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

+ CRL.REV.P. 286/2022

VINOD KUMAR

..... Petitioner

Through: Mr. Ashutosh Thakur, Mr. Rishi Raj
and Mr. Chandra Pratap, Advs.

versus

STATE OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mr. Amit Sahni, APP for State and SI
Ashish, PS Dabri.

Mr. Lalit Tokas, Adv. with R-2 and 3.

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Date of Decision: 02.08.2023.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present petition has been filed challenging the impugned judgment dated 23.01.2020 passed by ASJ(SFTC), South West District, Dwarka, New Delhi in criminal appeal no. 164/2018 titled as Vinod Kumar vs Sh. Rajender Singh &Ors. arising out of order dated 24.02.2018 passed by Ld. MM, Dwarka New Delhi in FIR No. 154/2004 under Section 324/34 IPC titled as State vs Sh. Rajender Singh &Ors.
2. The brief stated facts of the case as per the FIR, are that while returning from a wedding, the petitioner was allegedly verbally abused and physically assaulted by respondents 2 and 3 causing him grievous



injuries.

3. Vide order dated 24.02.2018, the learned MM acquitted the accused of the offence under Section 325/34 IPC. The consequent appeal filed against their acquittal before the learned Sessions Court was dismissed by the learned Additional Sessions Judge vide order dated 23.01.2020.
4. The order passed by learned MM was appealed against in the court of learned ASJ, Dwarka, New Delhi. Vide order dated 23.01.2020, the learned Additional Sessions Judge relied on the depositions of the all the prosecution witnesses and the defense witnesses. Further, it is a settled law that for the offence under S.325 IPC to be established, it is vital that the injuries caused thereof to be proven to be grievous in nature. However, it was noted that the concerned doctor, during cross-examination, stated that neither was the MLC prepared in his presence nor did he signed it. The victim is alleged to have suffered a fracture of mandible and a fracture on the right side and two on the left side of the mandible. The aforesaid injuries had been confirmed through the deposition of PW8. However, the X-rayreport was neither produced by prosecution nor exhibited during evidence and thus, the learned ASJ noted that the learned MM was correct in their observation that the nature of injuries cannot be held to be proved as grievous. It is also pertinent to mention that , the learned ASJ observed that there was no emergency call made to 100 and nor was there any cogent explanation as to why no complaint was made from 22.04.2004 i.e. time of incident till 05.40 p.m. of 23.03.2004 when DD was registered; this was also



confirmed by PW6 i.e. IO who stated that he received DD No. 35A at about 5.45pm alongwith the complaint.

5. The present revision petition has been filed on the grounds alleging that the material evidence produced by the prosecution against the respondent no. 1 & 2 was neglected by the Ld.MM and failed to appreciate that the *rukka* which was prepared by the investigation agency mentioned the fact that it was only after the result of injuries was given by the doctors that the FIR was registered on 29.02.2004 and the same had come in the evidence of the IO. Further it has been submitted that the learned MM erred in not allowing the petitioner's application dated 15.02.2018 for placing the necessary documents on record as the same is vital for the proper adjudication of the case. Moreover, it is alleged that the learned Trial Court did not appreciate the victim's conduct who, upon regaining consciousness, went straight to the police station despite suffering fractures on both sides so his jaw as is written in the MLC.
6. The revisional jurisdiction conferred upon this court under Section 397 CrPC is very limited in nature. The Hon'ble Supreme Court in a catena of cases has held that the scope of Section 397 CrPC can only be exercised to prevent abuse of process of court or to secure the ends of justice. In *Amit Kapoor v. Ramesh Chander* (2012) 9 SCC 460, the Apex Court inter-alia held that:

"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...

*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. On the other hand, Section 482 is based upon the maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused."*

7. In light of the judgements of the Hon'ble Supreme Court, it is clear that it must be demonstrated that the impugned order has a gross error, is not compliant with the law, contains findings without a basis of



evidence, in ignorance of material evidence or that there is arbitrary judicial discretion. However, I consider that the learned counsel has failed to elucidate any such point and that there has been no abuse of procedure or injustice so as to invoke Section 482. The learned MM and Learned Sessions Court has meticulously examined the material on record. There is no illegality or infirmity in the order of the learned Trial Court. It is also a settled proposition that only because another view can be taken the revisional court cannot substitute it's opinion.

8. In view of the submissions made, the present petition is dismissed.

DINESH KUMAR SHARMA, J

AUGUST 2, 2023/AR