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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.REV.P. 34/2016

VED PRAKASH & ORS

....Petitioners

Through: Mr. Rajeev Kumar Jain, Advocate.

Versus

STATE & ORS

....Respondents

Through: Mr. Satish Kumar, APP.
Mr. Rajesh Kumar Passey, Adv. for
respondent No.2-6.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER
10.02.2025

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1. The instant criminal revision petition under Section 397 of the Code of Criminal Procedure, 1973 (hereinafter “CrPC”) has been filed on behalf of the petitioners praying for following reliefs:-

“1. That the impugned order dated 30th Oct., 2015 may kindly be set aside/ quashed.

2. That the orders for further investigation in FIR No. 345/06, P.S. Prashant Vihar may be passed and investigation be handed over to CBI.

3. That the summoning orders be issued against the respondent no.2 to 6 to face the trial in FIR NO. 345/06, P.S. Prashant Vihar in the interest of justice, equity and circumstances of the



case.”

2. The brief facts of the case are that the instant FIR bearing No. 345/2006 was registered at Police Station - Prashant Vihar under Sections 304/34 of the Indian Penal Code, 1860 (hereinafter “IPC”) at the instance of a complaint made by the petitioner no. 1. In the said complaint, it was alleged that the deceased, who was the father of the complainant/petitioner no. 1, was physically assaulted by the respondent nos. 2 and 3, which caused his death.

3. After conducting investigation into the matter, the investigating agency filed the closure report. Thereafter, an application was filed by the petitioner under Section 173(8) of the Code of Criminal Procedure, 1973 (hereinafter “CrPC”) seeking further investigation in this matter, which was dismissed by the learned Metropolitan Magistrate-04, Rohini Courts, Delhi (hereinafter “MM”) *vide* the impugned order dated 30th October, 2015.

4. Being aggrieved by the impugned order, the petitioner has filed the instant revision petition.

5. Learned counsel appearing on behalf of the petitioners submitted that *vide* the impugned order, the learned MM has accepted the final report without considering relevant facts and evidence on record. It is further submitted that after the completion of investigation, the final report was filed by the investigating agency before the Court concerned and pursuant to that, no protest application was filed instantaneously by the complainant before the Court concerned against the said final report filed by the investigating agency as they were not aware that the said report has been filed.



6. It is submitted that after receiving a copy of the final report in the year 2015, the complainant filed an application under Section 173(8) of the CrPC before the Court concerned, thereby, seeking directions to the Investigating Officer to investigate the matter further.

7. It is submitted that in the said application, it was clearly highlighted that the role of the Investigating Officer is highly objectionable and suspicious as in the course of a long-drawn investigation in the present matter, the Investigating Officer failed to collect any evidence against the alleged accused persons.

8. It is submitted that the aforesaid application was filed before the Court concerned as the Investigating Officer had failed to collect CDR and telephone records of all the accused persons, and therefore, the entire investigation was faulty.

9. It is submitted that while passing the impugned order, the learned MM has failed to consider the presence of the accused persons at the site of the incident when the deceased had sustained injuries which is evident from the MLC and postmortem report of the deceased.

10. In view of the foregoing submissions, it is prayed that the impugned order dated 30th October, 2015 being erroneous, contrary to the law and without application of judicial mind, is liable to be set aside. It is further prayed that considering the matter in its entirety, this Court may pass a direction for further investigation in the instant matter.

11. *Per contra*, the learned counsel appearing on behalf of the respondent no. 2 to 6 submitted that while passing the impugned order, the learned MM has taken into consideration all the grounds and contentions made in the application filed under Section 173(8) of the CrPC, and has also appreciated



the fact that there is no witness on record who has supported the case of the complainant. It is further submitted that the complainant has also not witnessed the said incident himself, which allegedly led to the death of the deceased and therefore, his version of events is based on frivolous claims.

12. It is submitted that in the absence of any material against the respondents, the investigating agency has filed the closure report which was duly taken on record by the learned MM pursuant to which the petitioner failed to file the protest application for more than two years against the said closure report.

13. It is submitted that the injury caused on the left cheek of the deceased could not be caused by merely slapping a person and the same is evident from the statement of the doctors who had conducted the MLC as well as the post-mortem of the deceased person.

14. It is submitted that this Court may not exercise the revisional jurisdiction to interfere with the impugned order passed by the learned MM in which there is no miscarriage of justice or error that has been established by the complainant. It is also submitted that this Court has limited scope in the exercise of its revisional jurisdiction to interfere with the orders passed by the Courts below. It is further submitted that in view of the aforesaid facts and circumstances, there is no error or illegality in the impugned order and thus, the instant petition may be dismissed.

15. Thereafter, the learned APP appearing on behalf of the State vehemently opposed the instant petition and submitted that the investigating agency, after thorough investigation, could not find any material or witness supporting the case of the complainant as no one witnessed the alleged incident on the said date of the incident, i.e., 25th April, 2006.



16. It is further submitted that the learned MM, while passing the impugned order, has taken into consideration all the grounds which have been taken in the application filed under Section 173(8) of the CrPC for further investigation. It is further submitted that there is no illegality or error in the impugned order and there are no substantial grounds or reasons for interfering with the said order by this Court in the exercise of its revisional jurisdiction. Therefore, it is prayed that the instant revision may be dismissed being devoid of any merit.

17. Heard learned counsel for the parties and perused the material placed on record.

18. Before advertng to the merits of the present case, it is pertinent to discuss the settled position of law on the scope of the exercise of the Court's revisional jurisdiction. In the case of **Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460**, the Hon'ble Supreme Court held:

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.



13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice *ex facie*. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC.

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20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily....”

19. Perusal of the aforesaid extracts makes it clear that the revisional jurisdiction of this Court has to be exercised in a limited manner such as in the case of a palpable error, non-compliance with the provisions of law or when the decision involves arbitrary exercise of judicial discretion. The



purpose of the exercise of the said jurisdiction is to ensure that the ends of justice are secured and there is no abuse of process of the court.

20. Adverting to the merits of the present case, it is alleged by the complainant that on 25th April, 2006, the complainant, on discovering some injury marks on the left cheek of the deceased, had taken him to the hospital for check-up. On the doctor's (namely, Mr. Pradeep Dua) query, the deceased informed him that the said injury was caused by the respondent nos. 2 and 3 as they had slapped him. It is stated in the instant FIR that the doctor conducted the X-Ray of the deceased's skull and upon discovering that the report was normal, subsequently discharged him. However, due to certain complications arising on the next day, the deceased had to be taken to the hospital again where he was admitted in the ICU before his demise.

21. This Court has perused the MLC and the post-mortem report which has been relied upon by the petitioners to strengthen their case. There is no dispute on the point of the injury sustained by the deceased on his left side upper cheek (hereinafter "injury no. 1"), which was sufficient to cause death in the ordinary course of nature, as per the post-mortem report.

22. As per the opinion of the CW2, namely Dr. NK Aggarwal based on the post-mortem of the deceased, the cause of death was shock due to cerebral damage resulting from injury no. 1, which was sufficient to cause death in the ordinary course of nature. It was further opined that the said injury can be caused due to fall on blunt object or *vice versa*.

23. Dr. Pradeep Dua, who treated the deceased on 25th April, 2006 opined in his statement that merely a slap was insufficient to cause the blunt force impact which caused injury no.1. It is stated in the Final Report filed by the investigating agency that Mr. Uday Prakash, the eldest son the deceased



admitted in his statement recorded under Section 161 of the CrPC that the deceased sustained the injury on his left cheek due a fall in the bathroom at his house on 25th April, 2006.

24. It is an admitted fact that there is no eye-witness to the said incident which allegedly led to the injury that caused the death of the deceased. It is also undisputed that the complainant himself has not seen the incident which is alleged to have caused the death of the deceased.

25. Taking into consideration the nature of the injury, the opinion rendered by the doctors who conducted the MLC/post-mortem of the deceased and the material placed on record, this Court is of the view that it is likely that the injury no. 1 was sustained due to a fall of the deceased person at his house and the allegations made by the complainant, even taken at their best case, do not point towards the involvement of respondent nos. 2 to 6 in causing the said injury and death of the deceased.

26. Therefore, the investigating agency, despite conducting thorough investigation, has not found any material supporting the version of the complainant and this Court does not find any material to form an opinion otherwise. In light of the same, it is held that the impugned order, by virtue of which the petitioner's application under Section 173 (8) of the CrPC was dismissed does not suffer from any illegality which warrants the intervention of this Court and it is further held that the same has been passed after taking into consideration the entire facts and circumstances, including the grounds taken by the petitioner in the aforesaid application.

27. In view of the foregoing discussions, this Court does not find any reason to exercise its revisional jurisdiction to interfere and set aside the impugned order dated 30th October, 2015, passed by the learned MM-04,



Rohini Courts, Delhi in FIR No. 345/2006 and the same is, hereby, upheld.

28. Accordingly, the instant revision petition stands dismissed being devoid of any merit. Pending application(s), if any, stands disposed of.

CHANDRA DHARI SINGH, J

FEBRUARY 10, 2025

NA/st/ryp

[Click here to check corrigendum, if any](#)