are simple in nature and (iii) the Investigating Officer has not seized the *lathi danda* and *patila* which were allegedly used to cause injuries to the injured victim and even not identified by the complainant.

2. Briefly, the facts as available on record are that the FIR was lodged at the instance of the complainant Amir wherein it was stated that on



23.11.2017 at around 8.30 pm, the complainant and his two friends Moseem and Pappu, were consuming alcohol on the terrace of Hotel of Saddam at Gali No.5, Jagjit Nagar, New Usmanpur, III Pusta. Saddam came to the terrace and asked the complainant to stop consuming liquor however, upon his refusal, Saddam called Sonu and another boy whose name was not known and proceeded to drag the complainant from the roof and beat him with *lathi danda* and *patila* on his head. The complainant has further stated that Sonu and his associates have caused injuries on his head which would have resulted his death.

3. During the investigation, the complainant was medically examined at Jag Parvesh Chandra Hospital and the injuries were found to be in the occipital region as well as on his shoulder. The injuries were opined to be simple in nature. The impugned order also records that the arrest memo of the accused bears the thumb impression of the complainant. The petitioner's contention that he was not named in the FIR is explained by the complainant that he was not aware of the names of the associates of Sonu. Though the injuries were opined to be simple, the contention that Section 308 IPC cannot be invoked is misconceived and rejected. For an offence punishable under Section 308 IPC, the nature of injury is inconsequential and it is the other factors such as intention and knowledge as well as the seat of injury which are relevant. In this regard, reference can be made to the decision of the Supreme Court in Sunil Kumar v. N.C.T. of Delhi & Ors.<sup>1</sup>, wherein it was observed:-

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<sup>1</sup> (1998) 8 SCC 557



*4. The view taken by the High Court is obviously erroneous because offence punishable under Section 308 IPC postulates doing of an act with such intention or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. An attempt of that nature may actually result in hurt or may not.*

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Further, in the case of Om Wati (Smt.) & Anr. v. State & Ors.<sup>2</sup>, it was observed:-

“xxx

*8. At the stage of passing the order in terms of Section 227 of the Code, the court has merely to peruse the evidence in order to find out whether or not there is a sufficient ground for proceeding against the accused. If upon consideration, the court is satisfied that a prima facie case is made out against the accused, the Judge must proceed to frame charge in terms of Section 228 of the Code. Only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the court can discharge the accused. The court is not required to enter into meticulous consideration of evidence and material placed before it at this stage. This Court in *Stree Attyachar Virodhi Parishad v. Dilip Nathumal Chordia* cautioned the High Courts to be loath in interfering at the stage of framing the charges against the accused. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice staring the court in the face. The opinion on many matters can differ depending upon the person who views it. There may be as many opinions on a particular point, as there are courts but that would not justify the High Court to interdict the trial. Generally,*

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<sup>2</sup> (2001) 4 SCC 333



*it would be appropriate for the High Court to allow the trial to proceed.*

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*12. ....We would again remind the High Courts of their statutory obligation to not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons which in law amount to interdicting the trial against the accused persons. Unscrupulous litigants should be discouraged from protracting the trial and preventing culmination of the criminal cases by having resort to uncalled-for and unjustified litigation under the cloak of technicalities of law.*

xxx”

4. The other contention of learned counsel for the petitioner that the IO has not seized the *lathi danda* and *patila* is also of no consequence at this stage as the injury inflicted on the person of the injured/complainant has been corroborated by the MLC. Further, the version of the complainant finds support in the statements of Moseem and Pappu which were statedly recorded during investigation and finds mention in the impugned order.

5. In view of the above, I find no ground to interfere with the impugned order. The petition, alongwith pending applications, is accordingly dismissed.

**MANOJ KUMAR OHRI**  
(JUDGE)

**JANUARY 3, 2024/rd**