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

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Date of Decision: 10.08.2016

% **W.P.(CRL) 1712/2014**

PRAMOD GOYAL

..... Petitioner

Through: Mr. Ravi Gupta, Senior Advocate
along with Mr. Ankit Jain &
Ms.Bhoomija Verma, Advocates.

versus

STATE & ORS

..... Respondents

Through: Mr. Rajesh Mahajan, ASC and
Ms.Parul Jamwal & Mr. Peeyush
Bhatia, Advocate along with SI
Kishanveer Bhati, PS-Preet Vihar, for
the State.
Mr. Vidit Gupta, Advocate for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The petitioner has preferred the present writ petition to seek the writ of certiorari quashing the FIR No.303/2014 dated 21.05.2014 registered at Police Station – Preet Vihar under Section 406/ 506/ 323/ 341/ 34 IPC. The petitioner also seeks the quashing and setting aside of the order dated 29.04.2014 passed in CC No.26/2014 passed by Sh. S.P. Laler, MM, Karkardooma Courts, Delhi titled as *Ujala Cements Pvt. Ltd. Vs. Pramod Goyal & Another*. The aforesaid FIR came to be registered on account of

the impugned order dated 29.04.2014 passed by the learned MM. The complainant in the present case is Rajender Prasad Goyal.

2. The allegations against the petitioner/ accused which are narrated in the FIR in question, insofar as they are relevant, read as follows:

“1. That the complainant is the company who is running his business in the name of M/s Shri Ujala Cement Pvt. Ltd. having its registered office at B-86, Preet Vihar, Delhi-110092 at present D-87, Preet Vihar, Delhi-110092, the complainant is one of the director who has been authorized for filing the present case vide its resolution passed by the directors dated 20.9.2013 and the complainant is aware with the complete facts of the case and is competent to file the present complaint on behalf of the company. 2. That the car bearing no.DL8CX 4661 make volks wagen (polo) was purchased in the name of the company on 25.1.2012 through its director from Bhasin Motors (division of Bhasin Motors Pvt. Ltd.) for the sum of Rs.5,91,620/- the bill is enclosed herewith). 3. That the accused no.1 is the nephew of the complainant and the accused no.2 is the mama of the accused no.1. In the month of June 2012 both the above said accused persons came at the office of the complainant being the relative they showed the inability to have any car, both asked to arrange the car for a period of one year with the assurance that the said car shall be returned as and when the complainant demand. 3. That the complainant demanded the above said accused persons on 01.07.2013 to return the said car but they always took time again and again are not intended to return the said car, so the complainant asked to return the said car otherwise to make the complaint, then on 09.08.2013 at about 2:30 p.m. when the complainant was going to Karkardooma Courts, Delhi then both were met along with the above said car and restrained him at ICICI Bank Preet Vihar, Delhi and threatened that ‘TU BADA GADI WALA BANTA HAI ROJ ROJ GADI MANGTA HAI TUJHE KHATAM KAR DENGE PAR GADI NAHI DENGE’ and started manhandling the complainant save himself. The above said

accused persons have refused to return the said car and has committed the offences of criminal breach of trust, beating, threat to kill and restraining him in the way and are liable to be punished. That the complainant did not lodge the report on 100 number while he has having his mobile phone because there are litigations pending against other family members and the complainant had already threatened to drag him in the civil case as well as in the criminal cases if any case is registered or any complaint is made against the above said persons, so the complainant was afraid but after consultation from his brothers and family members, it has been decided by the complainant that the matter has to be lodged otherwise they shall cause damages in the car and would implicate the complainant in any criminal case. That in case the above said car is not recovered immediately from the possession of the above said accused persons, then the complainant shall be ruined forever. 6. That by the acts of the above said accused persons, the complainant suffered with mental and physical agony and was also defamed before eyes of society as he himself had given the vehicle to them being the relative and family members but they have become dishonest and instead of returning the car, they assaulted the complainant on 09.08.2013 at 2:30 p.m. As stated above and also passed the filthy remarks, there was no other way to lodge the complaint in this regard, because persons, so with intend to consult with the other family members, he did not make any complaint, thereafter on 20.09.2013 the resolution was passed in the company by the directors and then the complainant made a complaint to the Deputy Commissioner of Police dated 30.09.2013. SHO of Preet Vihar its DD No.45-B dated 30.09.2013”.

3. The submission of learned senior counsel for the petitioner Mr. Ravi Gupta is that the perusal of the FIR, as extracted above, itself shows that there are civil litigations pending between the petitioner and the complainant Rajender Prasad Goyal. Mr. Gupta points out that accused No.1 is the nephew of the complainant, and accused No.2 is the maternal uncle of

accused No.1. After demise of the father of the petitioner late Sh. Shyam Sunder Goyal, family disputes have erupted between the parties, in respect whereof civil litigations are pending. Mr. Gupta submits that the FIR in question is nothing but a *mala fide* attempt on the part of the complainant to abuse the process of law with a view to put pressure upon and harass the petitioners. Mr. Gupta submits that even if the allegations contained in the FIR are assumed to correct and they are taken at their face value, the offences alleged against the petitioners are not made out. He further submits that there is gross delay in making the first complaint by the complainant – which was made, firstly, on 30.09.2013, whereas the offences were allegedly committed on 01.07.2013 and 09.08.2013. Mr. Gupta submits that there is no satisfactory explanation furnished by the complainant for the delay of 3 months from the alleged commission of the first offence under Section 405/406 IPC, and a delay of nearly 7 weeks from the alleged commission of the other offences by the accused. Mr. Gupta submits that the filing of the complaint on 30.09.2013 is clearly an afterthought and the same is a manufactured complaint having no basis whatsoever.

4. In support of his submissions, he has sought to place reliance on several decisions which shall be taken note of while dealing with the submissions of the petitioners. Mr. Gupta submits that the present case falls squarely within the parameters set out by the Supreme Court in ***State of Haryana & Others Vs. Ch. Bhajan Lal & Others***, 1992 Suppl (1) SCC 335, and consequently, the FIR deserved to be quashed.

5. On the other hand, learned counsel for the respondent/ complainant has supported the impugned order passed by the learned MM dated

29.04.2014. He has also placed reliance on the judgment of the Calcutta High Court in ***Bhaskar Mondal Vs. UCO Bank & Others***, (2002) 2 CAL.L.T. 574 (HC).

6. The Supreme Court in ***Ch. Bhajan Lal*** (supra) indicated a few category of cases in which the criminal proceedings may be quashed by the High Court – though sparingly; with circumspection, and; in rarest of rare cases. The Supreme Court observed in paragraphs 105 & 106 as follows:

“105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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.

106. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.” (emphasis supplied)

7. Thus, in a case where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their

entirety, do not *prima facie* make out a case against the accused, the FIR could be quashed by the High Court. Similarly, where High Court comes to the conclusion that the criminal proceeding is manifestly attended with *mala fides* and/ or where the proceeding is maliciously instituted with an ulterior motive of wreaking vengeance on the accused, and with a view to spite him due to private and personal grudge, the High Court may quash the same. No doubt, the power to quash criminal proceedings should be exercised very sparingly; with circumspection, and; in rarest of rare cases. The reliability or genuineness of the allegations made in the FIR would not be enquired into by the Court while examining the plea for quashing of the FIR and the criminal proceedings arising therefrom, in writ jurisdiction.

8. Keeping in view the aforesaid parameters, I proceed to examine the submissions of Mr. Gupta that the complaint/ FIR does not disclose commission of any offence by the accused. The allegations against the petitioners are in two parts. The first set of allegations relate to the commission of offence under Section 405/ 406 IPC. The substance of the allegation made by the complainant is that one car bearing No.DL8CX4661 of the make Volkswagen (Polo), which was purchased in the name of his company M/s Ujala Cements Pvt. Ltd., was entrusted to the petitioners/ accused when they, in June 2012, asked the complainant to arrange a car for them for a period of one year with the assurance that the said car shall be returned as and when the complainant demands. The further allegation of the complainant is that the complainant demanded the accused persons on 01.07.2013 to return the said car “*but they always took time again and again and are not intended to return the said car, so the complainant asked*

to return the said car otherwise to make the complaint” (emphasis supplied)

9. The first submission of Mr. Gupta is that the ingredients of Section 405/ 406 IPC, i.e. criminal breach of trust are not made out on a plain reading of the allegations contained in the complaint/ FIR. He relies on ***G.K. Sawhney Vs. State & Another***, 186 (2012) DLT 784, wherein this Court enlisted the ingredients of the offence of criminal breach of trust, as follows:

“1. There should be an entrustment by one person to another of the property or of any dominion over property;

2. Such entrustment must be in trust;

3. There must have been misappropriation or conversion to his own use by the person who receives the property in trust;

4. Such conversion or retention of property must be against or in violation of any direction of law prescribing the mode in which such a trust is to be discharged or any other local contract made touching the discharge of such trust.”

10. He also places reliance on the decision of this Court in ***Cogent Silver Fibre Pte Ltd. Vs. State***, 2007 (5) AD (Delhi) 185, wherein this Court has held that unless an accused is entrusted with property, or entrustment with dominion over property, there can be no criminal breach of trust. In the said case, the Court found that there was no entrustment of property, or entrustment with dominion over property in the accused. Consequently, the Court quashed the FIR and the criminal proceedings, since the offence under Section 406 IPC was not made out.

11. He further submits that even if it were to be accepted that there was entrustment of the car with the petitioners/ accused, the element of misappropriation or conversion of the car by the accused – who had received the said car in trust, to their own use cannot be said to have been made out. He submits that the conversion/ retention of the car cannot be said to be in violation of any direction of law prescribing the mode in which such a trust is to be discharged, or any other local contract made touching the discharge of such trust. Mr. Gupta submits that the complainant himself states in his complaint/ FIR that the accused had asked the complainant to arrange the car for a period of one year. They had made the said request since they showed their inability to have any car. Thus, the car was given to the accused by the complainant himself for the use of the accused. He submits that there was no entrustment of the car to the petitioners, much less its misappropriation or conversion by the petitioners to their own use.

12. On the other hand, the submission of learned counsel for the respondent No.2/ complainant is that the entrustment of the car to the petitioners is evident from the allegation that the accused asked the complainant to arrange the car for a period of one year for their use, with the assurance that the said car shall be returned as and when the complainant demanded. Thus, the car in question was entrusted to the petitioners for their use, only for such period as the complainant permitted. The accused were obliged to return the car as and when the complainant demanded. The continued retention and use of the car tantamounted to misappropriation or conversion, for their own use, of the said car.

13. Learned counsel for the respondent has submitted that the defence

taken by the petitioners/ accused was that the car had been purchased by them. In this regard, he places reliance on the impugned order dated 29.04.2014, wherein the learned Magistrate takes note of the status report filed by the State to this effect.

14. I cannot agree with the submission of Mr. Gupta that a perusal of the FIR does not make out a case of entrustment of the car by the complainant to the accused/ petitioners. The said entrustment by the complainant was in respect of the car which was registered in the name of the company M/s Ujala Cements Pvt. Ltd., of which the complainant is a Director. The complaint/ FIR does not claim that the property in the car was transferred to the petitioners/ accused. The property in the car continued to be retained by the company M/s Ujala Cements Pvt. Ltd. It was given to the petitioners/ accused on the assurance of it being returned as and when the complainant demanded the same. Thus, the car was delivered to the petitioner/ accused in trust by the complainant.

15. The retention and the use of the car by the petitioners/ accused till the time that the same was with the consent of the complainant would not amount to misappropriation or conversion of the car by the accused to their own use. It was given to them for their use.

16. Thus, the issue that arises for consideration is whether the complaint/ FIR contains facts/ allegations which, prima facie, establish misappropriation or conversion of the car by the petitioner/ accused. The allegation of the complainant is that the complainant demanded the accused persons to return the car on 01.07.2013. However, the complainant does not

stop at this. He also alleges that the petitioners/ accused “*always took time again and again*”. Thus, the complaint/ FIR itself alleges that the petitioner/ accused did not convey their intention to misappropriate or convert the car to their own use, contrary to the consent and permission of the complainant. It is also implicit in the said allegation made in the complaint/ FIR – that the petitioner/ accused “*always took time again and again*”, that time was granted, again and again, by the complainant to return the car. The complaint/ FIR does not disclose as to when and how, the complainant asked the petitioners to return the said car, and put them to notice that otherwise he would make the complaint. It is not the case of the complainant that despite the complainant refusing to grant more time to the accused, they continued to retain and use the car, and thereby misappropriated or converted to their own use the said car. It does not emerge from a reading of the complaint/ FIR as to on what basis the complainant drew the inference that the petitioner/ accused “*are not intended to return the said car*”. Thus, a perusal of the FIR/ complaint does not disclose, as to when the misappropriation or conversion of the car could be said to have started. The said misappropriation/ conversion could have started only upon the complainant making a firm demand for return of the car, and turning down any further request by the accused/ petitioner to seek time. The petitioner/ accused, unless clearly put to notice with regard to the demand for return of the car by a particular date, could not be said to have misappropriated or converted the car to their own use. Consequently, even though the entrustment over the car with the petitioner/ accused, by the complainant, is borne out from the reading of the complaint/ FIR, the allegation with regard to the misappropriation or conversion of the car to

their own use by the accused are absolutely vague and incomplete.

17. Pertinently, the petitioners have already returned the car to the complainant while seeking anticipatory bail upon registration of the FIR.

18. The submission of learned counsel for the respondent No.2 premised on the so-called defence taken by the petitioners/ accused is neither here, nor there. The defence of the accused cannot be considered while examining the sustainability of the complaint/ FIR on the parameter that the same, prima facie, does not disclose the commission of an offence.

19. In view of the aforesaid discussion, in my view, the registration of the FIR under Section 405/ 406 IPC is not sustainable. At this stage itself, I may observe that there are other reasons why the FIR under Section 406 IPC deserves to be quashed. The same are firstly, the delayed filing of the FIR and, secondly, the impression the Court gathers, that the entire FIR is a result of *mala fides* of the complainant against the petitioner/ accused, and the same has been maliciously instituted with the ulterior motive of wrecking vengeance on the petitioners/ accused due to private and personal grudges. These aspects shall, however, be dealt with a little later.

20. Turning to the allegations contained in the FIR in relation to the incident of 09.08.2013, once again, I find that a perusal of the allegations do not, prima facie, disclose the commission of the offence under Section 506/ 323/ 341 IPC. Section 506 IPC prescribes punishment for criminal intimidation which reads:

“506. Punishment for criminal intimidation.— Whoever commits, the offence of criminal intimidation shall be punished

with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

21. The offence of criminal intimidation is defined in Section 503 IPC. Section 503 IPC reads as follows:

“503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section. Illustration A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B’s house. A is guilty of criminal intimidation.”

22. The submission of Mr. Gupta, learned senior counsel for the petitioner is that once again, the ingredients of “criminal intimidation” are not borne out from a plain reading of the complaint/ FIR. The allegation in the FIR in relation to the said incident is that on 09.08.2013 at about 02:30 p.m. while the complainant was going to Karkardooma Courts, Delhi the accused met the complainant with the car aforesaid and “*restrained him at ICICI Bank*

Preet Vihar, Delhi and threatened that ‘TU BADA GADI WALA BANTA HAI ROJ ROJ GADI MANGTA HAI TUIHE KHATAM KAR DENGE PAR GADI NAHI DENGE’ and started manhandling the complainant save himself.” Mr. Gupta submits that to constitute criminal intimidation, the threat of injury to person, reputation or property should be “*with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat*”. Mr. Gupta submits that there was no alarm caused by the issuance of the alleged threat to the complainant. In this regard, he has placed reliance on ***Kanshi Ram Vs. State***, (86) (2000) DLT 609. In this case, the accused/ petitioners were accused of using the words “*maaro saalon ko*”. The Court while examining the issue whether a charge under Section 506 IPC could be framed against petitioners, observed:

“... .. Strangely enough, Israr Ahmed, has nowhere stated in his statement that the alleged threat had caused an alarm to him. On the contrary the circumstances of the case clearly go to show that even after the alleged threat, the complainant or other media persons did not retrace their steps. It is well settled that mere threat is no offence. That being so, the threat alleged to have been given by the petitioner does not fall within the mischief of Section 506 IPC. Consequently, no charge under Section 506 IPC can be framed against the petitioner on the basis of the said evidence.”

23. Mr. Gupta submits that had the complainant been alarmed, he would not have waited for nearly 7 weeks before filing his complaint on 30.09.2013 for the first time. He further submits that it is not the allegation against the petitioners/ accused, that the alleged threat was issued by the

accused to the complainant to do any act which he is not legally bound to do, or to omit to do any act which the complainant was legally entitled to do. Even the alleged threat does not contain the words that the petitioner/ accused would finish the complainant, if he did not transfer the car to the petitioner/ accused, or if he did not stop making a demand therefor. On the aforesaid aspect, learned counsel for the respondent No.2 has not advanced any submission. Even, the learned ASC has not been able to show that the allegations contained in the complaint/ FIR, in relation to the incident of 09.08.2013, prima facie, makes out a case of Section 506 IPC against the petitioner/ accused. Thus, I am of the view that the FIR in question under Section 506 IPC cannot be sustained and is liable to be quashed.

24. Turning to the examination of the FIR/ complaint in relation to the offence under Section 323, once again, I find that the allegations are highly deficient and do not, prima facie, make out a case. Section 323 IPC prescribes punishment for voluntarily causing hurt. ‘*Hurt*’ is defined in Section 319 IPC to mean “*Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt*”. “*Voluntary causing hurt*” is defined in Section 321 to mean “*Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt”*”.

25. In the present case, all that the complainant states in his complaint/ FIR is that the petitioner/ accused “*started manhandling the complainant saved him self*”. “*Manhandling*” does not necessarily result in ‘*hurt*’. The complainant does not state that the said alleged manhandling caused bodily

pain, disease or infirmity to him. This Court in *Shiv Kumar Vs. State Govt. of NCT of Delhi*, 2012 (1) AD (Delhi) 804, while observing that there was no injury as per the MLC on the complainant, discharged the accused from charges under Section 323 IPC. In the present case, there is no MLC of the complainant. It is not the case of the complainant that he proceeded, consequent to his alleged manhandling, to have himself medically examined at a hospital. Thus, the offence under Section 323 IPC, even on a reading of the FIR is, prima facie, not made out.

26. Even otherwise, it is clear to me that the complaint leading to registration of the FIR was filed highly belatedly, and this factor coupled with the fact that the parties are closely related and are already in civil litigation, also leads me to conclude that the making of the complaint is manifestly attended with *mala fides* and the proceedings, namely the complaint under Section 156(3), were maliciously instituted with the ulterior motive of wrecking vengeance on the accused/ petitioners with a view to spite them, and with a view to settle personal grudges.

27. The complainant was conscious of the fact that he did not make the complaint immediately when the alleged offence under Section 406 IPC was committed on 01.07.2013, and the remaining alleged offences under Section 506/ 323/ 34 IPC were allegedly committed on 09.08.2013. To explain the delay, he states:

“That the complainant did not lodged the report on 100 number while he has having his mobile phone because there are litigations pending against other family members and the complainant had already threatened to drag him in the civil case as well as in the criminal cases if any case is registered or

any complaint is made against the above said persons, so the complainant was afraid but after consultation from his brothers and family members, it has been decided by the complainant that the matter has to be lodged otherwise they shall cause damages in the car and would implicate the complainant in any criminal case.”

28. The complainant claims in the complaint/ FIR that on 20.09.2013, the resolution was passed by the Directors of the company M/s Ujala Cements Pvt. Ltd., whereafter the complaint was made to the Deputy Commissioner of Police dated 30.09.2013 and D.D. No.45B dated 30.09.2013 was registered with the SHO, Preet Vihar Police Station.

29. The explanation furnished by the complainant for the evident delay in filing the complaint for the first time on 30.09.2013 in respect of offence allegedly committed on 11.07.2013 and 09.08.2013 is not convincing at all. Admittedly, the complainant was carrying on his mobile phone on 09.08.2013 when the alleged offence under Section 506/ 523/ 341/ 34 IPC were committed by the petitioners/ accused. However, he did not lodge a report on 100 number. Merely because litigations were already pending amongst the family members and the petitioner/ accused “*had already threatened to drag him in the civil case as well as in the criminal cases if any case is registered or any complaint is made against the above said persons*” could hardly have been a reason not to report the offence against persons with whom litigation was already underway. The fact that there were earlier litigations within the family members already pending, shows that the complainant was not a novice when it came to launching/ initiating/ defending litigations. It cannot be said that the said consideration caused such a threat to the complainant, as to dissuade him from taking any action

against the petitioner/ accused. There is no explanation as to why, and how, he has gathered the courage subsequently to make the complaint on 30.09.2013. There is nothing to feel afraid about launching or facing litigation. The fact that the complainant took the decision to make the complaint after consultation with his brothers and family members, itself shows that there was ample time to concoctate the same. Delay in lodging the complaint - where the same is not sufficiently explained, is considered by the Court sufficient to doubt the case of the prosecution, precisely for the reason that such delay can be utilized by the complaint for the purpose of concocting the complaint.

30. In *Deo Lakhan Paswan Vs. State of Jharkhand & Another*, 2012 (1) J.L.R.J. 206, the Court was dealing with a complaint filed under Sections 500/ 504/ 323 IPC. The Supreme Court noticed that the complainant did not lodge any FIR with the Police Station soon after the alleged incident. He waited for “good 3 days” and then lodged the complaint before the CJM. The alleged offences were committed between 03.11.1998 and 25.06.1999 repeatedly, yet, he did not take any steps to lodge the FIR on an earlier date. The Supreme Court held that the complaint was an afterthought, and that the same had been lodged only with the intention to harass the appellant/ accused. The Supreme Court also observed, in the facts of that case, that the complaint was a malicious counter action against the appellant/ accused since he had taken action against the complainant, who was his inferior. The Supreme Court observed in paragraphs 11 and 12 of this decision as follows:

“11. After having categorically gone through the entire record and the evidence adduced for registration of the criminal

complaint against the Appellant, we have come to a conclusion that it was an afterthought, with an intention to harass the Appellant, who at the relevant point of time was holding the charge of Executing Engineer. Ultimately, it was this Appellant who had issued the order of reversion against the Complainant. Thus, the act of complainant taking recourse to the criminal action against the Appellant was malicious counter action against the Appellant. Even after critically examining it, we do not find any element of truth in the complaint lodged by him.

12. Even though there are many reasons for coming to this conclusion but some of the important ones are highlighted hereinbelow :

(i) According to the Complainant himself, the Appellant's atrocities started with effect from 3.11.1998 and continued up to 25.6.1999, but in between he took no step to either lodge an FIR or file a complaint or even to bring it to the notice of Appellant's superior.

(ii) No reasons have been assigned or explained by the complainant for this inordinate delay in doing so.

(iii) Admittedly, soon after the alleged incident also on 25.6.1999, Complainant did not go to the Police Station to lodge an FIR.

(iv) Even assuming that his FIR was not registered then he took no steps to proceed further in accordance with provisions of Code of Criminal Procedure wherein he could have lodged the said FIR with the Superintendent of Police of the District.

(v) Again, he waited for good three days to lodge the aforesaid complaint. This unexplained delay is naturally fatal to his case.

(vi) Lastly, it must also be mentioned that if he was really injured on his right toe then as a prudent man, he should have gone to a hospital or a Police Station so that he could have got examined by a Doctor. No such injury or medical report is placed on record before us.”

31. I may next refer to *Lata & Another Vs. State & Another*, 2009 (2) JCC 903. In this case, this Court quashed the FIR, *inter alia*, on the ground of delay in filing the same.

32. Lastly, I may refer to *Ripun Bora Vs. State (Through CBI)*, (2012) ILR I Delhi 412. In this case, this Court quashed the charge-sheet and proceedings emanating therefrom against the petitioner, *inter alia*, on the ground that there was delay of 18 days in filing of the complaint and there was no reason to explain the same.

33. The decision relied upon by learned counsel for the respondent No.2 complainant in *Bhaskar Mondal* (supra) is of no avail. In this case, the Calcutta High Court held that criminal proceedings could not be quashed by the Court in writ proceedings when the material adduced before it discloses some material to implicate the accused. In this decision as well, the Calcutta High Court recognized the position that if a criminal case could not be maintained on the basis of the FIR, the Court could quash the proceedings at that stage.

34. In the present case as well, as noted above, the explanation furnished by the complainant is completely vague and make belief. It does not inspire any confidence. The proceedings launched by the complainant ex-facie stem out of *mala fides* and it is no more than malicious prosecution of the petitioners. Complainant, obviously, has grudges as the petitioner no.1 and the complainant are nephew and uncle, and disputes have arisen between them after the demise of the father of the petitioner and they are already in litigation.

35. In view of the aforesaid, it is not considered necessary to even examine, whether, a reading of the FIR discloses commission of the offence under section 34 IPC. I may only observe that the allegations qua the said offence appear to be vague, inasmuch, as, the complainant does not state as to from what direction the petitioner/ accused came and met the complainant, and how he was restrained from proceeding in the direction towards Karkardooma Courts Delhi. The manner in which the obstruction was allegedly created and caused, is also blissfully absent from the complaint/FIR. All that the complaint/FIR states in this regard is, “... .. *then both were met along with the above said car and restrained him at ICICI Bank Preet Vihar, Delhi*”.

36. For all the aforesaid reasons, the writ petition is allowed and the aforesaid FIR No.303/2014 and the proceedings arising therefrom are quashed.

VIPIN SANGHI, J

AUGUST 10, 2016

B.S. Rohella