14.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
\+ **CRL.REV.P. 513/2004**

Judgment delivered on 18th September, 2009.

Rakesh Kumar Gupta ..... Petitioner
Through : Mr. R.N. Mittal, Sr. Adv. with
Mr. Manoj Kumar, Adv.

versus

STATE (Govt. of NCT Delhi) ..... Respondent
Through : Mr. Lovkesh Sawhney, Advs.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether reporters of local papers may be allowed to see the Judgment ? **YES**
2. To be referred to the Reporter or not? **YES**
3. Whether the Judgment should be reported in the Digest? **YES**

G.S. SISTANI, J.

1. The present petition has been filed under Section 397 of the Code of Criminal Procedure, 1973, and is directed against the order dated 02.06.2004 passed by the learned Additional District and Sessions Judge, Delhi, framing charges against Rakesh Kumar Gupta (petitioner herein).

2. The brief facts of the case are that on 14.02.2003, a case was registered on a statement made by Virender Singh Rawat under Sections 323/341/34 IPC, Police Station New Ashok Nagar, Delhi, wherein it was stated that the complainant (Virender Singh Rawat) runs a medical store along with his elder brother, Balbir Singh Rawat, under the name of Rawat Medicos and that the owner of the said shop was Sh. Mukesh Gupta. About two months prior to the date of the incident, Sh.

Mukesh Gupta had asked the complainant and his brother to vacate the shop, at once. As per the complainant, his family members had sought time, however, the owner was adamant that the shop be vacated in one or two days and whereupon the complainant had filed a civil suit. On 13.02.2003 at about 10:15 p.m., when the complainant and his elder brother were in the process of closing the shop, his elder brother went ahead at some distance from the shop. Suddenly, the complainant heard the cries of his brother and he saw that opposite to Seema Sweets one Parmohan, Mukesh, Rakesh @ Ballu, whom the complainant knew very well and two other unknown persons had surrounded his brother and were beating him mercilessly with *dandas* and *sarias*. By the time the complainant reached the spot, the three had run away. One, Chaudhary Karan Singh had witnessed the entire incident and after hearing the noise, he had come to the spot. After some time, the PCR vehicle reached the spot and brought the injured to LBS Hospital and the complainant also came in the said vehicle to the hospital.

3. Vide order dated 02.06.2004, charges were framed against the petitioner herein and against which the present revision petition has been filed.

4. Learned senior counsel for the petitioner submits that a false case has been registered against the petitioner. It is submitted that the date of the incident is 13.02.2003 and admittedly the deceased (Balbir Singh) was running a Chemist Shop as a tenant of Sh. Mukesh Gupta. Reading of the FIR would show

that the petitioner herein was not named as the accused, only three persons were named, Parmohan, Mukesh and Rakesh @ Bablu. Learned senior counsel submits that the FIR was made in such a manner so as to have flexibility to rope any two persons at a subsequent stage inasmuch as the FIR states that besides these three persons, two other persons were also present at the spot. However in the same breath it is stated in the FIR that three persons ran away, and nothing has been said about the other two persons. It is further contended that Balbir Singh died five (5) days after the incident. The MLC, copy of which has been filed at page 42 of the paper book, suggests that he was conscious/oriented, his blood-pressure was 120/80 and still neither any dying declaration nor any other statement of Balbir Singh was recorded, nor he named any other person. The FIR would also show that sections 147 and 149 of the IPC were not included.

5. Learned counsel for the petitioner further contends that even on 10.01.2003 a false complaint was lodged by the complainant under section 156(3) of the Cr.P.C. WHICH was drafted on 08.01.2003 and filed on 10.01.2003 at the instance of Virender Singh (who also happens to be the author of the FIR, subject matter of the present petition) for an alleged incident dated 20.12.2002. Copy of the complaint which has been filed on record, shows that the petitioner had been arrayed as accused No.2. A specific role has been ascribed to the petitioner, with respect to the said incident, that the petitioner not only assaulted the complainant and his father

but also fired with a revolver. Learned counsel contends that two reports were filed by the Sub-Inspector (at page 40 and 41 of the paper book), which would show that no firing took place and further that the father, who is alleged to have been assaulted, did not give any statement nor any MLC was carried out.

6. Learned senior counsel for the petitioner further submits that the name of the petitioner has been included on the basis of two supplementary statements made by the complainant. The first supplementary statement dated 16.02.2003, states that the complainant wishes to add the name of the petitioner on the basis of the knowledge received by him from one Karan Singh and Tribhuvan. As per the FIR, Karan Singh was a witness to the incident, whereas counsel for the petitioner submits that Tribhuvan has been added as another witness and incidentally whose name did not find mention in the FIR. Counsel for the petitioner also points out that the name of Karan Singh also finds mention in the list of witnesses, which was filed along with the complaint filed on 10.01.2003 under section 156 (3) Cr.P.C, which would show that Karan Singh is not a reliable witness.

Second supplementary statement was recorded on 23.3.2003, wherein the complainant has stated that he had visited the police Station and where he saw one person in the Police custody and on enquiry he came to know that his name was Rakesh Kumar Gupta (petitioner herein). Counsel for the petitioner submits that this is again false, as not only Rakesh

Kumar Gupta (petitioner) is the neighbour of Virender Singh and also the brother of the land-lord (Mukesh Kumar Gupta); besides it is the same Virender Singh, who had named and ascribed a role to the petitioner in the complaint filed on 10.01.2003. Thus, the petitioner is being falsely implicated in the case.

7. Learned senior counsel for the petitioner contends that the petitioner has been falsely implicated in this matter and at the stage of framing of charge, the Court has the power to sift and weigh the material on record only for the purpose of finding out whether or not a *prima facie* case is made out against the accused. It is further contended that summoning of an accused in a criminal case is serious matter and the criminal law cannot be set into motion in a casual manner. In support of this plea, learned counsel for the petitioner has placed reliance upon the case of ***M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate***, reported at ***(1998) 5 SCC 749*** and more particularly para 28 and part of para 29. Counsel has also placed reliance on the case of ***Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra***, reported at ***(2008) 10 SCC 394*** and more particularly paragraphs 15 and 16 to buttress his argument that the judicial mind is to be exercised at the time of framing of charge and the Court must assess whether or not a *prima facie* case is made out against the accused. Counsel contends that if two views are equally possible, the Judge must give benefit to the accused. Paragraphs 15 and 16 are reproduced below:

> **"15.** Chapter XVIII of the Code lays down the procedure for trial before the Court of Session, pursuant to an order of commitment under Section 209 of the Code. Section 227 contemplates the circumstances whereunder there could be a discharge of an accused at a stage anterior in point of time to framing of charge under Section 228. It provides that upon consideration of the record of the case, the documents submitted with the police report and after hearing the accused and the prosecution, the court is expected, nay bound to decide whether there is "sufficient ground" to proceed against the accused and as a consequence thereof either discharge the accused or proceed to frame charge against him.
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> **16.** It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material 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 a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable 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 gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible. (See *State of Bihar* v. *Ramesh Singh*[1] and *Prafulla Kumar Samal*[2].)"

8. *Per contra*, learned counsel for the State has vehemently opposed the present petition on the ground that two witnesses have categorically named the petitioner. It is contended by learned counsel for the State that Karan Singh is not a witness of convenience but he has a shop opposite to the shop of the deceased and, thus, he is a natural witness. Counsel further contends that no benefit can be derived by the petitioner to show that the same Karan Singh has been named as a witness

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[1] (1979) 3 SCC 4 : 1979 SCC (Cri) 609.

[2] (1977) 4 SCC 39 : 1977 SCC (Cri) 533.

in the complaint filed on 10.01.2003 under Section 156(3) of the Cr.P.C. and he is also a witness to the present occurrence. Thus, it is contended in view of the fact that both the incidents have occurred at the same place and taking into consideration that the shop of Karan Singh is opposite to the shop of the deceased, he had an occasion to witness both the events and this according to the learned counsel there is a plausible explanation as to why Karan Singh's name finds mention as a witness in the first incident and also as a eye-witness to the second incident.

9. Learned counsel for the State further contends that there is no delay in recording of the evidence of the eye-witness, Karan Singh. His evidence was recorded on the same night of the incident and there was no reason for him to falsely implicate the petitioner. Even otherwise the dispute is between the deceased and his brother on one side and the petitioner and his family members on the other, and there is no reason for Karan Singh to falsely implicate the petitioner.

10. Counsel for the State further contends that Virender Singh, the author of the FIR, could have named all the family members of the petitioner but at the very first instance he had named three persons whom he saw and since the incident had taken place at a distance, and from where he was positioned, he could not see the faces of the other two persons but clearly stated in the FIR that in addition to three persons, two other persons were also present. Learned counsel explains that Karan Singh, who was at the opposite direction, thus, had an

opportunity to see the other two persons and he named them at the very first opportunity available. Learned counsel further submits that Tribhuvan was returning home from the temple and he had seen the incident and named all the five persons.

11. Learned counsel for the State contends that at this stage of framing of charge, the Court must take into consideration the statements made by two eye-witnesses who have named the petitioner. It is further contended that the petitioner upon surrender had made a disclosure statement, which led to the recovery of a saria from an open field and according to the MLC a danda and a saria were used to inflict injuries upon the deceased. The presence of Karan Singh cannot be doubted at the spot as his name finds mention in the FIR. Counsel also contends that the petitioner had refused Test Identification Parade which would also go against the petitioner. Counsel next contends that the author of the FIR i.e. Virender Singh had also made two supplementary statements. The credibility and the effect of these two supplementary statements cannot be appreciated by the Court at this stage. Learned counsel contends that the order passed by the learned Trial Court shows application of mind and is a reasoned order.

12. Rebutting the arguments of the counsel for the State, learned senior counsel for the petitioner contends that both Virender Singh and Karan Singh were equi-distantly placed and both of them were attracted to the spot of the incident when the deceased Balbir Singh started screaming and, thus, it cannot be said that Karan Singh was in a better position to identify

the accused persons. Learned senior counsel for the petitioner submits that it is extremely unnatural that when both Karan Singh and Virender Singh had removed the injured to the hospital, Karan Singh did not disclose the name of all the persons present at the spot to Virender Singh.

13. I have heard learned counsel for the parties and carefully gone through the record of the case. The law with regard to framing of charge is well-settled. In the case of ***Union of India Vs. Prafulla Kumar Samal***, (1979) 3 SCC 4, the Apex Court laid broad contours on the point of framing of charge. The same are reproduced as under:

> "**10.** Thus, on a consideration of the authorities mentioned above, the following principles emerge:
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> (*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.
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> (*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.
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> (*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.
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> (*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.

14. Similar opinion was expressed in the case of ***State of Orissa Vs. Debendra Nath Padhi***, (2005) 1 SCC 568, wherein the Apex Court held:

> **"6.** At the stage of framing charge, the trial court is required to consider whether there are sufficient grounds to proceed against the accused. Section 227 of the Code provides for the eventuality when the accused shall be discharged. If not discharged, the charge against the accused is required to be framed under Section 228. These two sections read as under:
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> *Section 227 CrPC*
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> "227. *Discharge*.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."
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> *Section 228 CrPC*
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> "228. *Framing of charge*.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—
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> (*a*) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report;
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> (*b*) is exclusively triable by the court, he shall frame in writing a charge against the accused.
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> (2) Where the Judge frames any charge under clause (*b*) of sub-section (1), the charge shall be read and explained to the accused, and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

7. Similarly, in respect of warrant cases triable by Magistrates, instituted on a police report, Sections 239 and 240 of the Code are the relevant statutory provisions. Section 239 requires the Magistrate to consider “the police report and the documents sent with it under Section 173” and, if necessary, examine the accused and after giving the accused an opportunity of being heard, if the Magistrate considers the charge against the accused to be groundless, the accused is liable to be discharged by recording reasons thereof.

8. What is the meaning of the expression “the record of the case” as used in Section 227 of the Code. Though the word “case” is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to the Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit “the case” to the Court of Session and send to that court “the record of the case” and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

9. Further, the scheme of the Code when examined in the light of the provisions of the old Code of 1898, makes the position more clear. In the old Code, there was no provision similar to Section 227. Section 227 was incorporated in the Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements. If the evidence even if fully accepted cannot show that the accused committed the offence, the accused deserves to be discharged. In the old Code, the procedure as contained in Sections 207 and 207-A was fairly lengthy. Section 207, inter alia, provided that the Magistrate, where the case is exclusively triable by a Court of Session in any proceedings instituted on a police report, shall follow the procedure specified in Section 207-A. Under Section 207-A in any

proceeding instituted on a police report the Magistrate was required to hold inquiry in terms provided under sub-section (1), to take evidence as provided in sub-section (4), the accused could cross-examine and the prosecution could re-examine the witnesses as provided in sub-section (5), discharge the accused if in the opinion of the Magistrate the evidence and documents disclosed no grounds for committing him for trial, as provided in sub-section (6) and to commit the accused for trial after framing of charge as provided in sub-section (7), summon the witnesses of the accused to appear before the court to which he has been committed as provided in sub-section (11) and send the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session as provided in sub-section (14). The aforesaid Sections 207 and 207-A have been omitted from the Code and a new Section 209 enacted on the recommendation of the Law Commission contained in its 41st Report. It was realised that the commitment inquiry under the old Code was resulting in inordinate delay and served no useful purpose. That inquiry has, therefore, been dispensed with in the Code with the object of expeditious disposal of cases. Instead of the committal Magistrate framing the charge, it is now to be framed by the Court of Session under Section 228 in case the accused is not discharged under Section 227. This change brought out in the Code is also required to be kept in view while determining the question. Under the Code, the evidence can be taken only after framing of charge.

10. Now, let us examine the decisions which have a bearing on the point in issue.

11. In *State of Bihar* v. *Ramesh Singh*[3] considering the scope of Sections 227 and 228 of the Code, it was held that at the stage of framing of charge it is not obligatory for the judge to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. At that stage, the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion, at the initial stage of framing of charge, is sufficient to frame the charge and in that event it is not open to say that there is no sufficient ground for proceeding against the accused.

12. In *Supdt. and Remembrancer of Legal Affairs, W.B.* v. *Anil Kumar Bhunja*[4] a three-Judge Bench held that the Magistrate at the stage of framing charges had to see whether the facts

[3] (1977) 4 SCC 39 : 1977 SCC (Cri) 533.
[4] (1979) 4 SCC 274 : 1979 SCC (Cri) 1038 : (1980) 1 SCR 323.

alleged and sought to be proved by the prosecution prima facie disclose the commission of offence on general consideration of the *materials placed before him by the investigating police officer*. (emphasis supplied) Though in this case the specific question whether an accused at the stage of framing of charge has a right to produce any material was not considered as such, but that seems implicit when it was held that the Magistrate had to consider material placed before it by the investigating police officer.

13. In *State of Delhi* v. *Gyan Devi*[5] this Court reiterated that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons.

14. In *State of M.P.* v. *S.B. Johari*[6] it was held that the charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted, cannot show that the accused committed the particular offence. In that case, there would be no sufficient ground for proceeding with the trial.

15. In *State of Maharashtra* v. *Priya Sharan Maharaj*[7] it was held that at Sections 227 and 228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may, 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.

16. All the decisions, when they hold that there can only be limited evaluation of materials and documents on record and sifting of evidence to prima facie find out whether sufficient ground exists or not for the purpose of proceeding further with the trial, have so held with reference to materials and documents produced by the prosecution and not the accused. The decisions proceed on the basis of settled legal position that the material as produced by the prosecution alone is to be considered and not the one produced by the accused. The latter aspect relating to the accused though has not been specifically stated, yet it is implicit in the decisions. It seems to have not been specifically so stated as it was taken to be a well-settled proposition. This aspect,

[5] (2000) 8 SCC 239 : 2000 SCC (Cri) 1486.
[6] (2000) 2 SCC 57 : 2000 SCC (Cri) 311.
[7] (1997) 4 SCC 393 : 1997 SCC (Cri) 584.

> however, has been adverted to in *State Anti-Corruption Bureau* v. *P. Suryaprakasam*[8] where considering the scope of Sections 239 and 240 of the Code it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 of the Code and the documents sent with it. *The only right the accused has at that stage is of being heard and nothing beyond that*. (emphasis supplied) ....."

15. Thus at the time of framing of charge, the Court is not supposed to look into the evidence of the case in detail and is only to consider whether there is a strong suspicion against the accused on the basis of the material that comes before it. The court has the power to sift the evidence for the limited purpose of finding out, whether or not a *prima facie* case is made out against the accused. However, the Court is not supposed to delve deeply into the merits of the matter and start a roving expedition into the evidence that is brought forth it, as if conducting a trial. Further there is no one fixed definition that may be ascribed to the term "*prima facie*" nor can the term "strong suspicion" have a singular meaning. While coming to the conclusion of a strong *prima facie* case or strong suspicion, the Court shall have to decide each case on the basis of its own independent facts and circumstances.

16. It would be apt to recall that a Court exercising revisional jurisdiction cannot go into intricate details as regards the merits of a matter and may interfere only when there is any illegality or material irregularity or impropriety in the order passed by the lower court. A revisional court cannot act as a

[8] 1999 SCC (Cri) 373.

court of appeal and reappraise the merits of the case. Thus the task that lay before me is to see whether the trial Court carefully applied the law with regard to framing of charge to the facts of this case and if there is any infirmity in the impugned order.

17. Learned ASJ vide impugned order dated 02.06.2004 had observed that, *"[a]fter hearing both the sides, and upon perusal of the record of this case I find that accused Par Mohan, Mukesh and Rakesh @ Ballu are named in the FIR and remaining two are named subsequently as they reportedly fled away from the spot. As per the post mortem report, the injuries found on the person of the deceased are collectively sufficient to cause death of the deceased..... Hence, in view of the above factual and legal position, I am of the view that prima facie a case under Section 302/34 IPC is made out against all the accused....."*

18. Applying the principles of law laid down as per ***Prafulla Kumar*** *(supra)* and ***Debendra Nath Padhi*** *(supra),* I find that admittedly, the petitioner herein was not named in the FIR. It is also not in dispute that Balbir Singh (deceased) did not disclose the names of the persons who assaulted him much less the name of the petitioner and the case has been registered on the statement of Virender Singh (brother of the deceased). In the FIR, Virender Singh has stated that on the night of 13.02.2003 when he was closing the shop, his brother had gone some distance ahead of him. After some time, he heard the cries of his brother. He rushed towards the noise

and saw that opposite to Seema Sweets one Parmohan, Mukesh, Rakesh @ Ballu whom he knew very well, and two other unknown persons had surrounded his brother and were beating him with *sarias* and *dandas.* The motive for the assault was reported to be on account of dispute over shop No.4, Ashok Nagar, New Delhi.

19. Learned ASJ vide impugned order dated 02.06.2004 had observed that upon perusal of the record of this case, he found that accused Par Mohan, Mukesh and Rakesh @ Ballu were named in the FIR and remaining two were named subsequently as they reportedly fled away from the spot, and since one should not go the into detail of evidence, a *prima facie* case was made out. Although the learned ASJ has correctly observed that one is not required to delve deeply into the merits and evidence of the matter, at this stage, however, the same does not imply that the court must simply act as a post office or rely upon the prosecution. In my considered opinion, the learned ASJ failed to read the FIR and the material on record in the right perspective inasmuch as mere naming of a person in the supplementary statement does not make him *prima facie* guilty of the offence.

20. I find merit in the contention of counsel for the petitioner that the petitioner herein has been falsely implicated by Virender Singh inasmuch as Virender Singh knew the petitioner prior to the incident. He had named the petitioner in his complaint dated 10.1.2003 and ascribed a specific role to him and had the petitioner been present at the spot of the incident on

13.2.2003, Virender Singh would have named him at the first instance in the FIR itself. It has been brought to my notice that the petitioner is Secretary of a school namely, DP Arya Public School, which is near the shop of the complainant for the last seven years and that the petitioner is well known in the area and the same would allude that Virender Singh knew the petitioner beforehand besides petitioner is the brother of the landlord.

21. Admittedly, Virender Singh had filed a criminal complaint on 08.01.2003, prior to the date of the present incident, in the Court of ACMM, Shahdara, Delhi against Mukesh Kumar Gupta as accused no. 1. In the said complaint, Rakesh Kumar Gupta (petitioner herein) had been arrayed as accused no. 2 so much so that the complete address of the petitioner had also been mentioned. In the said complaint, allegations were leveled against Rakesh Kumar Gupta (petitioner herein) of having assaulted Virender Singh (complainant herein). It was further alleged that Rakesh Kumar Gupta (petitioner herein) armed with a revolver and some other persons forcibly entered into the shop of the complainant by using criminal force. Rakesh Kumar Gupta is alleged to have hit the father of the complainant with the butt of his revolver while the other accused persons who were armed with iron rods and dandas gave blows to the complainant. When the accused persons were giving blows with iron rods and dandas, Rakesh Kumar Gupta fired with his revolver pointing the same towards the side of the complainant, but he missed the point. The neighbours raised an alarm and also called the PCR Van. As

per the complaint, the complainant and his father were taken to Lal Bahadur Shastri Hospital, where they were medically examined. Rather interestingly, vide order dated 24.01.2003, the learned Metropolitan Magistrate, while analyzing the said complaint, observed that *"HC Sombir has clarified that father of Virender was not medically examined on 16.12.02. And it is clear that this fact has been wrongly submitted in report. Complainant and his counsel have also stated that no such medical examination was conducted on 16.12.02 of the father of the complainant. SI Bashir further states that opinion on both MLCs of complainant and his father dated 20.12.02 has been declared simple by the concerned doctor. He has denied allegations regarding firing done by respondent allegedly at the spot on 20.12.02 or handing over of any revolver or cartridge by complainant party to him. ... I am not prima facie satisfied regarding commission of any cognizable offence in the matter. ...."* Reading of the complaint and the order dated 24.01.2003 would clearly show that Virender Singh knew the petitioner beforehand and there was no reason for him to not name the petitioner in the FIR, as the person who assaulted his brother.

22. A bare reading of the FIR would show that Virender Singh has in categoric terms stated that there were *two other unknown persons* i.e. persons whom he did not know. When Virender Singh could identify three persons, there is no reason to say that he could not have identified the other two persons, had he known them. Although, it has been submitted by counsel

for the State that because of the position of Virender Singh, he was unable to see the face of other two persons, and that Karan Singh, who is an eye-witness to the incident and was at the opposite direction, had an opportunity to see the other two persons and he named them at the very first opportunity available. However, I find no merit in this contention. As per the FIR, Karan Singh had also witnessed the entire incident, who after hearing the noise, had come to the spot. After some time, PCR vehicle also reached the spot and took the injured to the hospital inasmuch as Virender Singh also accompanied in the said vehicle. Thus as per the FIR lodged by the complainant himself, both he and Karan Singh reached at the spot of the incident immediately after hearing the cries of Balbir Singh (deceased). Thus to say that Karan Singh did not disclose the name of the other two accused persons to the complainant at that point of time, is unbelievable, for the reason that Karan Singh also knew the identity of the petitioner. It is relevant to note that the name of Karan Singh also finds mention in the list of witnesses, which was filed along with the complaint filed by Virender Singh on 10.01.2003, under section 156 (3) Cr.P.C. The sequence of events would show that Virender Singh did not know who the other two persons were, otherwise he would have named them at the very first opportunity. Virender Singh has also stated that the three persons (who were named in the FIR) ran away, but nothing has been stated insofar as the other two persons are concerned. I find merit in the contention of the counsel for

the petitioner that though as per Virender Singh, Karan Singh had witnessed the entire incident, however no efforts were made to find out the identity of two unknown persons, before lodging the complaint at 11:50 p:m.

23. There is yet another aspect which casts a doubt upon the supplementary statement made by Virender Singh. The supplementary statement made by Virender reads as under:

> *"FIR No.42/03 U/S 323/341/506/302 IPC PS ANAND VIHAR Supplementary Statement of Virender Singh s/o Naval Singh r/o A-127 N A Nagar Delhi U/S 161 Cr.P.C.*
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> *State that in connection with my case I have to day come to Police Station where in the compound of the Police Station I have seen one person in Police custody and I have told you that this person was also involved among those who had assaulted my brother Balbir Singh on 13/2/2003 and on inquiry his name has come to be known as Rakesh Kumar Gupta s/o Damodar Prasad. You have recorded my statement, heard and it is correct.*
>
> *Sd/-*
> *SHO N A Nagar*
> *Dated : - 23/3/2003"*

24. A careful reading of the supplementary statement shows that Virender Singh had come to the police station on 23.03.2003. In the compound of the police Station, he saw a person in police custody and Virender Singh informed that the person in police custody was one of the persons involved in assaulting his brother and it was only on enquiry that he came to know his name. This statement would, thus, imply that Virender Singh did not know the name of the petitioner till he was told. While as per the complaint filed on 10.01.2003, Virender Singh had not only named the petitioner in the complaint but had

also ascribed him a definite role. Thus, the supplementary statement of Virender Singh would have little or no value.

25. In the case of ***Pepsi Foods Ltd. v. Special Judicial Magistrate,*** reported at ***(1998) 5 SCC 749*** it has been observed by the Supreme Court as under:

> **"28.** Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

26. It would be useful to reiterate herein, the observations of the Apex Court in the case of ***V.Y. Jose and Anr. Vs. State of Gujarat and Anr.*** reported at ***2008 (16) SCALE 167***, wherein their lordships held as under:

> 15. ..... Section 482 of the Code of Criminal Procedure, saves the inherent power of the court. It serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years although no case has been made out against him.
>
> It is one thing to say that a case has been made out for trial and as such the criminal proceedings

> should not be quashed but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all.
>
> (emphasis supplied)

27. Thus criminal proceedings should not be set into motion as a matter of routine. Courts ought not to forget that criminal trial not only exposes the person to a depleted reputation in the society but is also cumbersome, long drawn out, and ruinous in terms of time and money. Litigation should not be used as a tool of harassment against another and a person should not unnecessarily be made to go through the rigours of trial.

28. In this case, three other family members have been named in the FIR and who are facing trial. The petitioner herein was neither named in the FIR nor was any description given therein which could connect the petitioner with the crime. In the FIR lodged by none other than Virender Singh himself, he has stated that there were *two other unknown persons*, who assaulted his brother (Balbir Singh). There is material on record which clearly spells out that Virender Singh (complainant) knew the petitioner beforehand, and had he seen the petitioner assaulting his brother, he would have named him in the FIR itself. I am further fortified in my view by the fact that as per the FIR itself, both the complainant and Karan Singh were present at the spot. If the complainant had been unable to see the petitioner, then Karan Singh, who as per the State witnessed the entire incident, would have surely disclosed the name of the petitioner to Virender Singh, at the

spot itself. In my considered opinion, no strong/grave suspicion is made out against the petitioner on the basis of the material on record. In view of the aforestated reasons, I find that the order dated 02.06.2004 passed by the learned ASJ contains material irregularity and impropriety. Accordingly, the present revision petition is allowed. The order dated 02.06.2004 passed by the learned Additional District and Sessions Judge, Delhi, framing charges against Rakesh Kumar Gupta (petitioner herein), is set aside, qua the petitioner only.

29. Petition stands disposed of in the above terms.

G.S. SISTANI, J.

September 18th, 2009
'msr'