

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

% *Judgment reserved on: 13.03.2014.*

Judgment delivered on: 20.03.2014.

+ CRL.M.C. 3951/2013 & Crl. M.A. No.14129/2013
R.K. KWATRA & ORS

..... Petitioners

Through Mr. Tanmaya Mehta, Adv.

versus

STATE & ANR

..... Respondents

Through Ms. Kusum Dhalla, APP
Mr. R.S. Mahla and Mr. Jitender
Kumar Panchal, Advs for R-2

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioners seek quashing of present FIR No.224/2013 registered under Sections 323/506/341/354 of the IPC against the three petitioners namely R.K. Kwatra, his wife Jagmohini Kwatra and his daughter Shalini Kwatra; submission is that this FIR which was registered pursuant to a complaint made under Section 156(3) of the Cr.PC was registered after a delay of three years and is in fact only a counter-blast of FIR No.296/2010 which had been registered on the

complaint of Shalini against B.S. Rachhora and his sons.

2 Record shows that on 15.08.2010 a quarrel had taken place between the petitioners (hereinafter referred to as the 'Kwatra group') and the complainant (hereinafter referred to as the 'Rachhora Group'); the dispute was over the parking of a car; parties are admittedly neighbors. Allegation is that the driver of Shalini had asked B.S. Rachhora to move his car in front of their house; his son Shaksham went to move the car and thereafter the family members of both the petitioners and the complainant party collected there and a hot exchange of filthy abuses took place between them; submission of both the groups is that both the parties had received injuries.

3 Record shows that FIR No.296/2010 was registered on 04.10.2010 against B.S. Rachhora and his sons. This was on the complaint made by Shalini. Record further shows that after the framing of charges, the evidence of Shalini was led before the trial Court; this was on 08.02.2013.

4 The allegations in the present petition are that the present FIR i.e. FIR No.224/2013 has been registered three years after the date of the incident; incident is admittedly dated 15.08.2010. Further submission is

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that it was only after the deposition of PW-Shalini on 08.02.2013 in the counter FIR i.e. FIR No.296/2010 that this complaint has been got revived and the complainant of this case i.e. B.S. Rachhora who had been in slumber for the last almost three years has now suddenly woken up. Learned counsel for the petitioner has placed reliance upon a judgment of the Apex Court in Crl. Appeal No.441/2013 decided on 13.03.2013 titled Raj Kumar and Anr. Vs. State of Uttar Pradesh and Anr. to support his submission that where is delay in reporting the incident and the lodging of the FIR the allegations complained of even otherwise being inherently improbable, there was no reason why ratio of the judgment of State of Haryana Vs. Ch. Bhajan Lal & Others reported in AIR 1992 SC 604 should not be followed and the FIR be not quashed.

5 These submissions of the learned counsel for the petitioners have been countered by the learned counsel for respondent No. 2 who submits that the statement of the victim in the present FIR i.e. Pushpa who is the wife of B.S. Rachhora has been recorded under Section 164 of the Cr.PC just two days ago; investigation is still at its nascent stage and as such the submissions made by the learned counsel for the petitioners can only be examined during the course of trial and merely because the FIR

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has been registered after a gap would be no ground to quash present proceedings. For this proposition, reliance has been placed upon AIR 1996 SC 309 Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh and another as also another judgment of the Apex Court reported as AIR 1991 SC 1308 State of Bihar Vs. Raj Narain Singh; submission is that the Court should not prejudge a question without affording reasonable opportunity to the prosecution to substantiate its allegations.

6 Record of the instant case shows that incident had occurred on 15.08.2010. The issue was trivial. The dispute had arisen over the parking of a vehicle in front of the house of petitioner No. 3 i.e. Shalini. The driver of Shalini had asked B.S. Rachhora and his son to remove their car. The incident of quarrel, counter quarrel and injuries alleged by both the parties had emanated pursuant to this incident. As noted supra, FIR No.296/2010 had been registered on 04.10.2010 on the complaint of Shalini. This was against B.S. Rachhora, his wife and two sons. Shalini has been examined as a witness in the trial Court on 08.02.2013. This Court has been informed that trial in that case is under progress and the matter is at the stage of the evidence of the prosecution.

7 The present FIR i.e. FIR No.224/2013 has been registered on
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29.07.2013 i.e. almost three years after the date of the incident which is dated 15.08.2010. On 19.08.2010 a complaint had been lodged by B.S. Rachhora in the concerned police station. Learned counsel for respondent No. 2 has drawn attention of this Court to a subsequent complaint dated 21.08.2010 which Pushpa (wife of B.S. Rachhora) had filed before the Delhi Women Commission, Vikas Bhawan, Indraprastha Estate, New Delhi in which she has stated that on 15.08.2010, a quarrel had taken place between R.K. Kwatra and her children on the issue of parking; she sustained injuries; when her husband intervened, the whole matter got further embroiled; police was called; legal action was requested. Admittedly after 21.08.2010, there is nothing on record to show that these complaints i.e. complaint dated 19.08.2010 and the complaint dated 21.08.2010 were pursued. This position stands admitted by learned counsel for respondent No. 2. On 20.02.2013, a complaint was made to the DCP alleging non-action of the police complaint which had been filed before the local police on 19.08.2010. This date of 20.02.2013 is relevant; it is admittedly after the deposition of Shalini in FIR No.296/2010 which deposition had been recorded before the concerned Court on 08.02.2013. The status report filed through the

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Inspector of the concerned police station i.e. PS Paschim Vihar both before the Court of Magistrate and before this Court have also been brought to the notice of this Court. The first status report filed before the Court of learned MM is dated 28.06.2013. In this status report it has been stated that during the course of inquiry, it has been found that the complainant's wife (Pushpa) was not present at the time of incident i.e. on 15.08.2010; this report further states that the complaint has been filed by the complainant (B.S. Rachhora) as a mere counterblast to the FIR No.296/2010 which has been registered under Sections 323/354/506/509 of the IPC at PS Paschim Vihar which case is under trial; it further records that this complaint has been filed by the complainant in order to save his skin from the trial of that case. The second status report which has been filed before the High Court is dated 09.10.2013. This has also been forwarded by the concerned SHO of PS Paschim Vihar. In this report also, it is stated that statements of certain neighbours were recorded under Section 161 of the Cr.PC namely Sachin Verma, an eye witness neighbor as also of HC Paramajeet Singh, In-charge PCR van who had reached the spot and as per their statements, the allegations made by B.S. Rachhora are wrong as the wife of B.S. Rachhora was not

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present at the time of the incident; this report further states that the investigation carried out so far does not substantiate the allegations in the present FIR i.e. FIR No.224/2013.

8 Learned counsel for the petitioners has also drawn attention of this Court to a communication dated 28.09.2010 sent by B.S. Rachhora to the Members of the Delhi Women Commission qua the present incident. This letter nowhere states that Pushpa's blouse/shirt had been torn by R.K. Kwatra. In fact, this reply states that B.S. Rachhora while trying to save his wife from Kwatra, his daughter Shalini intervened and slapped him. His son also reached the spot. It does not recite the averments now made in the present FIR (FIR No.224/2013) that the shirt/blouse of the complainant Pushpa had been torn. Attention has also been drawn to the complaint dated 02.01.2011 made by B.S. Rachhora to the Directorate (Education) against Shalini Kwatra wherein B.S. Rachhora has reiterated that Shalini is a chronic litigant and is fighting Court cases; inquiry against her conduct and activities should be carried out; submission of the learned counsel for the petitioners being that after this communication to the Directorate (Education), Shalini (petitioner No.3) who was working as an Assistant Teacher in the Senior Secondary Crl. M.C. No.3951/2013

School, B-3, Paschim Vihar has since been transferred to the Civil Lines and this was at the behest of B.S. Rachhora who is fighting tooth and nail with the petitioners group for malicious and ulterior reasons; submission being reiterated by the learned counsel that this FIR has been got registered only because of the influence that B.S. Rachhora has in the neighbourhood.

9 Submissions of the learned counsel for the petitioner has force. Record clearly deciphers that after the incident of 15.08.2010, although a complaint had been made to be local police by B.S. Rachhora on 19.08.2010 which was followed by another complaint dated 21.08.2010 addressed by Pushpa before Delhi Commission for Women but thereafter the matter went to rest and B.S. Rachhora and his family did not wake up from their slumber for almost more than 2- ½ years i.e. till 20.02.2013 when they made a complaint to the DCP asking him as to why no action has been taken on their complaint dated 19.08.2010. Even on a specific query put to the learned counsel for respondent No. 2 as to why no action had been taken in this long intervening period, he has no answer. Admittedly in this intervening period, the cross FIR i.e. FIR No.296/2010 had progressed and in the course of trial on 08.02.2013 i.e. CrI. M.C. No.3951/2013

just 12 days before 20.02.2013, the statement of Shalini indicating B.S. Rachhora and his family on oath had been recorded. As noted supra, the present FIR had been registered finally on 29.07.2013 which was pursuant to an order passed by the Magistrate on an application under Section 156 (3) of the Cr.PC.

10 Not only has there been an inordinate delay (i.e. more than 2- ½ years from the date of the incident) by respondent No. 2 in taking up his cause and of an incident which had allegedly occurred on 15.08.2010, this also appears to be a clear case of a counterblast of B.S. Rachhora who agitated by the evidence of Shalini recorded on 08.02.2013 (in the counter FIR) woke up from his sleep and thought of pursuing an otherwise dead matter. The fact that it was a dead matter is evident from the fact that there is no explanation by him or his counsel as to why he did not take any action in this long intervening gap of 2- ½ years. It could be for no other reason but to counterattack the petitioner group i.e. Kwatra group. This view of this Court is fortified by the letter which had been written by B.S. Rachhora to the Directorate of Education on 02.01.2011 against the conduct of Shalini. There was no occasion whatsoever for him to do so; he chose to do so; this could be only for a

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malicious and vengeful grievance that he was still nursing against the Kwatra family. The two status reports filed by the SHOs of PS Paschim Vihar at two different points of time i.e. the first report dated 28.06.2013 and the second report which is dated 09.10.2013 also clearly state that the investigation which included the recording of statement of eye-witness Sachin Verma as also of HC Paramajeet Singh, In-charge PCR van who had reached the spot immediately and Sachin Verma have both stated that Pushpa (wife of B.S. Rachhora) was not present at the time of the incident. The whole case of B.S. Rachhora is based on the injuries received by his wife Pushpa; the complaint stating that his wife had been molested by R.K. Kwatra and her blouse/shirt had been torn by him. There is also no answer by the learned counsel for respondent No. 2 as to why this version that Pushpa was molested by Kwatra also did not find mention in the reply dated 28.09.2010 which he had addressed to the Delhi Commission for Women.

11 These criminal proceedings appear to be maliciously instituted by B.S. Rachhora. There is no doubt that quashing of an FIR under the inherent powers of the Court should be limited to extreme exceptions but the Apex Court in the case of Ch. Bhajan Lal (Supra) has delineated

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these powers and where it appears to the Court, on the facts of a given case, that the prosecution of the complaint is manifestly malafide and evidently capricious and attached with ulterior motives, the Court to secure the ends of justice must proceed to quash the FIR. Present FIR falls in this category. In this background, FIR No.224/2013 registered under Sections 323/506/341/354 of the IPC at PS Paschim Vihar and all proceedings emanating therefrom are quashed.

12 Petition disposed off.

INDERMEET KAUR, J

MARCH 20, 2014

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