

**K.T. Zimik Vs. Govt. of National Capital Territory of Delhi**

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**SooperKanoon Citation :** [sooperkanoon.com/699356](http://sooperkanoon.com/699356)

**Court :** Delhi

**Decided On :** Jul-27-1997

**Reported in :** ILR1999Delhi126

**Judge :** M.S.A. Siddiqui, J.

**Acts :** [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 397 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 279, 304-A and 338

**Appeal No. :** CRL.M.(M) No. 4653/98

**Appellant :** K.T. Zimik

**Respondent :** Govt. of National Capital Territory of Delhi

**Advocate for Def. :** Mr. H.J.S. Ahluwalia, Adv.

**Advocate for Pet/Ap. :** Mr. Kanchan Singh, Adv

**Judgement :**

ORDER

**M.S.A. Siddiqui, J.**

1. By this petition under Section 482 Cr.P.C., the petitioner seeks quashing of the order dated 6.3.1998 passed by the Additional Sessions Judge in revision petition No. 37/97 confirming the order dated 10.2.1995 passed by the Metropolitan

Magistrate for framing charges under Sections 279/338/304-A IPC against the petitioner.

2. Briefly stated, facts giving rise to the present petition are that on 14.1.1993, the complainant Surinder Malhotra along with his wife Smt. Kanchan, daughter Pooja and son Deepak were going on the scooter bearing registration No. DIV 1582. A Maruti Gypsy bearing registration No. DDV 8538 driven by the petitioner came from behind and hit the scooter causing the death of Pooja and injuries to Smt. Kanchan. According to the prosecution case, the alleged incident took place because of the rash and negligent driving of the said Gypsy by the petitioner. The report of the alleged incident was lodged by Surinder Malhotra. Investigation thereafter followed and the petitioner was put on trial for the offences punishable under Sections 279/338/304-A IPC. The learned Metropolitan Magistrate, after considering requisite documents, explained particulars of the offences to the petitioner in the form of charges under Sections 279/338/304-A IPC. Aggrieved by the said order of framing of charges, the petitioner preferred a revision to the Court of Sessions Judge, which was dismissed by the Additional Sessions Judge vide orders dated 6.3.1998. Not satisfied with this order of dismissal of the revision, the petitioner has come up before this Court under Section 482 Cr. P.C.

3. It is significant to mention that by this petition under Section 482 Cr.P.C., the petitioner seeks quashing of the order dated 10.2.1995 passed by the Metropolitan Magistrate for framing charges under Sections 279/338/304-A IPC and the order dated 6.3.1998 passed by the learned Additional Sessions Judge in revision petition No. 37/97 confirming the said order of the learned Metropolitan Magistrate. Sub-section (3) to Section 397 Cr.P.C. bars the second revision. It is well settled that the inherent powers under Section 482 Cr.P.C. cannot be utilised for exercising powers which are expressly barred by the Code of Criminal Procedure. (*Simirkhia v. Dolley Mukharjee* , *Suraj Devi Vs . Pyare Lal* : 1981 CriLJ296 ). It is equally well settled that this Court cannot act as second revisional court under the garb of exercising inherent powers (*G.M. Hedge v. S. Bangarappa* (1995) Cri. L.R. 211 and *Dharampal Vs . Ram Shree* : 1993 CriLJ1049 ). There is nothing on record to show that the impugned order of the learned Magistrate is vitiated by some glaring defect in the procedure or there is a manifest error on a point of law

and consequently there has been a flagrant miscarriage of justice. However, in view of the established legal position, this Court cannot entertain a second revision against the order dated 10.2.1995 passed by the Learned Metropolitan Magistrate under the garb of exercising inherent powers under Section 482 of the Code. Consequently, the petition under Section 482 Cr.P.C. is liable to be dismissed on this Court alone.

4. Learned counsel for the petitioner has put forward three premises for quashing the F.I.R. and the consequent criminal proceedings arising out of the same. The first is that the courts below have completely ignored the discrepancies between the F.I.R. and the wireless message flashed by the PCR van in respect of the alleged incident. The second is that the courts below have failed to take into consideration the facts stated in the reply filed by the respondent Surinder Malhotra to the petitioner's application under Section 156(3) Cr.P.C. for further investigation, which are inconsistent with the facts stated in the F.I.R. The third is that both the courts below have failed to appreciate the facts stated by the petitioner that at the relevant time the petitioner's Gypsy was hit from behind by the scooter driven by the complainant, Surinder Malhotra, which in turn was hit behind by a bus bearing registration No. DBP 1488. The fourth is that the courts below have failed to appreciate the fact that the mechanical inspection reports when seen in connection with the photographs of the damaged vehicles irrefutably point towards the petitioner's innocence.

5. In the instant case, the F.I.R. prima facie discloses a case under Sections 279/338/304-A IPC against the petitioner. That being so, there is no question of looking into other materials at this stage which the petitioner may wish this Court to take into consideration. The petitioner has raised certain questions of fact which require evidence and this court exercising jurisdiction under Section 482 Cr.P.C. cannot go into the questions of fact and give a finding thereon.

6. For the foregoing reasons, I am not inclined to interfere in the matter in exercise of jurisdiction under Section 482 Cr.P.C. Accordingly, the petition is dismissed.