

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

Date of decision: 1st February, 2013

+ **CRL. M.C. 379/2013**

SMT. JAGIR KAUR & ORS.

..... Petitioners

Through: Thakur Virender Pratap Singh Charak,
Adv. with Mr. Pushpender Charak, Adv.,
Mr. RPS Tomar, Adv.

versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Ms. Rajdipa Behura, APP for the State.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

CRL M.A.1220/2013 (Exemption)

Exemption allowed, subject to all just exceptions.

The Application is allowed

CRL. M.C. 379/2013

1. The Petitioners invoke inherent powers of the Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for setting aside of the order dated 04.12.2012 whereby the Revision Petition against the summoning order dated 30.06.2011 passed by the learned Metropolitan Magistrate ('MM') was dismissed by the learned Additional Sessions Judge ('ASJ'). The Petitioners grievance is that they (the Petitioners) were not aware of the order dated 30.06.2011 passed by the learned

‘MM’ and therefore, the delay in filing Revision Petition ought to have been condoned and the Petition ought to have been heard on merits.

2. Although, the Petitioners are primarily aggrieved by the order dated 30.06.2011 whereby the learned ‘MM’ ordered summoning of the Petitioners for offence punishable under Sections 323/341/354/506/34 of IPC and by the order dated 23.07.2012 whereby the learned ‘MM’ held the Petitioners to be served with summons in Complaint Case No.120/2001 when they (the Petitioners) appeared in another case under the Protection of Women from Domestic Violence Act, 2005.
3. It is well settled that the power of quashing of FIR or a criminal proceeding should be exercised very sparingly with circumspection and in rare cases. The Court is not justified in embarking upon an inquiry as to the reliability, genuineness or otherwise of the allegations made in the FIR.
4. In *State of M.P. v. Awadh Kishore Gupta (2004) 1 SCC 691*, it was held that where the investigation was not complete, it was impermissible for the High Court to look into the materials the acceptability of which is essentially a matter for trial. The Supreme Court observed that the Court should not go into annexures of the Petition under Section 482 of the Code which cannot be termed as evidence without being tested and proved. Para 13 of the report is extracted hereunder:-

“13. It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 of the Code, it is not permissible for the Court to act as if it was a trial Judge. Even when charge is framed at that stage, the Court has to only

prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. In *Chand Dhawan v. Jawahar Lal* (1992) 3 SCC 317 it was observed that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 of the Code, which cannot be termed as evidence without being tested and proved. When the factual position of the case at hand is considered in the light of principles of law highlighted, the inevitable conclusion is that the High Court was not justified in quashing the investigation and proceedings in the connected case (Crime No. 116 of 1994) registered by the Special Police Establishment, Lokayukta, Gwalior.....”

5. In a recent report of the Supreme Court in *State of Orissa & Ors. v. Ujjal Kumar Burdhan* (2012) 4 SCC 547, the investigation initiated by the Vigilance Department of the State Govt. of Orissa into allegations of irregularities in receipt of excess quota, recycling of rice and distress sale of paddy by one M/s. Haldipada Rice Mill, Proprietorship concern of the Respondent was quashed by the High Court. The Supreme Court reversed the order passed by the High Court and observed that extraordinary power under Section 482 of the Code has to be exercised sparingly with circumspection and as far as possible for extraordinary cases where allegations in the complaint or the FIR taken on its face value and accepted in their entirety do not constitute the offence alleged. The Supreme Court relying on its earlier decision in *State of West Bengal v. Swapan Kumar Guha* (1982) 1 SCC 561 held that the Court will not normally interfere with the investigation and will permit an inquiry into

the alleged offence to be completed. Paras 8 and 9 of the report are extracted hereunder:-

“8. It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation.

9. In State of W.B. v. Swapan Kumar Guha (1982) 1 SCC 561, emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: (Paras 65-66)

“65. ... An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed.

...

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. ... If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence.”

6. In *State of Haryana & Ors. v. Ch. Bhajan Lal & Ors.* AIR 1992 SC 604 the Supreme Court considered its earlier decision on quashing of the FIR and observed that it would not be possible to lay down any precise, clearly defined, sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. Some of the cases where the powers to quash FIR could be exercised were enumerated as under:-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

7. Thus, it is well settled that the averments made in the Complaint and the evidence produced by the Complainant before the learned ‘MM’ for the purpose of issuance of the process has to be taken at its face value unless there is any material which shows that the commission of the offence was not at all possible. Paras 3 to 9 of the order dated 30.06.2011 passed by the learned ‘MM’ are extracted hereunder:-

“3.It is alleged that on 21.09.10 at about 11.30 am, all the accused persons assaulted the complainant at her residence 49/8, East Patel Nagar. Accused no.1 and 2 dragged the complainant and accused no.2 gave abuses, kicks and blows to her. Accused no.3 also gave blows and kicked the complainant. Clothes of complainant were torn and complainant was saved by Mr. R.K.Kumrah. Thereafter, complainant was sent for medical examination in which multiple bruises over the arms and back were observed.

4. The complainant had lodged complaint to the police station but no action was taken upon the complaint of complainant.

5. *Vide order dated 14.12.2010, the application U/s. 156(3) Cr.P.C. filed by the complainant, was dismissed and matter was fixed for recording pre summoning evidence wherein the complainant examined herself as the only witness and reiterated the contents of the complainant in the evidence.*

6. *This is the stage of summoning and the court has to only find sufficient ground to proceed.*

7. *In the present case, the complainant is the only witness. Complaint shows that main allegations are against the accused no.1,2,3 and 4 and all these accused conspired against the complainant, to commit the alleged offence.*

8. *There is nothing on record to show that complainant received grievous injuries. In MLC hurt is simple and multiple bruises over the arms and back were observed.*

9. *Considering the nature of injuries, the allegations in the complaint, and the fact of property disputes between the two sides, I am of the considered view that there is no sufficient material to show commission of long list of alleged offences. There has been history of previous altercation between the parties and there is nothing to establish that complainant was in exclusive possession of property to the exclusion of others. No offence has been made out against accused no.4 as only allegation against him are that he did not take any action on the complaint of complainant and the police officials over looked her genuine complaint.”*

8. The Petitioners defence that the Respondent No.2 herself was obstructing the Petitioners or that the Respondent No.2 had no right in the property (No.49/8, East Patel Nagar, where the incident allegedly took place) cannot be gone into by this Court at this stage in exercise of its power under Section 482 Cr.P.C.
9. There is no material at this stage to show that the offence could not have been committed by the three Petitioners.

10. The Petition, therefore, has to fail; it is accordingly dismissed.

(G.P. MITTAL)
JUDGE

FEBRUARY 01, 2013
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