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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 1919/2016

ARUN KUMAR

..... Petitioner

Through

Mr Rajneesh Roshan, Advocate

versus

STATE OF NCT DELHI & ANR.

..... Respondent

Through

Mr Panna Lal Sharma, APP for the State
alongwith Sub Inspector Vikas Rawat,
PS Fatehpur Beri, Delhi.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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18.05.2016

1. This is a petition under Section 482 Cr.P.C. moved by the petitioners for quashing of FIR No.736/2015 u/s 354A/506 IPC and Section 12 of POCSO Act.
2. Learned counsel for the petitioner submits that the wife of the petitioner is having bad character and in greed of the house, she got registered this false complaint against the petitioner. Moreover, this petition is a counter blast to the application dated 2nd October, 2015 filed at PS Fatehpur Beri, New Delhi. That being so, the FIR be quashed.
3. FIR in the instant case was registered on the basis of a complaint made by Smt. Renu, wife of the petitioner wherein she alleged that she along with her husband and two daughters is living at 3rd floor, Surrender Khari Ka Makan, Asola Bandh Road, New Delhi. Her elder daughter Khushi is 8 years of age while younger daughter Shalini is 4 years. On 5th November, 2015, when she brought her daughter Catherine from her school, then her daughter informed her that in her (complainant's) absence,

her father shows dirty film (nude film) on his TAB and when she abstains from seeing then he shows deliberately and threatens her that in case she informs about the same to her mother or anyone else then he will kill her and her mother. On the basis of this complaint, the FIR has been registered.

4. It is well settled by a long course of decisions of Hon'ble Supreme Court that for the purpose of exercising its power Under Section 482 Cr. P.C. to quash a FIR or a complaint the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has no jurisdiction to examine the correctness or otherwise of the allegations.

5. Venkatachaliah, J. in *State of Bihar v. Murad Ali Khan and Ors.*, 1989CriLJ1005 has stated that the jurisdiction Under Section 482 of the Code has to be exercised sparingly and with circumspection and has given the working that in exercising that jurisdiction, the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not.

6. In *State of Haryana & Ors. vs. Ch. Bhajan Lal and Ors.*, AIR 1992 SC 604, Hon'ble Supreme Court gave 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:-

(i) 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.

- (ii) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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.
- (iii) 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.
- (iv) Where, the allegations in the F.I.R. 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.
- (v) 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.
- (vi) 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.
- (vii) 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. A note of caution was given 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 F.I.R. 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.

8. Reverting to the present case, the allegations made in the complaint, in my considered opinion, do clearly constitute a cognizable offence justifying the registration of a case and an investigation thereon and this case does not fall under any one of the categories of cases formulated above calling for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. itself.

9. By virtue of this petition, the petitioner is basically challenging the character of his own wife by alleging that she is having bad character and further that the present FIR is a counter blast to an application moved by him before the police station. These facts, at best, can be the defence of the petitioner, however, at this stage, when the investigation is still in progress and there is no reason to disbelieve the averments made in the complaint which resulted in registration of FIR, there is no ground for quashing of FIR.

10. Accordingly, the petition is dismissed.

SUNITA GUPTA, J

MAY 18, 2016/rs