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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : MAY 05, 2016

DECIDED ON : AUGUST 03, 2016

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CRL.M.C.4665/2015 & CRL.M.A.16735/2015

GULVINDER KHATRI

..... Petitioner

Through : Petitioner in person.

versus

STATE (GOVT.OF NCT OF DELHI) & ANR. Respondents

Through : Mr.Tarang Srivastava, APP.

Mr.Narender Kumar, Advocate, for
the complainant.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present petition under Section 482 Cr.P.C. has been preferred by the petitioner for quashing of FIR No.675/2013 registered under Sections 354A/506 IPC at Police Station Mehrauli. The petition is contested by the respondent/complainant.

2. The petitioner urged that the instant FIR has been lodged by the complainant to pressurize him to settle the criminal prosecution instituted by him against her vide Complaint Case No.261/1/11 titled Gulvinder Khatri vs.State & Ors. in which complainant's son along with others has been summoned to face trial under Sections 323/452/506/147/149/34 IPC vide order dated 19.12.2011. Allegations made in the FIR 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 petitioner. Allegations leveled by the complainant cannot be taken on its face value. The Investigating Officer did not offer any reasonable opportunity to the petitioner to submit his version on the record. He further urged that earlier the complainant had falsely lodged FIR No.589/2013 under Sections 354A/509 IPC at PS Mehrauli on 28.08.2013 for which a quashing petition (Crl.M.C.182/2015) has been filed before this Court. He had already filed a Civil Suit No.198/2013 on 24.08.2013 against her where she was directed to park her car No.HR 99QT 4083 in the common parking space of a building allotted to her, in a way that it did not obstruct the petitioner's car bearing No.DL 2C AH 6121 either in the parking of her car or in taking it out from its parking space. He further urged that on 28.08.2013 at around 11.20 a.m., he had come down from his upper ground floor of the building holding a camera and had taken photographs of the car bearing No. HR 99QT 4083 owned by the prosecutrix obstructively parked against his car No.DL 2C AH 6121. After clicking two three photographs, he had handed over the camera and the newspaper from the street abutting the parking bay to his wife, Savita Khatri standing over the upper ground floor balcony of his flat. While he was busy in clicking the photographs, he noticed that the complainant was approaching towards the parking bay from the opposite side by talking on her mobile but she did not come close to him and he watched him from a distance. The petitioner had taken only less than ten minutes in clicking photographs and thereafter, he went straightaway to Saket Metro Station to reach Narela Sub-City situated about

60 kilometres away from his abode to attend the pre-decided meeting with Regional Manager, Region IV, State Bank of India.

3. He urged that earlier the complainant had instituted a complaint case bearing No.535/1/12 against him before the learned Metropolitan Magistrate, Saket Courts. Her application under Section 156(3) Cr.P.C. was dismissed on the basis of negative status report dated 21.06.2012 vide order dated 31.07.2012. Finally, complainant opted to withdraw the complaint case on 29.04.2014. It was further contended that on 25.09.2013 a hand written complaint to the SHO PS Mehrauli vide DD No.26B, was made in which the complainant leveled false allegations of sexual harassment and criminal intimidation. Vital discrepancies have emerged in her statement given to the police and the one recorded under Section 164 Cr.P.C. before the learned Magistrate.

4. He further urged that the investigation was not carried out fairly. Legality and propriety of order dated 12.09.2014 of learned Metropolitan Magistrate on the point of charge whereby allegations of the prosecutrix were accepted at their face value was also challenged. The evidence brought on record by the petitioner was not taken into consideration. Reliance was placed on *Subhkaran Luharuka &Anr. Vs.State (Govt.of NCT of Delhi) & Anr.*2010 (3) JCC 1972; *Vimal Suresh Kamble vs.Chaluverpinake Apal S.P. and Anr.* Appeal (Crl.)1449/1995; *Sukhbir Yadav vs.State* Crl.A.679/2003; *Dr.M.M.Mandakumar vs.N.A.Nisa and Anr.* Crl.M.C.1006/2015; *Suraj Mal vs.State* AIR 1979 SC 1408 and *Ashok Narang vs.State* Crl.A.932/2009.

5. Learned counsel for the complainant controverting the arguments urged that the impugned order of the court below does not suffer from any illegality.

6. The petitioner and complainant were acquainted with each other. Relations between the two were strained specifically over parking of the vehicle in the common parking area. It is relevant to note that FIR No.589/2013 under Sections 354A/509 IPC came to be recorded at PS Mehrauli on 28.08.2013 on the complainant's complaint. Charge-sheet in the said FIR has since been filed and charge vide order dated 12.09.2014 has been framed against the petitioner. Crl.M.C.182/2015 filed by the petitioner for quashing of the said FIR has been decided / dismissed today vide a separate order.

7. In the instant case, the complainant informed the police on 25.09.2013 vide DD No.26B *"When she was cleaning her Scooty on 23.09.2013 at around 8.45 a.m., Gulvinder Khatan Advocate threatened to commit rape upon her and could not escape him. Then she called SI Virender on phone and who told her as to what he could do. When she left for her office on 25.09.2013, he tried to caught hold of her in the stairs, her chunni came in his hands and he said if she did not fulfil his desire, he would spoil her face with acid and he would get both her children kidnapped and killed."*

8. She recorded her 164 Cr.P.C. statement on 28.10.2013 stating that *"On 23.09.12 I was cleaning up my scooty. At that time Gulvinder Khatri who is an Advocate and my neighbour came and said to me that I will rape you. Immediately, I phoned SI Virender Singh who already has my case. He said I cannot do anything in this case. Next day when I left for*

office then Gulvinder tried to catch me. I immediately ran then chunni came in his hand. Then he left chunni and said fulfil my wish else with acid your face will be spoiled. You accept my terms else your children also will be kidnapped and murdered. You are seeing that you have made so many complaints but nothing happened to me and nor anything will happen because I am an Advocate, everybody feared of me.”

9. It is a matter of record that the petitioner was arrested and released on bail. Upon completion of investigation, a charge-sheet has been filed in the Court. The Trial Court took cognizance of the offence and summoned the petitioner. Vide order dated 12.09.2014 charge under Sections 354/506 II IPC has been framed against the petitioner. Thereafter, instant petition for quashing of the FIR has been filed. The petitioner has not given plausible explanation as to why there is inordinate delay in filing the present petition for quashing of the FIR which came into existence in 2013. Subsequent to the registration of the FIR not only a charge-sheet has been filed against the petitioner but he has been charged for commission of offence under Sections 354/506 II IPC by an order dated 12.09.2014.

10. On perusal of the contents of the complaint and attendant circumstances, it cannot be inferred, at this stage, that the allegations leveled by the complainant are frivolous/false. The incident was reported to the police promptly. The prosecutrix alleged sexual harassment by the petitioner on 23.09.2013 and 25.09.2013. In both her complaints to the police and statement under Section 164 Cr.P.C., she has implicated the petitioner for sexual harassment and criminal intimidation. The plea that these charges are false as various inconsistencies, discrepancies or improvements have occurred between the two versions given before the police and learned

Metropolitan Magistrate, cannot be gone through at this stage. These pleas are primarily the defence which the petitioner requires to establish during trial. Statement of the prosecutrix cannot be discarded at this stage.

11. Allegations against the petitioner are specific and cannot be brushed aside at this stage. The pleas raised for discharge/quashing of the FIR are primarily arguments on the merits of the case which are to be taken into consideration after the parties are given opportunities to establish their respective cases during trial. At the stage of framing of charge, the court has no jurisdiction to go into the merits of the allegations, and is only required to evaluate the material and documents on record with a view to find out if the facts emerging from taken at their face value disclose the existence of all ingredients constituting the alleged offence. The Trial Court was not required to weigh the evidence as if it was for conviction or acquittal. In *State of Maharashtra vs. Som Nath Thapa & Ors.* 1996 Cr.5, 2448, the Supreme Court observed:

“ If on the basis of materials on record a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently if the court were to think that the accused might have committed the offence, it can frame the charge, though for conviction, the conclusion is required to be that the accused has committed the offence. It is apparent at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

12. In ‘*Amit Kapoor vs. Ramesh Chander and Another*’, 2012 (9) SCC 460, Hon’ble Supreme Court discussed the ambit and scope of power

with the Courts including the High Court under Section 397 and Section 482 of the Code.

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law.....

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the Code of Criminal Procedure.....

16. The above-stated principles clearly show that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore-noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited.

17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a *sine qua non* for exercise of such jurisdiction. It may even be weaker than a *prima facie* case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.....”

13. In ‘P.Vijayan vs. State of Kerala and another’, 2010 (2) SCC 398, Supreme Court held :

“11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

12. The scope of Section 227 of the Code was considered by this Court in the case of State of Bihar v. Ramesh Singh : (1977) 4 SCC 39 wherein this Court observed as follows:

“4....Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial....”

This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage,

yet it may be sufficient for the satisfaction of the Trial Judge in order to frame a charge against the accused."

14. If on the basis of the materials on record, a Court could come to the conclusion that commission of the offence is a probable consequence; a case of framing of charge exists. For the purpose of framing charge under Section 228 Cr.P.C., the *Court* is to consider judicially whether on consideration of the materials on record, it can be said that the accused has been reasonably connected with the offence alleged to have been committed and that on the basis of the said material there is a reasonable probability or chance of the accused being found guilty of the offence alleged. If the answer is in the affirmative, the Court will be at liberty to presume "that the accused has committed an offence" as mentioned in Section 228 of the Code for the purpose of framing charge.

15. Again, the law is very clear that the court should refrain from quashing the FIR on the ground that the allegations made in the FIR were false. Inherent powers under Section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in the Section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in the absence of specific provisions in the statute [*'Subhkaran Luharuka & Anr. vs. State' (supra)*]. In the instant case, it cannot be contended that the allegations made in the First Information Report or the complaint do not prima facie constitute offence or make out a case against the accused.

16. In the light of the above discussion, I find no merit in the petition and it is dismissed. Pending application also stands disposed of.

17. Observations in the order shall have no impact on merits of the case.

18. Trial Court record (if any) be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

AUGUST 03, 2016/ tr

