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

+ CRL.REV.P. 284/2016

STATE

.....Petitioner

Through: Mr. Ajay Vikram Singh, APP for the
State.

SI Shivam Bisht, PS Khajuri Khas.

versus

TIKAM SINGH & ORS.

.....Respondents

Through: Mr. Ashwani Jha, Adv. Through VC
for R-1 to 3.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

15.04.2025

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1. Hearing in the present case has been conducted through hybrid mode.
2. The matter was listed for hearing on 14.04.2025, however, on account of holiday being declared on 14.04.2025, the same is taken up for hearing on 15.04.2025.
3. The present petition under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973, (for short, 'CrPC') has been filed seeking the following prayers: -

“In view of factual facts, submissions and averments as made herein above, it is most humbly and respectfully prayed that this Hon'ble Court may kindly and graciously be pleased to set-aside/quash the Order and Judgment dated 14.01.2016 passed by Shri Sanjay Sharma, A.S.J., Karkardooma Courts, Delhi, in F.I.R. No.182/2013, P.S. Khajuri Khas, Delhi, in the interest of justices.

It is further prayed to kindly summon the trial court record of the said case.

It is further prayed that this Hon'ble Court may also pass any such or further order(s)/direction(s) as deem fit and proper in the facts



and circumstances and submissions of the case, in favour of the Petitioner.”

4. The present proceedings arise out of FIR No. 182/2013, under Sections 308/34 of the Indian Penal Code, 1860, (for short, ‘IPC’). registered at PS Khajuri Khas, which was registered on the basis of the statement of the complainant, Tarun Kumar, wherein, he had stated that on 11.04.2013 at around 09:00 PM, he received a call from his brother, Tanuj, that he has been involved in a quarrel at Jeevan Jyoti School, near Sadatpur Extension, Delhi. It was stated that the complainant then took his motorcycle No. DL 13 SC 0196 and headed towards Jeevan Jyoti School, near Gali No.3, where he found that few people were involved in a quarrel with his brother, Tanuj, and were beating him and when the complainant tried to intervene to pacify the situation then, the said people started fighting with him and started beating him. In the meanwhile, Arvind and Mohit, who were residents of the nearby street, came to the spot and tried to rescue the complainant and his brother. But ‘V’ (JCL/CCL, name withheld), who was holding a wooden stick (*danda*) in his hand, hit the complainant on his left hand and accused, Rishipal (Respondent No.2), hit a stone on his waist and accused, Kallu (Devender @ Kallu: Respondent No.3), hit the complainant with a stone on his head and because of the same, blood started oozing out of the complainant’s head. It was further stated that Tikam (Respondent No.1) also gave beatings with fists and kicks to the complainant and during this, Tanuj, Mohit and Arvind, who were involved in rescuing him, also got beaten. Thereafter, a call was made on emergency helpline No. 100, regarding the aforesaid incident.

5. After the registration of the FIR, investigation was undertaken and MLCs of the complainant and injured persons, Arvind and Tarun were



collected by the Investigating Officer and on completion of investigation, chargesheet for the offences punishable under Sections 308/34 of the IPC was filed before the Court of competent jurisdiction. The learned Trial Court, after hearing the arguments on consideration on point of charge, discharged the accused/respondents, for the offences punishable under Sections 308/34 of the IPC. Learned ASJ found that the offences punishable under Sections 323/34 of the IPC are made out against the respondents/accused persons and not Sections 308/34 of the IPC. In view of the statutory bar provided under Section 155(2) of the CrPC, the proceedings against the respondents could not be continued as offence punishable under Section 323 of the IPC is non-cognizable offence and thus, they were discharged. Therefore, the present petition has been filed by the State assailing the impugned order of discharge of the respondents/accused persons.

6. Learned APP for the State has submitted that the learned ASJ has not taken into account the fact that the respondents/accused persons had inflicted the injuries on the vital parts, i.e., head of the complainant. It is further submitted that the nature of the injury and the recovery of the weapon of offence, at the stage of framing of charge, is immaterial as only *prima facie* case is to be seen and an in-depth inquiry is to be done at an appropriate stage during the course of the trial. It is further submitted that learned Special Judge has failed to appreciate the fact that the statement of the injured, Tanuj, and the complainant are on similar lines and the same is also reflected from their MLCs wherein injuries inflicted on their person has been mentioned. It is, therefore, the case of the prosecution that only a *prima facie* case is to be seen at the stage of framing of charge and in view of the same, the impugned order of discharge has to be set aside.



7. *Per contra*, learned counsel appearing on behalf of respondents/accused persons has submitted that the learned Trial Court has passed the impugned order of discharge after proper application of mind and duly appreciating the MLCs as well as the statements of the injured victims in the present case. It is further submitted that the MLCs of the injured victims show that they were discharged after treatment on the same day of the happening of the alleged incident and the injuries inflicted on them were simple in nature, and thus, the learned Trial Court has rightly discharged the respondents/accused persons in the present case.

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

9. Learned Trial Court while discharging the respondents/accused persons for the offences punishable under Sections 308/34 of the IPC had passed the following order: -

“12. To proceed under Section 308 IPC, it is not essential that the injury actually caused to the victim should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the 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, if an accused does not intend to cause death or any bodily injury, which he knows to be likely to cause death or even to cause such bodily injury as is sufficient, in the ordinarily course of nature to cause death, Section 308 IPC would not apply. It depends upon the facts and circumstances of each case whether the accused had the intention to cause death or knew in the circumstances that his act was going to cause death.

13. The nature of weapon used, the intention expressed by the accused at the time of the act, the motive of commission of offence, the nature and size of the injuries, the parts of the body of the victim selected for causing injuries, severity of the blow or blows and the conduct of the accused are important factors which may be taken into consideration in coming to a finding whether in a particular case, the accused can be proceeded under Section 308 IPC.



14. In '**Sheila Devi & Ors. v State**', CrI. Rev. P. 217/15 decided on 23.09.2015, the Hon'ble Delhi High Court observed as under:

"5. In the instant case, both the parties were acquainted with each other and they lived as neighbours in the same vicinity. There was no history of previous animosity or hostility between them. On 25.07.2012, a sudden quarrel took place between them on a trivial issue of raising alleged unauthorized toilet which was objected to by the complainant. Again on 26.07.2012 quarrel took place between them on the sad issue. In the said quarrel, the complainant sustained injuries on her forehead. MLC (Annexure-C) reveals that one lacerated wound 31 c.m. was found on the forehead of the victim. Injuries were 'simple' in nature caused by blunt object. The victim did not need hospitalization and was discharged on the same day after prescribing certain medicines. Apparently the injuries sustained by the victim were not sufficient to cause death in the ordinary course of nature. The petitioners were not armed with any deadly weapons. Only a single blow was allegedly sustained by the victim when a brick was thrown at her by one of the petitioners in the quarrel that had taken place all of a sudden without premeditation. No serious injuries were caused on the vital organ of the victim. Under these circumstances, it cannot be inferred that injuries were inflicted with the avowed object or intention to cause death or bodily injury capable of causing death. Merely because a superficial injury was found on the forehead of the victim, it cannot be said that such an injury was caused with the intention to commit culpable homicide. The material before the learned Trial Court was deficient to attract Section 308 IPG. It was a simple case of scuffle/ quarrel between the parties where injuries were inflicted voluntarily and for that the assailants can be proceeded for causing hurt under Section 323 IPC."

15. In '**Rajiv Sharma v State of NCT of Delhi & Anr**', CrI. Rev. P. 34/2015 decided on 17.09.2015, Hon'ble High Court while setting aside charge under section 308 IPG observed as under:

"5. In the instant case, the complainant was residing as a tenant in premises in question under one Jyotsna Das. It appears that subsequently the said premises were purchased by the petitioners. Apparently, there was no previous animosity or hostility between the parties before the incident. It is alleged that the petitioners' intention was to get the tenanted premises vacated forcibly. No complaint,



whatsoever, was lodged by the complainant against the petitioners before 22.02.2009. On that day too, both the parties were booked under Sections 107/150 Gr.P.G. Pradeep and complainant Ram Avtar Sharma sustained injuries 'simple' in nature on their bodies. They were medically examined at AIIMS soon after the quarrel and were discharged on the same day after prescribing certain medicines. The injuries were 'simple' in nature caused by a blunt object. None of the victims was found to have suffered any fracture. Subsequently, the Investigating Officer sought specific opinion from the concerned examining doctor who informed that the injuries sustained by Ram Avtar were "contusion on scalp, abrasion and swelling on left eye, swelling on lower lip and tenderness on outer aspect of right eye." X-ray report mentions 'no fracture seen'. MLC pertaining to Pradeep mentions "lacerated wound on scalp on left parietal region 2.5 cm, swelling and tenderness on left shoulder, contusion on left shoulder, abrasion of upper lip, abrasions on right elbow." X-ray report mentions 'no fracture seen'. He further informed that the Injuries mentioned in both MLCs were possible in a fight. These were caused by blunt force/ weapon. All the injuries were 'simple' in nature and were not sufficient to cause death in the ordinary course of nature. 6. No weapon of offence was recovered during investigation. No repeated forceful blows were inflicted on any vital body parts. Revolver allegedly in possession of one of the assailants was not used. Sharp-side of the weapons allegedly in possession of the assailants were not used to Inflict injuries "

16. It is evident that the incident in question was a sudden fight. There was no previous enmity or hostility between the accused persons and the complainant Tarun Kumar. The accused persons did not attack the complainant party in a pre planned manner. The complainant Tarun Kumar reached at the place of incident on receiving a call from his brother Tanuj. The accused persons were scuffling with his brother Tanuj. The complainant intervened into the matter and during that process, he sustained injury on his head. The accused persons were not carrying any dangerous weapon. The alleged danda has not been recovered. The dimensions and features of the said danda have not been stated by the complainant Tarun Kumar. The accused Rishipal Singh and Devender @ Kallu picked up the stones from the place of Incident. MLC of the complainant Tarun Kumar mentions about a superficial injury in the form of a lacerated wound measuring 2.5 x 1 cm on his parietal region. The injury sustained by the complainant



Tarun Kumar is simple The complainant Tarun Kumar and Arvind Yadav were discharged on the same day.

17. The alleged stones neither recovered nor their features stated by the witnesses. Mere presence of such minor injury on head is not sufficient to attract section 308 IPC. The accused persons did not utter any word for causing any injury sufficient to cause death.

18. According to MLC, the complainant Tarun Kumar was conscious and oriented at the time of his medical examination. He was fit for making statement. The injured Arvind Yadav was not having any external injury. He mere complained of pain in his body. It Is evident that the injury sustained by the complainant Tarun Kumar was not sufficient to cause death in ordinary course of nature.

19. It was a case of simple hurt punishable under section 323 IPC.

20. In '**Surinder Kumar v State**' (supra), Hon'ble High Court observed as under:

"7....Therefore, the most important circumstances in a case under section 308 would be that an act should have been committed with intention or knowledge to commit culpable homicide not amounting to murder. The injuries sustained by the complainant are not such that could in any manner result in the death of the injured persons. The injuries were caused by a blunt object and it was one and a half inch lacerated wound in the scalp. The doctor who examined the complainant had opined that there was no evidence of head injuries and it did not even require the hospitalisation and he was asked to attend the OPD the next date. The word 'grievous' against the injuries has been written by the doctor who had not examined the injured and had not given any opinion about his alleged head injuries. Merely because an injury has been found on the head, it cannot be said that such an injury was caused with the intention or knowledge to commit culpable homicide not amounting to murder. The evidence and circumstances of the case otherwise show that there was no intention or knowledge on the part of the accused to cause such injuries which would have resulted in the death of the complainant as a result of which they would have been guilty of murder or culpable homicide not amounting to murder.....

8. For the foregoing reasons, I am of the considered opinion that the petitioners could not have been charged for an offence punishable under Section 308/34 I PC.

9. Coming to the second question as to whether the petitioners could be tried for an offence punishable under Section 323/34 IPC, I find that the offence under Section 323



is a non- cognizable offence and investigation by the Police into the case involving non-cognizable offence is not permissible without permission of the Magistrate. Admittedly, no permission has been taken by the Police to investigate into the offence punishable under Section 323 IPC. It is contended by Mr. Behl that as the FIR related to an offence not only under Section 323 IPC but also under Section 308, there was no bar in the police investigating the case. In my opinion, the argument has no basis. When the case is actually registered against an accused in respect of both cognizable and non- cognizable offences and ultimately it is found that the cognizable offence is not made out, it may mean giving long hand to the police in first registering cases for cognizable offences which ultimately may not fall within the definition of such a case. I am, therefore, of the view that the police having not taken permission of the Magistrate under Section 155 (2) of the Code of Criminal Procedure, the proceedings against the petitioners under Section 323 cannot be continued.

10. For the foregoing reasons while I discharge the petitioners of the offence under Section 308 IPC, I quash the proceedings pending against them in relation to FIR No. 335/92 PS Krishna Nagar, in so far as it relate to the offence punishable under Section 323 IPC.”

21. In the facts and circumstances of the case, It cannot be inferred that the accused persons caused injury to the complainant Tarun Kumar and Arvind Yadav with the requisite intention or knowledge required under section 308 IPC.

22. Section 308 IPC is not applicable to the present case.

23. Section 323 IPC is a non-cognizable offence.

24. Investigating Officer applied section 308 IPC to a case which was a case of simple hurt since beginning in a mechanical manner.

25. A police officer has no authority to investigate a non-cognizable offence in the absence of order of a Magistrate having the power to try such case or commit it for trial.

26. Accordingly, the accused persons are discharged from offence under section 308 read with 34 IPC.

27. The proceedings against the accused persons, in so far as relate to offence under section 323 read with 34 IPC, cannot be continued in view of statutory bar contained in section 155 (2) of the Cr.PC.”

10. It is a matter of record that the alleged weapon of offence, i.e., stone



and wooden stick (*danda*), by which the alleged injuries, as stated in the MLCs of the injured victims, were alleged to have been caused were not recovered. As per the case of the prosecution and chargesheet filed before the learned Trial Court, offences punishable under Sections 308/34 of the IPC were alleged to have been made out against the respondents/accused persons. Section 308 of the IPC reads as under: -

“Section 308:- Attempt to commit culpable homicide: Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

11. It is pertinent to note that, even as per the case of the prosecution, the incident in the present case was not premeditated and it was a sudden fight between the brother of the complainant and the accused/respondents. It is also not the case of the prosecution that there was prior enmity between the injured victims and the accused/respondents.

12. As per the MLC, the complainant, Tarun Kumar, had an abrasion and swelling on his left hand and tenderness on right lateral side of chest and a superficial injury in the form of a laceration, 2.5 x 1 cm over his left parietal area. It is further stated in the MLC that he was conscious and oriented at the time when his medical examination was conducted. As per the MLC of the injured/victim, Arvind Yadav, no fresh external was seen on his person and there was complaint of pain in lower back and thigh. No bone injury was observed in the X-ray of his chest. It is a matter of record that the nature of



injuries inflicted on both the injured victims, as opined by the concerned doctor, were simple in nature. It is also pertinent to note that, in the chargesheet filed by the prosecution, it was not the case that the accused/respondents by their acts alleged against them did intend to cause the death of the injured persons. Perusal of the statements of the injured, Tarun and Arvind, show that the allegations *qua* the accused/respondents are of quarrel and giving fists and kick blows to them.

13. The Hon'ble Supreme Court in **Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4**, had observed and held as under: -

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. **By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.**

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he



was conducting a trial.”

(emphasis supplied)

14. The Hon’ble Supreme Court in **Sajjan Kumar v. Central Bureau of Investigation, (2010) 9 SCC 368**, while analysing the scope of Sections 227 and 228 of the CrPC, has observed and held as under: -

“Exercise of jurisdiction under Sections 227 and 228 CrPC

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged



offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

(emphasis supplied)

In view of the aforesaid facts and circumstances of the present case and the law laid down by the Hon’ble Supreme Court, this Court finds that the impugned order does not suffer from any legal infirmity or perversity and thus, no grounds for interference with the impugned order are made out.

15. The present petition is dismissed and disposed of accordingly along with all pending applications, if any.

16. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case or pending trial and any observations made herein are only for the purpose of the present petition.

17. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

18. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

APRIL 15, 2025/kr

Click here to check corrigendum, if any