

**IN THE COURT OF SH. MUNEESH GARG,
ADDITIONAL SESSIONS JUDGE-02, NORTH WEST
DISTRICT, ROHINI COURTS, DELHI.**

**Criminal Revision No. 98/2026
CNR NO. DLNW01-003958-2026**

IN THE MATTER OF:

(1) Tota Ram

S/o. Late Sh. Nahar Singh
R/o. E-2/285, Sultanpuri,
Delhi -110085.

(2) Dev Kumar

S/o. Late Sh. Nahar Singh
R/o. E-2/285, Sultanpuri,
Delhi -110085.

... **Petitioners.**

Versus

State

... **Respondent**

Date of Institution : 06.04.2026

Date of Judgment : 20.08.2026

JUDGMENT

1. By way of the present revision petition, the revisionists/accused Dev Kumar and Tota Ram have challenged the order dated 04.12.2025 passed by the Ld. JMFC-01, North-

West District, Rohini Courts, Delhi, whereby notice under Section 160/34 IPC was framed against them.

2. Notice of the revision petition was issued to the State. The Trial Court Record has been perused. Arguments have been heard on behalf of the revisionists as well as the State.

3. Briefly stated, the prosecution case is that on 31.03.2012, near E-2/279, Sultan Puri, Delhi, a quarrel took place between two groups. As per the prosecution version, Nahar Singh (since deceased), Tota Ram and Dev Kumar were on one side, whereas Seema, Abhishek and Rajinder Singh were on the other side. It is alleged that the persons involved were levelling allegations against each other, abusing each other and manhandling each other, thereby causing disturbance in the locality. On the basis of the said incident, FIR No.126/2012 was registered under Section 160 IPC.

4. During the pendency of the proceedings, accused Nahar Singh expired and proceedings against him stood abated. Accused Seema and Rajinder pleaded guilty to the offence under Section 160 IPC on 08.07.2013 and were convicted and sentenced to pay a fine of Rs.100/- each, with default sentence of simple imprisonment for five days.

5. The present revisionists Dev Kumar and Tota Ram did not plead guilty and claimed trial. The matter was, thereafter, considered by the Ld. Trial Court on the question of notice. Vide impugned order dated 04.12.2025, the Ld. Trial Court, after hearing both sides, came to the conclusion that prima facie material existed against the revisionists and accordingly framed notice under Sections 160/34 IPC, to which they pleaded not guilty and claimed trial.

6. Learned counsel for the revisionists has primarily contended that once Seema and Rajinder, who were allegedly members of the opposite group, had pleaded guilty and stood convicted under Section 160 IPC, the essential ingredients of the offence of affray could not survive against the present revisionists. It is argued that the prosecution cannot simultaneously treat one side as guilty of affray and proceed against the other side for the same offence. It is further submitted that the Ld. Trial Court failed to appreciate this aspect and mechanically framed notice against the revisionists.

7. It is also contended that the impugned order has been passed without proper application of mind and that the material on record does not disclose the commission of an offence by the revisionists.

8. Learned Additional PP for the State has opposed the revision petition and submitted that the prosecution material specifically alleges a fight between persons belonging to two groups in a public place, resulting in disturbance of public peace. It is argued that the plea of guilt by two other accused persons does not absolve the present revisionists from their individual criminal liability. It is further submitted that at the stage of framing of notice, the Court is only required to ascertain whether a prima facie case exists and detailed appreciation of evidence is impermissible.

9. I have considered the rival submissions and perused the Trial Court Record.

10. Before examining the contentions raised by the revisionists, it would be apposite to notice the ingredients of the offence alleged. Section 159 IPC defines affray in the following terms:

“When two or more persons, by fighting in a public place, disturb the public peace, they are said to commit an affray.”

11. Section 160 IPC prescribes punishment for committing affray. Thus, broadly speaking, the prosecution is required to

establish that there was a fight between two or more persons, that such fight took place in a public place and that the same resulted in disturbance of public peace.

12. At the stage of consideration of notice in a summons-case, the Court is not required to conduct a meticulous examination of the prosecution evidence or undertake a mini-trial. The Court has to examine the material available on record to determine whether a prima facie case is made out.

13. In the present case, the prosecution version, as reflected from the FIR and the material placed before the Trial Court, is that the revisionists were allegedly involved in a physical altercation with persons belonging to the opposite group at a public place and that the incident resulted in disturbance of public peace. Therefore, at this stage, the basic ingredients necessary to constitute an offence under Sections 159/160 IPC cannot be said to be wholly absent. The decision i.e. **Murugan vs. The State** CrI. O.P. (MD) No. 1561 of 2022 relied upon by Ld. Counsel for the revisionists would not be of any assistance to the revisionists, in the manner as sought to be relied upon by the Ld. Counsel for the revisionists, as the facts and circumstances of the present case are clearly distinguishable.

14. The principal contention of the revisionists is that since Seema and Rajinder had already pleaded guilty and were convicted under Section 160 IPC, no offence of affray could thereafter be made out against the revisionists. The contention is misconceived. Section 159 IPC does not contemplate that the guilt of all the participants must necessarily be determined in one and the same proceeding. The very definition of affray proceeds on the basis of participation of two or more persons in a fight. The fact that some of the participants have admitted their guilt and have been convicted on their plea does not, by itself, obliterate the allegations against the remaining participants.

15. More importantly, the plea of guilt entered by Seema and Rajinder cannot be treated as a judicial finding that the revisionists were innocent or that they did not participate in the alleged occurrence. Their conviction on their own plea of guilt merely determines their criminal liability. It does not amount to an acquittal or exoneration of the other accused persons.

16. The submission of the revisionists that acceptance of guilt by the persons belonging to the opposite side necessarily establishes that the opposite party alone was responsible for the affray is therefore without merit. The offence of affray is based upon the occurrence of a fight involving two or more persons and

the disturbance of public peace. Whether the revisionists actually participated in such fight and whether the prosecution can ultimately prove the charge against them are matters to be determined after evidence is led.

17. At this stage, the Court cannot accept the defence version merely because two other accused persons have already pleaded guilty. The plea of guilt of a co-accused cannot be converted into substantive evidence of innocence of another accused.

18. The revisionists have also sought an appreciation of the prosecution material and have contended that the allegations are not substantiated. Such contentions essentially relate to the evidentiary value of the prosecution case. At the stage of notice, this Court is not required to determine whether the prosecution will ultimately succeed in proving the case beyond reasonable doubt.

19. The reliance placed by the Ld. Trial Court upon the general principle that at the stage of framing of notice the Court is only required to ascertain the existence of a *prima facie* case cannot, therefore, be said to be erroneous. The judgment relied upon by the Trial Court, namely ***Omwati v. State (Delhi Admn.), (2001) 4 SCC 38***, lays down the settled principle that at the stage of

consideration of charge the Court is not required to conduct a meticulous appreciation of evidence. Though the said decision deals with the stage of charge, the underlying principle regarding limited scrutiny of the prosecution material at the threshold remains relevant.

20. It is, however, clarified that since the present case is a summons-case, the Trial Court is dealing with the accused at the stage contemplated under Section 251 Cr.P.C. The expression “notice” used by the Trial Court is therefore appropriate. The reference in the impugned order to the principles applicable to framing of charge does not, by itself, vitiate the order when the Trial Court has otherwise examined the material for the limited purpose of determining whether a *prima facie* case exists.

21. It is also relevant that the allegations in the FIR are not confined to a mere exchange of verbal abuses. The prosecution case specifically alleges manhandling and a physical altercation between persons belonging to two groups. Whether the alleged conduct amounts to “fighting” within the meaning of Section 159 IPC and whether there was disturbance of public peace are ultimately matters to be established on evidence. Mere quarrelling or exchange of hot words, by itself, would not necessarily constitute affray; however, the present record, at the

threshold, contains allegations of physical manhandling/fighting sufficient to warrant continuation of proceedings.

22. The revisional jurisdiction is not intended to substitute the view of the revisional Court for that of the Trial Court merely because another view may also be possible. Interference is warranted where the impugned order suffers from patent illegality, perversity, gross irregularity or material non-application of mind. No such infirmity is made out in the present case.

23. The argument that the passage of time since the occurrence or the previous conviction of the co-accused renders the present proceedings legally untenable is also without substance. The revisionists are required to face the trial on the allegations specifically levelled against them. Their guilt or innocence has to be adjudicated on the basis of evidence to be led before the Trial Court.

24. Consequently, this Court finds no illegality, impropriety or material irregularity in the impugned order dated 04.12.2025 warranting interference in exercise of revisional jurisdiction.

25. In view of the foregoing discussion, **the present revision**

petition is dismissed.

26. The impugned order dated 04.12.2025 passed by the Ld. JMFC-01, North-West District, Rohini Courts, Delhi, whereby notice under Sections 160/34 IPC was framed against revisionists Dev Kumar and Tota Ram, is hereby affirmed.

27. Nothing observed herein shall be construed as an expression on the merits of the case. The Ld. Trial Court shall adjudicate the matter independently on the basis of evidence led before it and in accordance with law.

28. **Trial Court Record be sent back along with a copy of this order.**

29. **Revision file be consigned to the Record Room after due compliance.**

**Announced in the open Court
on 20.08.2026**

**(MUNEESH GARG)
ADDITIONAL SESSIONS JUDGE-02
(NORTH WEST), ROHINI COURTS,
DELHI.**