

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

+ **CRL.M.C. No.3518/2005**
CrI.M.C.No.545/2008

Date of Decision : 23.8.2011

CRL.M.C. 3518/2005

BASANT LAL Petitioner
Through Mr.Rajat Aneja, Adv.

versus

THE STATE & ANR Respondents
Through Mr. Naveen Sharma, APP
Mr.Manish Kohli, Adv. for R-2

CRL.M.C. 545/2008

UMA SHARMA & ANR Petitioners
Through Mr.Manish Kohli, Adv.

versus

STATE Respondent
Through Mr.Naveen Sharma, APP

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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

V.K. SHALI, J. (oral)

1. These are two connected petitions bearing

Crl.M.C.No.3518/05 titled **Basant Lal Vs. The State & Anr.** and Crl.M.C. No.545/08 titled **Uma Sharma & Anr.**

Vs. State. It is clarified that the two parties will be referred by the names of Basant Lal and Uma Sharma and not as petitioner or respondents as these are two cases pertaining to two cross FIRs.

2. So far as Crl.M.C.no.545/08 is concerned, it pertains to FIR No.38/2004, u/S 323/341/34 IPC registered by P.S. New Usmanpur on the basis of a complaint lodged by Basant Lal. It was alleged by him that Chetan Sharma, husband of Uma Sharma had taken loan by mortgaging his house with the bank and thus committed the offence of cheating. It is alleged that Chetan Sharma was threatening Basant Lal to withdraw the case, failing which he will have to face the dire consequences. On 10.7.2004, he alleged that he was coming back to his house, after dropping his children to school, when he was obstructed in the way by Uma Sharma wife of Chetan Prakash and her daughter Navraj. Both of them started saying that if Basant Lal did not withdraw his

case from the Court he will have to face the dire consequences. It is alleged since he told them that he would not withdraw the case, he was beaten by both the daughter and the wife of Chetan Prakash with chappals. His Sweater and T-shirt was torn and he was threatened to be implicated in a false case. Because of this incident, FIR No.38/2004, u/S 323/341/34 IPC was registered by P.S. New Usmanpur against Uma Sharma and her daughter for causing simple hurt and wrongful restraint in furtherance of their common intention.

3. In the other petition bearing Crl.M.C. No.3518/05 Basant Lal is the petitioner and Uma Sharma is the complainant on whose behalf FIR no.40/2004, under Section 323/509 IPC by P.S. Usmanpur has been registered. The allegations made in the said FIR are that on the date of the incident, Basant Lal had abused and assaulted Uma Sharma and her daughter, while she was going to drop her daughter, Navraj at some school where she was teaching. It is alleged in the complaint of Uma Sharma that instead of registering an FIR

against Basant Lal, the police had registered a case against her. Consequently, Uma Sharma had to file an application before the learned Magistrate because of which an FIR was registered. Even in respect of this FIR against Bansant Lal, the police had filed a closure report before the learned Magistrate. Uma Sharma had filed a protest petition against the said closure report filed by the police on the basis of which the learned Magistrate had passed an impugned order dated 15.1.2005 taking cognizance of the matter and decided to proceed ahead against Basant Lal.

4. Basant Lal feeling aggrieved by the said summoning order, assailed the same as well as the registration of the FIR against him by praying for setting aside the summoning order as well as for quashing the FIR.
5. The reason for quashing of the aforesaid FIR and the summoning order is that it has been made with ulterior motive to harass him while as it is alleged that he is the actually the aggrieved party.
6. I have heard the learned counsel for the parties and

perused the record.

7. At the outset, it must be said that both these petitions are raising the disputed question of facts, which cannot be a ground for quashing of either of the two FIRs, if we see the ground which has been set up by the petitioner in Crl.M.C. no.545/2008 filed by Uma Sharma and Ors., it has been stated since they are ladies and they had actually been assaulted by Basant Lal, who has previous criminal background of being involved in number of criminal matters, therefore, the learned Magistrate has committed a grave error in taking cognizance of the matter in respect of FIR No.38/2007 registered against them.
8. Similarly, the other grounds which have been urged in the petition is that the information given by Basant Lal is not credible, etc. These grounds are, essentially, matters which have to be adjudicated in the Trial Court after the parties are permitted to adduce their respective evidence against each other.
9. With regard to the other case also, if one looks at the

impugned order dated 15.1.2005, which is assailed by Basant Lal before this Court, a reading of the same shows that the police seemed to be in league with the accused in the said case namely Basant Lal.

10. In FIR no.40/2004 registered against Basant Lal, the allegations were that he had assaulted Uma Sharma and her daughter Navraj and passed remarks against them, despite this, no FIR was registered. It is really very strange that the police instead of recording the statement of the victim, had recorded the statement of other witnesses and arrived at a conclusion that no case against Basant Lal was made out and chosen to file a cancellation report. This is what has been rectified by the learned Magistrate by the impugned order dated 15.1.2005 on the basis of the protest petition, which was filed by the complainant/Uma Sharma. Even the FIR was registered on the direction of the Court. Therefore, the question of cognizance having been taken by the learned Magistrate after going through the protest petition was totally reasonable, justified and the

submissions made by Basant Lal that the cognizance has been taken wrongly is not sustainable. The points which has been raised in the petition are all disputed question of facts which can be gone into, once the parties are permitted to adduce their evidence. Supreme Court in not one but in number of cases has repeatedly observed that a case disputed question of facts cannot be a ground for quashing of the FIR. In case titled **State of Haryana & Ors. Vs. Bhajan Lal & Ors.** AIR 1992 SC 604, Supreme Court has laid down 7 illustrative contingencies for quashing of the FIR. I do not feel that any of these contingencies can be availed of by any of the parties in their respective cases.

11. For the reasons mentioned above, I am of the considered opinion since both these cases essentially hinge on the evidence involving the disputed question of facts, which is to be produced by the parties before the trial Court. This Court cannot be made to embark on an inquiry into all these aspects for quashing the proceedings.
12. Accordingly, the present petitions are dismissed.

13. Expression of any opinion made hereinbefore may not be treated as an expression on the merits of the case.

V.K. SHALI, J

AUGUST 23, 2011

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