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

+ **CRL.M.C. 2522/2015**

D K BHARGAVA

..... Petitioner

Represented by: Mr. Mohit Mathur, Sr.
Advocate with Mr. D.S. Kohli
and Mr. Sandeep, Advocates.

versus

STATE (NCT OF DELHI) & ANR

..... Respondents

Represented by: Mr. Hirein Sharma, APP for
the State with ASI Rameshwar,
PS Hazrat Nizamuddin Railway
Station.
Mr. Manohar Lal Sharma,
Advocate for respondent No.2

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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17.11.2016

CRL.M.C. 2522/2015 and Crl. M.A. No. 8806/2015 (stay)

1. On the complaint of respondent No.2 FIR No.460/2015 under Section 328 IPC was registered at PS Neb Sarai, Delhi on 4th April, 2015.
2. Respondent No.2 in the above noted FIR stated that her husband passed away in the year 1991-92. She had two sons and three daughters and all her children were married. In the year 1996-97 the company of Naveen Jindal forcibly occupied her 75 acres of land. She was coerced to prepare an affidavit in respect of the said land by the officials of the company. She had 6 acres of land at Doga-Moga wherein a colony and dirty water filter was erected by the officers of the company. In the year 2001 Manager of

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Naveen Jindal, that is, the petitioner herein came to her and stated that she should take the money and give an affidavit. When the complainant refused to prepare an affidavit, the petitioner stated that Naveen Jindal would come after 10-15 days and he would not give her money and will molest her. After 10-12 days in the evening Naveen Jindal and D.K. Bhargava, the petitioner herein came to her house, dragged her to the veranda, disrobed her and raped her. They further stated that if she complained they would rape her daughter as well. The complainant asked for help from her relatives. When she complained to the police station, she was abused and nobody lodged her report. In the year 2002, the SHO came to her house and took away the papers relating to the property, her medicals and all other relevant documents. After a few days the police officers took her to the police station where the concerned officer stated that if she did not hand over the property to Naveen Jindal, thus they will ruin her. Even on her complaint to the Collector in the year 2003 no action was taken. In the year 2008 at the instance of Naveen Jindal the guard of the company misbehaved with her daughter and when the village people went then FIR was registered. After 4-5 days the police officials made her withdraw the case. The allegations of molestation, rape and assault are also alleged in the year 2010. It is stated that when no action was taken by the police officers, she went to Raigarh Harijan Court where also her complaint was not registered. She again made a complaint to the Collector however, no inquiry was done. In the year, 2014 she got the phone number of Mr. M.L.Sharma, Advocate and she contacted him, who gave the papers to the Judge and the Ministers. On 6th January, 2015 the High Court of Bilaspur decided in favour of the complainant

whereafter she was called in the office of S.P. for recording her statement. Though the S.P. did not record the statement and stated that it would be recorded at Chakradhar Police Station, however, her statement was not even recorded thereafter. Thereafter she came to Delhi.

3. Respondent No.2 further alleged that on 21st March, 2015, a Saturday around 9.30-10.00 AM when she was outside Nizamuddin Station, some miscreants were following her. They assaulted the complainant and tried to take her fingerprints. The complainant got issued a ticket for Bilaspur and sat in the train. A medicine was sprayed on her so that she could be unconscious. She called up her counsel who told her to get down at Mathura, hence she got down at Mathura. She came back to Delhi with her counsel and went to PS Neb Sarai. On 4th April, 2015 she was called at the office of Sreedhar at 4.00 PM who told her that the date of hearing for her case in respect of property was 7th/6th. It is further alleged that the person recorded her version on the phone, took a photograph also and stated that he was a man of Naveen Jindal. He gave her some medicine by the syringe and took her thumb impression, when the complainant called the police at 100 number and her counsel as well. Thus the complainant sought action on all the incidents noted above.

4. As noted above, FIR No. 460/2015 under Section 328 IPC was registered at PS Neb Sarai on the same day and investigation was carried out. However, not satisfied the complainant filed a complaint under Section 156 (3) Cr.P.C. before the learned Metropolitan Magistrate, Tis Hazari alleging as under:

“21.03.2015 around at 10 A.M. in the morning I left my room from Saket to H. Nizamuddin Railway Station to board the train for Bilaspur as my Bilaspur counsel had called me to come for filing writ petition in the High Court. After that reaching the station I found that four people had been following me from Saket. After reaching Nizamuddin Station I purchased a general ticket bearing number 1292B7T1EF 11 p.m. dated 21.03.2015 for Bilaspur and boarded in Utkal train in general compartment. I notice that they also boarded the same train. I informed my Delhi counsel about this immediately by mobile phone. In between Nizamuddin to Faridabad one of them came near me and sprayed perfume upon me. Within seconds I lost my sense. I realised that the train was getting slower at outer of a station. They tried to get me de-board from the train at Faridabad but due to my resistance they could not succeed. In the meanwhile train started and no one came to help me. I was unable to speak any word and I kept silent. I informed the same to my advocate nearby Kosi Station. I found that the train halted at Mathura Junction Platform & few GRP police were roaming on the platform. She further stated that she get down and sat on chair at Mathura Station and was crying. One GRP person took her to the GRP Station, in the meanwhile her advocate also reached there. They suggested her to lodged complaint only at H. Nizamuddin Railway Station. In the evening she returned back to Delhi by train but here also no one came to her help to file her complaint”

5. On this subsequent complaint, pursuant to the directions of the learned Metropolitan Magistrate, FIR No.213/2015 under Sections 354A/357/327/328/330/365/511/34 IPC was registered on 30th May, 2015 at PS Hazrat Nizamuddin Railway Station. Hence the petitioner has filed the present petition seeking quashing of the above noted second FIR.

6. Learned counsel for the petitioner contends that since allegations in FIR No.213/2015 are part and parcel of FIR No.460/2015, in view of the decision of the Supreme Court reported as 2001 (6) SCC 181 T.T. Antony vs. State of Kerala & Ors. no second FIR for the same cause of action could have been registered.

7. Learned counsel for the respondent No.2 on the other hand relying upon the decision of the Supreme Court reported as 2013 (6) SCC 384 Anju Chaudhary vs. State of Uttar Pradesh & Anr. contends that the contents of the two FIR are different even though some part of it may relate to the same transaction. Hence the second FIR was validly registered and cannot be quashed.

8. In Anju Chaudhary (supra) the Supreme Court reiterating its earlier decision in T.T. Antony (supra) stated that it is settled principle of law that there cannot be two FIRs registered for the same offence. It further clarified that the possibility that more than one piece of information is given to the police officer in charge of a police station, in respect of the same incident involving one or more than one cognizable offence cannot be ruled out. The Court in order to examine the impact of one or more FIRs has to rationalise the facts and circumstances of each case and then apply the test of “sameness” to find out whether both FIRs relate to the same incident and to the same occurrence, are in regard to incidents which are two or more parts of the same transaction or based upon distinct and different facts and whether its scope of inquiry is entirely different or not. This will always be a mixed question of law and facts depending upon the merits of a given case and if the answer falls in the first category, the second FIR may be liable to

be quashed however, where the incident is separate, offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered.

9. From a perusal of the two complaints noted above it is clear that the contents of the FIR No. 213/2015 registered at PS Hazrat Nizumddin Railway Station are part and parcel of FIR No.460/2015 registered at PS Neb Sarai. FIR No.213/2015 neither being a counter FIR nor for a different cause of action but allegations therein subsumed in earlier FIR, the same is liable to be quashed.

10. Consequently, following the ratio of law laid down by the Supreme Court in T.T. Antony (supra) reiterated in Anju Chaudhary (supra) FIR No.213/2015 under Sections 354A/357/327/328/ 330/365/511/34 IPC registered at PS Hazrat Nizamuddin Railway Station and the proceedings pursuant thereto are hereby quashed.

11. Petition and application are disposed of.

Crl. M.A. No. 15287/2016 (Directions-by respondent No.2)

Application is dismissed as infructuous.

MUKTA GUPTA, J.

NOVEMBER 17, 2016/‘vn’

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