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

+ CRL.M.C. 8966/2023 & CRL.M.A. 33530/2023 (Stay), CRL.M.A. 533/2025 (Preponment of hearing)

MOHD AZHAR SAIFI AND OTHERSPetitioners

Through: Petitioners in person.

versus

THE STATE GOVT. OF NCT OF
DELHI AND ANR.

.....Respondents

Through: Ms. Shubhi Gupta, APP for the State
SI Biraj Salvi, PS Sarai Rohilla.
SI Deep Ram Sharma, PS Anand
Parvat.
Mr. Sachin Aggarwal, Advocate for
R-2 (through VC).

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

27.01.2025

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1. This hearing has been done through hybrid mode.
2. The present petition under Section 482 of the Cr.P.C. has been filed seeking the following prayers:

“It is, therefore, most humbly and respectfully prayed that this Hon’ble Court may kindly be pleased to quash of the FIR No.269/2017 U/S 308/323/34 IPC P.S. Sarai Rohila, Delhi and subsequent proceedings arising out of the said FIR pending before the Hon’ble Court of Ms. Ekta Gauba, ASJ, Central District, Tis Hazari Court, Delhi, in the interest of justice

Any other order or further order which this Hon’ble Court deem fit and proper under the facts and circumstances of the case in favour of the petitioners and against the respondents.”

3. The case of the prosecution as per the status report dated 22.01.2024



authored by Insp. Shishpal SHO PS Sarai Rohilla is as under:

- “1. Most respectfully, it is submitted that on 26.07.2017 a PCR call vide DD No. 26A regarding quarrel was received at PS Sarai Rohilla, Delhi and the same was marked to ASI Deep Ram, who alongwith staff reached the spot i.e. Vivekanandpuri Padam Nagar, Near Masjid, where it was learnt that PCR Van took injured persons to Hindu Rao Hospital. After that IO/ASI Deep Ram reached Hindu Rao Hospital and found the injured person namely Zaharudin S/o Badruddin R/o C-13, Vivekanand Puri, Masjid Fidai Khan, Sarai Rohilla, Delhi Age 60 years admitted vide MLC Nos 4464/17, on which Doctor opined A/H/O Physical Assault CLW of size 7x0.5 cm over scalp and U.O/Blunt. Another injured person namely Mohd Asgar S/o Mainuddin R/o C-13, Masjid Faidai Khan, Padam Nagar, Sarari Rohilla, Delhi Age 17 years was admitted vide MLC No 4463/17, on which Doctor opined A/H/O physical assault U.O/Blunt. After that IO recorded the statement of complainant Mohd. Asgar wherein he alleged that he is a student at Madrasa and on 26.07.17 at about 2:25 PM, he came out to start water motor where neighbor Md. Yusuf and his sons namely Azhar and Md. Ayub, started arguing and abusing him. Accused Azhar and Yusuf started beating him with the Stick and wood cutter saw. When he cried for help, Zahiruddin (Molvi of Madrsa) and a boy Mohd. Hidayat came out and tried to pacify the matter. In the meantime, Azhar attacked on the head of Zahiruddin (Molvi) with stick and Ayub started beating to Molvi with legs and fists. Accordingly a case vide FIR No. 269/2017 dated 26.07.17 U/S 308/323/34 IPC was registered at PS Sarai Rohilla and investigation was taken up by the then IO.
2. During investigation, scene of crime was inspected by Crime team and the exhibits were lifted from the spot. Blood stained clothes of the injured Zahiruddin were also seized. Statements U/S 161 Cr.P.C of witnesses were recorded. On 18.08.2017, accused Azhar Saifi S/o Mohd. Yusuf Saifi was arrested and at his instance used weapon of offence i.e. stick (danda) was recovered and seized. Accused Azhar was sent to Judicial Custody. On 04.09.2017 accused Azhar was granted bail by Hon'ble Court. On 11. 09.2017 anticipatory bail to accused Persons Mohd. Yusuf S/o Mohd. Rafiq and Mohd. Ayub S/o Mohd. Yusuf was granted by the Hon'ble court. On 28.09.2017 and 30.09.2017 both the accused persons were formally arrested respectively. During investigation, the MCs were deposited for final opinion. Nature of injury on both MLCs was opined as Simple.
3. After completion of investigation chargesheet u/s 308/323/34 IPC



was filed before the Hon'ble Court. On 07.12.2018, charges were framed by Hon'ble Court U/S 308/323/34 IPC against all the three accused persons. The case is pending trial in the Hon'ble Court of Ms. Ekta Gauba Mann (Central), Tis Hazari, New Delhi and NDOH is fixed for 24.04.2024. Out of 20 prosecution witnesses only 3 have been examined till date.

4. It is pertinent to mention here that a cross case vide FIR No. 302/2017 dated 21.08.2017 U/S 323/452/380/325/34 IPC PS Sarai Rohilla, New Delhi, was registered on the statement of Mohd. Azhar Saifi S/o Mohd Yusuf Saifi R/o C-13/I, Near Masjid Faidai Khan, Vivekanand Puri, Sarai Rohilla, New Delhi alleging therein that on 26.07.2017 the Imam of the Mosque namely Zahiruddin S/o Badruddin alongwith other 15-20 boys, armed with lathis and iron rods, barged into the house of the complainant and threatened to kill the father of the complainant. Imam namely Zahiruddin started beating to the complainant and his family. One of the assailants tried to hit the complainant with the stick, the complainant bent down and the same stick hit the head of Imam namely Zahiruddin. Rs. 20,000/- and gold neck set was also stolen by them. On this above-mentioned case was registered at PS Sarai Rohilla and the investigation was taken up.

5. During investigation of this case, statements of witnesses U/s 161 Cr.P.C were recorded. On 24.04.2018, accused namely Md. Lookman S/o Zahiruddin and on 27.04.2018 accused namely Md. Zahiruddin S/o Badruddin and on 27.06.2018, accused namely Mohd. Noman S/ Md. Zahiruddin were arrested in the case. All three accused persons were released on court bail by the Hon'ble Court. Nature of injury on MLC of injured namely Mohd. Azhar Saifi S/o Mohd. Yousuf was opined as grievous. Nature of injury on MLCs of injured Mohd Yusuf and Akhtari were opined as simple. After completing the investigation, the chargesheet of this case was filed before the Hon'ble Court u/s 323/325/380/506/34 IPC. On 07.12.2018, charges have been framed U/S 325/323/506/34 IPC by Hon'ble Court against the accused persons. This case is also pending trial in the Hon'ble court of Ms. Ekta Gauba Mann (Central), Tis Hazari, and NDOH is fixed for 24.04.2024.”

4. Petitioner no. 1 is present in person alongwith petitioner nos. 2 and 3 and argues that the present FIR could not have been registered as allegation would only show that a non-cognizable offence was committed and



therefore no permission under Section 155(2) of the Cr.P.C. was taken for registering the FIR. It is pointed out that there are discrepancies in the MLC prepared with respect to respondent no. 2 and the same would show that they have been manipulated in order to falsely implicate the petitioners in the present case. It is pointed out that MLC was not given to the learned Trial Court at the time of bail of petitioner no.1 and only after filing an RTI application, the petitioner got the concerned MLC. It was argued that since the injury suffered by respondent no. 2 was simple in nature, no offence under Section 308 of the IPC was made out. It is further argued that petitioner no. 1 had received grievous injuries; however, the cross-FIR on his complaint, i.e., FIR No. 302/2017 was registered only under Sections 323/452/383/325/34 of the IPC. Similarly, it is submitted that petitioner no. 2 herein has also received injuries. Reliance was placed on certain photographs to argue that a bare look at the same would show that it was impossible that petitioners had beaten respondent no. 2. It is submitted that the allegations in the FIR even if taken on *prima facie* value, no offence was made out against the petitioners.

5. Reliance is placed on the following judgements to submit that this Court should exercise power under Section 482 of the Cr.P.C. and quash proceedings against the petitioners.

- a) Surinder Kumar vs. State 1996 SCC Online Del 702
- b) State of Haryana and Others vs. Bhajan Lal and Others 1992 Supp (1) SCC 335
- c) Anand Kumar Mohatta and Another vs. State (NCT of Delhi), Department of Home and Another (2019) 11 SCC 706

6. *Per contra*, learned APP for the State assisted by learned counsel



appearing on behalf of respondent no. 2 submitted that cross cases had been registered between the parties, i.e., on the complaint made by the petitioners herein as well as on the complaint made by respondent no. 2. It is submitted that the injury in the present case was on the head of respondent no. 2 and therefore the provision of Section 308 of the IPC was added. Moreover, it is pointed out that charges under Sections 308/323/34 IPC in the matter were already framed on 07.12.2018 and the matter is pending at the stage of prosecution evidence, where out of 20 witnesses, 3 have been examined. It is also pointed out that the charges have also been framed in the cross case registered at the instance of the petitioner being FIR No. 302/2017 under Sections 323/452/383/325/34 of the IPC, registered at P.S. Sarai Rohilla.

7. Heard learned counsel for the parties and perused the record.

8. It is a matter of record that the investigation in the present case stands complete, chargesheet has been filed and charges have been framed and the prosecution evidence is ongoing. The contention made on behalf of the petitioners is with regard to the discrepancy in the MLC or non-supply of the MLC is a subject matter of trial. The petitioner while choosing not to challenge the order on charge, at this belated stage, cannot challenge the same by way of this petition. It is noted that charges were framed way back in December, 2018 and the present petition was filed on 04.11.2023. Clearly, the present petition suffers from delay and latches. Admittedly, there are two versions of the incident that had taken place on account of which two cross-FIRs had been registered. In these circumstances, it cannot be said that no incident had taken place. The veracity of the statement made by the complainant(s) with respect to the two FIRs is a matter of trial which shall be adjudicated during the course of the same in accordance with law.



9. In view of the aforesaid facts and circumstances of the present case no case for interference at this stage is made out.
10. The present petition is dismissed and disposed of accordingly.
11. Pending application(s), if any, also stand disposed of.
12. Needless to state, all the contentions raised by the petitioner may be taken up during the course of the trial and the same shall be decided in accordance with law.
13. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present petition.
14. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

JANUARY 27, 2025/sn

Click here to check corrigendum, if any