

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

% Reserved on: 10th August, 2016
Decided on: 19th October, 2016

+ **CRL.M.C. 4083/2011**

RAKESH KUMAR GAUR & ORS Petitioner
Represented by: Mr. Anuj Arora, Adv.

versus

STATE & ANR Respondent
Represented by: Mr. Kewal Singh Ahuja, APP
with SI Rajender, PS Malviya
Nagar.
Complainant in person.

+ **W.P.(CRL) 2821/2006**

S.K.SHARMA & ANR. Petitioner
Represented by: In person.

versus

SUNITA GAUR & ANR. Respondent
Represented by: Mr. Anuj Arora, Adv.
Mr. Rahul Mehra, Standing
Counsel, GNCTD with Mr.
Jamal Akhtar, Adv. & SI
Rajender, PS Malviya Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By CRL.M.C.4083/2011 the petitioners Rakesh Kumar Gaur and Harish Kumar Gaur seek quashing of FIR No.1175/2006 under Sections 354/506/509/34 IPC registered on the complaint of Sanjeev Kumar Sharma.

Petitioner Rakesh Kumar Gaur has since died and hence proceedings qua him stand abated. In W.P.(CRL) 2821/2006 petitioners Sanjeev Kumar Sharma and Vijay Laxmi seek quashing of FIR No.1227/2006 registered on the complaint of Sunita Gaur.

2. Both the parties are neighbours and despite repeated efforts no settlement could be arrived at though both parties stated that they were open to settlement and sought to settle the same. Thus the matter has to be heard on merits. Contention of the parties in their respective petitions is that the allegations in the FIR are vague, general and repetition of the provisions of the IPC and thus FIRs are liable to be quashed.

3. It would be thus appropriate to note the two FIRs. The allegations in the FIR No.1175/2006 under Section 354/509/34 IPC registered at P.S. Malviya Nagar by Sanjeev Kumar Sharma, the complainant are:

“On 25.5.06 at around 4 pm all the three accused persons as above named misbehaved using filthy, abusive language against my mother. Thereafter, the said three accused persons criminally intimidated to kill her and throw the labourers present and her from top of the floor of her house. Thereafter, the said accused persons used assault of criminal force with intent to dishonor her.”

4. The allegations in the FIR No.1227/2006 registered at PS Malviya Nagar on the complaint of Sunita Gaur for offences punishable under Sections 451/509/34 IPC are:

“Today dt.28.9.2006 at around 3.30 PM I was causing some work to be done in my house with the aid of labour mazdoor at that time my neighbor Sanjeev Kumar Sharma R/o 362, Chirag Delhi, trespassed on our roof after climbing his house wall that he was saying that he has to put cement and I refused for the same and said let the men in my house come then you put

cement inspite of saying he did not agree and insisted to try to put cement after coming on our roof when I again and again refused him he misbehaved and abused me. After some time my husband Harish Kumar and brothers in law Rakesh Kumar and Ramesh Kumar came I told them this, then they said to Sanjeev Kumar that Sunita was refusing you then why you were trying to put cement after coming on the roof of our house on coming of any one of us you would had put the cement then Sanjeev Kumar, his mother Vijay Laxmi started abusing and threatening that we would see all of you, you cannot do any harm to us if you would do more we would get you killed.”

5. Supreme Court in the decision reported as AIR 2009 SC 3520 Chunduri Siya Ram Krishna & Anr. Vs. Reddi Ravindra Babu & Anr. reiterating the law laid down for quashing of FIR in its earlier decision reported as (1976) 3 SCC 736 Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and 1992 Suppl. (1) SCC 335 State of Haryana Vs. Bhajan Lal held that when a prosecution is asked to be quashed at the initial stage, the test to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint filed prima facie establish the offence. If there is no concrete and direct allegation ascribing any definite role to each of the person in the offence alleged, then merely on the basis of bald and vague statements they cannot be made to suffer the trial and the FIR can be quashed.
6. In the decision of the Supreme Court reported as (2009) 10 SCC 184 Neelu Chopra & Anr. Vs. Bharti the Court held that if the allegations in the complaint are vague then it would be an abuse of process of law to allow such a prosecution to continue. The Supreme Court also noted that mere mention of Sections and the language of the Section is not sufficient to attract the offence. It was held:

“9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.

10. When we see the complaint, the complaint is sadly vague. It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of the process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein, on the basis of a vague and general complaint which is silent about the precise acts of the appellants.”

7. As noted above, in FIR No.1175/2006 the allegations are just repetition of the language of the Sections. No allegation is made as to what words were used and how the three accused criminally intimidated the complainant or used criminal force with intent to dishonor her. On a mere allegation of the ingredient of the offence as provided in the Section, no prosecution can be pursued for the reason the complaint is vague and general in nature. Even in FIR No.1227/2006 the allegations of abusing and threatening are vague and it has not been stated as to what abuses were given and how the complainant was threatened. Further, even as per the averment, the trespass on the roof of the house of the complainant was for the purposes of plastering and not for committing any offence. Thus, on the vague and general allegations no prosecution can be pursued.

8. Following the two decisions of the Supreme Court as noted above FIR No. 1175/2006 and FIR No.1227/2006 both registered at PS Malviya Nagar and the proceedings pursuant thereto are hereby quashed.

9. Petitions are disposed of.

(MUKTA GUPTA)
JUDGE

OCTOBER 19 , 2016
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