

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

+ **CRL.M.C. 132/2016 & Crl.M.A. 556/2016**

Date of Decision : March 11th, 2016

ANGELA SHARMA @ ANGELA RANI Petitioner

Through **Mr.Rajiv Gupta, Advocate.**

versus

STATE & ANR Respondents

Through **Mr.Hirein Sharma, Additional Public
Prosecutor for the State.**

**CORAM:
HON'BLE MR. JUSTICE P.S.TEJI**

P.S.TEJI, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the “Cr.P.C.”) has been filed by the petitioner for quashing of FIR No.200/2011, under Sections 323/380/506 of the Indian Penal Code (IPC), Police Station Civil Lines, Patiala.

2. The facts, in brief, are that the FIR in question was lodged on the basis of statement made by Sh.Vikas Sharma (respondent no.2- herein). In his statement, complainant Vikas Sharma stated to the police that his marriage with the petitioner Angela Sharma was solemnized on 19.06.2007 at Sat Narain Mandir, New York. From the said wedlock, two children were born at USA. The complainant came

to India on 19.08.2007 along with his parents. His wife Angela often used to visit Patiala and she lastly visited on 09.12.2012. She asked the complainant to live with her at USA permanent but the complainant wanted to keep his children at Patiala. Due to this, wife of the complainant used to make nuisance, so the parents of the complainant disinherited him and his children. The complainant started living in a rented house no.144, Civil Lines Colony, Patiala since August, 2011. His wife started creating nuisance there also. On 25/26.10.2011 at about 2.00 a.m., the complainant woke up his wife due to weeping of children due to which she started misbehaving with the complainant. The petitioner attacked the complainant with iron wiper which hit on the right side of his forehead and index finger due to which blood oozed out from his head. The petitioner also threatened to kill the complainant. Thereafter, the complainant was admitted in hospital where his statement was recorded. He did not go to his house due to hostile atmosphere. On 09.12.2011, when complainant visited his house to collect his documents, he found the rooms locked. With another set of keys, he opened the room and saw his file containing certificates, passport, ATM card and one gold Kara missing which were alleged to be stolen by the petitioner-herein as she used to have one key of the house. Landlord of the complainant informed him that his wife left the house on 30.10.2011 along with their children.

3. On the basis of complaint made to the police, the FIR in question was registered. After investigation, charge sheet was filed in the Court. The Hon'ble Supreme Court transferred the FIR in

question from Judicial Magistrate 1st Class-cum-Civil Judge (Junior Division) Patiala, Punjab to the Sessions Judge, Tis Hazari Court, Delhi.

4. Argument advanced by the learned counsel for the petitioner is that the the allegations made in the FIR do not prima facie constitute any offence. The criminal proceedings against the petitioner have been initiated with an ulterior motive for wreaking vengeance. The FIR in question was registered after 1½ months of the alleged date of incident with the intention to harass the petitioner. It is further argued that while granting interim bail, it was observed by the Court that the present FIR being a counter blast cannot be ruled out and the story put forth appears to be concocted one. The present FIR is counter blast of the cases filed by the petitioner against respondent no.2.

5. On the contrary, learned Additional Public Prosecutor for the State has argued that the pleas raised by the petitioner in the present petition are not tenable and the she would be at liberty to raise the same during the trial. The trial is at the initial stage and prosecution witnesses are yet to be examined. It is further argued that no ground is made out to quash the FIR and the proceedings emanating therefrom.

6. I have heard carefully considered the submissions of the learned counsel for the petitioner as well as learned APP for the State.

7. Perusal of record shows that specific allegations against her have been raised by her husband-complainant to the effect that she had given beatings to him by hitting with an iron wiper. It has been specifically stated by the complainant in his statement that the

petitioner hit with the iron wiper on his forehead and index finger due to which blood oozed out from the head of the complainant.

8. So far as the allegations regarding sustaining of injuries by the complainant are concerned, these are questions of fact which can be ascertained only by way of adducing medical evidence. The contention raised by the petitioner to the effect that there is delay in lodging the present FIR and that the present FIR is the counter blast of various proceedings initiated by the petitioner against her husband are questions of fact which cannot be decided in the petition under Section 482 Cr.P.C. and it is to be decided by the Trial Court after adducing evidence by the parties. Such contentions are required to be raised by the petitioner before the Trial Court which can be decided only after evidence and material placed on record.

9. The Hon'ble Apex Court in the case of ***Shankara Co-op Housing Society Ltd. v. M. Prabhakar and Ors. AIR 2011 SC 2161*** observed that :

“The High Court in its writ jurisdiction, will not enquire into complicated questions of fact. The High Court also does not sit in appeal over the decision of an authority whose orders are challenged in the proceedings. The High Court can only see whether the authority concerned has acted with or without jurisdiction. The High Court can also act when there is an error of law apparent on the face of the record. The High Court can also interfere with such decision where there is no legal evidence before the authority concerned, or where the decision of the authority concerned is held to be perverse, i.e., a decision which no reasonable

man could have arrived at on the basis of materials available on record. Where an enquiry into complicated questions of fact is necessary before the right of aggrieved party to obtain relief claimed may be determined, the court may, in appropriate cases, decline to enter upon that enquiry, but the question is always one of discretion and not of jurisdiction of the court which may, in a proper case, enter upon a decision on questions of fact raised by the Petitioner.”

In the case of *The State v. Mariya Anton Vijay and Ors. (2015) 9 SCC 294*, it was observed that :

“101. S.B. Johari's case (supra) was also a case where the High Court had quashed the charge at the instance of accused persons in exercise of its inherent jurisdiction by appreciating the material filed by the prosecution along with charge-sheet. The High Court therein had held that no case was made out on the basis of the contents of the charge sheet and the material filed in support thereof as in the opinion of the High Court, it was insufficient to frame the charge against the accused for their prosecution for commission of offence punishable Under Section 5(1)(d) and (2) of the Prevention of Corruption Act. The accused were accordingly discharged by the High Court without compelling them to face the trial on merits.

102. In an appeal filed by the State against the order of the High Court, this Court allowed the State's appeal, set aside the order of the High Court and upheld the charge sheet and the charges which were framed by the trial court and laid down the law which we have reproduced in para 88 above.

103. Coming back to the facts of this case, the High Court committed the same error which was committed by the High Court in S.B. Johari's case (supra) because in this case also the High Court went into the questions of fact, appreciated the materials produced in support of charge sheet, drawn inference on reading the statements of the accused, and applied the law, which according to the High Court, had application to the facts of the case and then came to a conclusion that no prima facie case had been made out against any of the accused for their prosecution under the Arms Act. This approach of the High Court, in our considered view while deciding petition Under Section 482 of the Code was wholly illegal and erroneous.”

10. In view of the above discussion, this Court is of the considered opinion that the petitioner has failed to make out any case for quashing the FIR in question. This is not a fit case to exercise the jurisdiction under Section 482 Cr.P.C.

11. The present petition is accordingly dismissed.

12. Application CrI.M.A. 556/2016 is also disposed of.

(P.S.TEJI)
JUDGE

MARCH 11, 2016
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