IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT: CRIMINAL PROCEDURE CODE

Crl. Rev. P. No.361 of 2003

Reserved on: 07.01.2008

Date of decision: 14.01.2008

MR. P.K. GHOSH ... PETITIONER

Through: Mr. Devender Hora with
Ms. Vandana Bhatia, Advocates.

Versus

STATE and ANR. ... RESPONDENTS

Through: Mr. Pawan Sharma, Advocate
for the State. Mr. P.K. Dey with
Mr. Kaushik Dey, Advocates
for Respondent No.2.

SANJAY KISHAN KAUL, J.

1. The present case is a classic one where two well educated people are alleged to have taken law into their own hands resulting in physical injuries.

2. The petitioner, the complainant, is alleged that on 30.8.2001 at about 8:25 a.m. when he along with one Mr. Madan was walking away from the then residence at Galaxy Apartments, Vikas Puri, Delhi, the ex-President of Galaxy Apartments, Mr. A.K. Kapoor, respondent No.2/accused stopped them and started hitting the petitioner on the face and head with some hard object. Respondent No.2 is thereafter alleged to have picked up a stone with which he started hitting the petitioner on the head and body with the threat to kill him. On the cries of the petitioner some persons gathered who intervened. The petitioner was taken for medical examination to DDU Hospital where the doctor found the injury to be a simple hurt.

3. The petitioner has further alleged that the injury was stated to be a simple hurt on account of the influence of respondent No.2 as he was a former Administrative Officer of Dr. Ram Manohar Lohia Hospital. Incidently the petitioner is a retired Government servant while respondent No.2 is still in Government service and the original dispute is about who would control the society of the Apartment owners. The petitioner, in fact, was so aggrieved that he addressed several letters to various authorities including ministries against respondent No.2.

4. The petitioner claims that his medical problems got aggravated and had to be admitted to LNJP Hospital for 22 days. In view of the head injuries, the petitioner was kept under observation and the opinion given was that it was a case of a grievous hurt and not a simple hurt. On the said medical report, the IO made out a case against respondent No.2 under Section 308 of the IPC.

5. On the aforesaid opinion being given by LNJP Hospital, respondent No.2 is alleged to have used his influence and instructed to get a medical board constituted of two-three doctors and the board so constituted examined the petitioner which held that the petitioner had suffered a simple hurt.

6. The challan was, however, filed under Section 308 IPC and thus was committed to the Court of Sessions at the stage of charge. The learned Additional Sessions Judge, however, passed an order dated 3.2.2003 holding that there was no material on record for a case under Section 308 IPC and the present case was one of simple hurt. It is this order, which is sought to be impunged by the petitioner.

7. A perusal of the impugned order shows that what weighed with the trial court was the initial medical report showing a simple blunt injury and there was nothing on record to show that respondent No.2 had any intention or knowledge that by such act he would commit culpable homicide of the petitioner. The matter was, thus, remanded back to the Magistrate to consider whether any charge could be framed against the accused in accordance with law.

8. Learned counsel for the petitioner has emphasised that once it was found that the offence complained of was in the nature of a grievous hurt as defined under Section 320 IPC, it is under Section 308 of the IPC that respondent No.2 ought to have been charged. Learned counsel relied upon the fact that the petitioner had to be hospitalised for 22 days making him fall under the eighth category of the kinds of grievous hurt as prescribed under Section 320 of IPC.

9. Learned counsel for respondent No.2, on the other hand, submitted that the injury initially found on the petitioner was a blunt injury and the petitioner, with the object of harassing respondent No.2 got himself re-examined and got admitted to the hospital and deliberately stayed in the hospital without there being any cause for the same. Learned counsel submitted that the mere fact that the petitioner stayed in the hospital for 22 days would not imply that respondent No.2 should be charged under Section 308 IPC. Learned counsel also emphasised that the nature of injury and nature of weapon have to be kept in mind and the allegation in the present case is only that respondent No.2 hit the petitioner with the stone. In fact, there have been past history of tussle over control of respondent No.2 of society and there are cross FIRs of respondent No.2 in respect of the incident in question.

10. Learned counsel for respondent No.2 further sought to plead that even if during the course of trial the evidence produced were to show that an offence under Section 308 IPC was made out, the Magistrate would have power under Section 309 Cr.P.C. to direct the proceedings against respondent No.2 under Section 308 Cr.P.C.

11. Learned counsel for the State has supported the case of the petitioner to contend that respondent No.2 should be charged under Section 308 IPC and if no material is found for the charge under Section 308 IPC, he may be convicted for a minor offence though he may not be charged with it in view of provisions of Section 222 Cr.P.C. Learned counsel further submitted

that at the stage of framing of charges only sifting of the material has to be done by the trial court.

12. Learned counsel for the State also rebutted the submission of the counsel for respondent No.2 to the effect that Section 319 Cr.P.C. would apply. Learned counsel submitted that the said provision would have no role in the present case since that provides for power to proceed against other persons appearing to be guilty of offence. Learned counsel submitted that, in fact, in such an eventuality it is Section 216 of the Cr.P.C., which would apply dealing with the power of the Court to alter or add a charge at any time before the judgement is pronounced.

13. On hearing learned counsels for the parties, one fact which imminently emerges is that the incident in question was the result of the tussle to control the society. It is in view thereof that the petitioner and respondent No.2 became enemical to each other resulting in the cross FIRs being lodged.

14. The immediate medical attention received by the petitioner showed that there was only a simple blunt injury. The petitioner was not satisfied with it and thus got himself admitted into another hospital subsequently after a couple of days where he continued to stay for 22 days. The question about the medical condition of the petitioner gave rise to the constitution of the board of three doctors, who submitted their report. One of the conclusions reached by the said committee was that after the admission of the petitioner on 3.9.2001, the next visit of the doctor occurred only on 11.9.2001 after full 8 days. The petitioner was thus quite stable during this period of time. On the basis of the material on record, the committee opined that the clinical condition of the petitioner did not deteriorate as he suffered from minor head injury, if any. Insofar as the plea of learned counsel for the petitioner for stay of the petitioner in the hospital for 22 days is concerned, it must be kept in mind that a mere stay in a hospital for 20 days, does not constitute a grievous hurt as some doctors and even lawyers are inclined to believe. It must be proved that during that period, the injured man was in severe bodily pain or unable to follow his ordinary pursuits. An injured man may be quite capable of following his ordinary pursuits long before 20 days are over, and yet may prolong his stay in hospital by interfering with the healing of his wound or for the sake of permanent recovery or greater ease or comfort may be willing to remain as a convalescent in hospital, especially if he is fed at the public expenses. Thus, in the present case, the gravity of the injury was simple in nature.

15. Learned counsel for the petitioner sought to rely upon the judgement of the Apex Court in Sunil Kumar Vs. N.C.T. of Delhi and Ors. 1999 1 AD (Cr.) SC 217 to plead that an attempt to commit culpable homicide not amounting to murder may actually result in hurt or may not. The hurt may be simple or grievous hurt. Merely because the injury inflicted in the incident was simple in nature, it did not absolve the accused from the charge under Section 308 IPC. It is the attempt to commit culpable homicide, which is punishable under Section 308 IPC whereas the punishment for simple hurts can be meted out under Sections 323 and 324 IPC and for grievous hurts under Sections 325 and 326 IPC.

16. There can be no doubt about the legal proposition as canvassed by the learned counsel for the petitioner but in the present case where if the intent and the instrument used is seen whereby a stone was picked up from the road in the heat of the moment, there does not appear that respondent No.2 committed such act with an intention or knowledge to commit an offence of culpable homicide not amounting to murder punishable under Section 308 IPC.

17. On perusal of the order, I am of the view that the trial court did not commit any error in not framing the charges under Section 308 IPC. The legal position is not in dispute that the task of the trial court at the stage of framing of charge is to sift through the material to form an opinion that the commission of an offence by the accused was possible. The probative value of the material on record cannot be gone into. However, there must exist some material, which should form the basis of the framing of the charge. Such view has been expressed in Soma Chakravarty Vs. State Through CBI (2007) 5 SCC 403. However, simultaneously it has also been emphasised in Dilawar Balu Kurane Vs. State of Maharashtra (2002) 2 SCC 135 that the trial judge cannot merely act as a post office or mouthpiece of the prosecution. He has to sift and weigh the evidence for the limited purpose of finding out whether a prima facie case has been made out and where two views are equally possible and evidence gives rise to some suspicion but not grave suspicion, he can discharge the accused.

18. In the present case despite the prayer made by respondent No.2, the learned Judge has not discharged him but has only come to the conclusion that the injury was of simple nature and there was no basis to frame a charge for grievous hurt under Section 308 IPC leaving it for the Magistrate to determine whether charges can be framed for simple hurt. The learned Additional Sessions Judge has thus exercised the power by not acting as a post office but appraising the evidence on record for determining whether there was material which could give rise even to a possibility of the offence for which respondent No.2 was sought to be charged to be proved and came to the conclusion that there was absence of such material. The medical examination conducted at DDU Hospital and the report of the medical board constituted thereafter concluded that the nature of injury was one of simple hurt. The stay at the LNJP Hospital for 22 days also does not indicate the fact that the petitioner sustained grievous hurt since the report of the said Board throws light on the visits made by the doctor which is after 8 days from the time the petitioner got admitted indicating the stable condition of the petitioner.

19. I find myself in agreement with the said view. There is no infirmity in the impugned order.

20. Dismissed.

Sd./-

JANUARY 14, 2008 SANJAY KISHAN KAUL, J.