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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : 17th MAY, 2016

DECIDED ON : 31st AUGUST, 2016

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CRL.M.C. 5254/2015 & Crl.M.A.No.18958/2015

GURVINDER SINGH

..... Petitioner

Through : Mr.K.T.S.Tulsi, Sr.Advocate with
Ms.S.Malhotra and Ms.Priyanka
Agarwal, Advocates.

VERSUS

STATE OF NCT OF DELHI AND ANOTHER Respondents

Through : Ms.Meenakshi Dahiya, APP.
Mr.Ankur Singhal, Advocate, for R-2

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.89/2013 registered under Sections 354/509 IPC at Police Station Amar Colony and consequential proceedings arising therefrom. The petition is contested by the respondents.

2. In brief, facts of the case are that on 20.02.2013, the complainant/respondent No.2 lodged a complaint at Police Station Patel Nagar alleging receipt of missed calls on her mobile from Mobile Nos.9811950000 and 9811114733 for the last one month. On enquiry, the petitioner informed the police that he had been receiving message from the

complainant's mobile. The complainant denied to have any acquaintance with the petitioner. On 21.02.2013, the complainant and the petitioner were called at Police Station Patel Nagar. The petitioner filed a written complaint vide DD No.67B at Police Station Patel Nagar informing that on receipt of SMSs on his mobile No.9811114733 on 16th, 18th and 19th February, 2013, he had called back on 19.02.2013 and a lady answering the call denied to have send any such message. On 25.02.2013, the complainant lodged FIR alleging that at around 1.30 a.m. two persons on a bike, stopped her car and misbehaved with her. The pillion rider was alleged to be the present petitioner. It was further alleged that the petitioner used sexually explicit words and tried to disrobe her. On 07.03.2013, the instant FIR was lodged under Section 354/354B/509 IPC against the petitioner.

3. During investigation, on analyzing Call Detail Records of the petitioner's mobile, it was found that on 25.02.2013, the petitioner had left his residence at around 10.50 a.m. to go to his shop at Khan Market. Petitioner's presence could not be established at East of Kailash at 11.30 a.m. as alleged by the complainant. On 31.08.2013, the Investigating Agency filed closure report under Section 173 Cr.P.C. claiming lack of evidence against the petitioner except the allegations made by the complainant. On 17.07.2014, Protest Petition against the closure report was filed by the complainant. The learned Metropolitan Magistrate in her order dated 02.01.2015 observed that the investigation carried out by the investigating agency was not satisfactory. Further investigation was ordered to be carried out. On 19.03.2015, the complainant recorded her 164 Cr.P.C. statement. Again, on 16.07.2015, the police filed second closure report reiterating lack of evidence. The Trial Court by its order dated 10.09.2015,

summoned the petitioner to face trial observing that there was sufficient material to take cognizance.

4. Learned Senior counsel urged that the investigating agency was unable to collect any evidence, whatsoever, to connect the petitioner with the crime. The allegations leveled by the complainant in the complaint/FIR could not be substantiated during investigation. It has come on record that the complainant was a close family friend of one Paramjeet Singh who was a business partner of the petitioner and a dispute had arisen between the two. The complaint was apparently motivated at Paramjeet Singh's behest. Learned Senior counsel further urged that as per Call Detail Records, there was only three telephonic contacts between the complainant and the petitioner on 19.2.2013 as under:-

S.No.	Calling No.	Called No.	Date and time	Duration
1.	9811950000 (Petitioner)	9818999830 (Complainant)	19/02/13- 12.26.04	180 secs
2.	9811114733 (Petitioner)	9818999830 (Complainant)	19/02/13- 12.29.26	19 secs
3.	9818999830 (Complainant)	9811114733 (Petitioner)	19/02/13- 12.54.52	83 secs

5. The Call Detail Records would reveal that the petitioner was not present in East of Kailash where the alleged incident took place. The

investigating agency has recorded the statements of many witnesses to show that the petitioner was present at his shop at Khan Market at 10.30 a.m. Paramjeet Singh in his 161 Cr.P.C. statement confirmed that he was a business associate of the petitioner and there was a dispute over monetary issues. Earlier, the complainant had relied upon the statement of one Simmi Singh who had allegedly witnessed the incident. However, during further investigation, she resiled from her previous statement. Learned Senior counsel further urged that since there was no cogent evidence on record and the allegations leveled by the complainant were not corroborated by scientific evidence, there was no occasion to summon the petitioner to face trial. The impugned order is a non-speaking order and no reasons have been indicated to discard the Call Detail Records collected during investigation ruling out the petitioner's presence at the spot at the relevant time. Taking of cognizance is a serious matter as it involves disturbing a life and personal liberty of a person. It cannot be done in a mechanical manner. It should be done after due application of mind. Reliance has been placed on *Mahmood UI Rehman & Ors.vs.Khazir Mohd.Tunda* AIR 2015 SC 2195; *Ramesh Thakur vs.State of NCT of Delhi* CrI.M.C.2019, 3182/2011; *Nupur Talwar vs.CBI & Anr.* (2012) 11 SCC 465; *Pepsi Foods Limited vs.Special Judicial Magistrate* 1998 5 SCC 749; *Prashant Bharti vs.State of NCT of Delhi* (2013) 9 SCC 293 and *Prashant Bharti vs.State of NCT of Delhi* (2013) 9 SCC 309.

6. Learned counsel for respondent No.2 urged that there is no illegality or irregularity in the impugned order. The allegations against the petitioner are specific and clear. No reasons prevail to discard the statement of the victim at this stage. The investigating agency was hand in glove with

the petitioner and with oblique motives preferred to file closure reports twice. Call Detail Records has been manipulated. The petitioner had planned the commission of offence with a great mind-set and to hide his guilt, deliberately and intentionally he had left the mobile phones in his shop at Khan Market. The judgments cited by the petitioner are not applicable to the facts and circumstances of the instant case. Reliance has been placed on *Brijesh vs.State* decided on 2.9.013 by this Court; *Rupan Deol Bajaj & Anr. vs.Kanwar Pal Singh Gill & Anr.* 1996 AIR 309; *K.M.Mathew vs.K.A.Abraham & Ors.*; *Vivek Goenka vs.Padam Sambhav Jain & Anr.* and *Hari Narain vs.State of Bihar & Ors.* 2002 (3) JCC 1523.

7. At the outset, it may be mentioned that the judgment '*Ramesh Thakur vs.State of NCT of Delhi*' (supra) relied on by the petitioner is of no assistance as it has since been set aside by the Hon'ble Supreme Court in Spl. Leave to Appeal (Crl.) No.6402-6404/2013 vide order dated 14.08.2014. It observed :

“...The complainant – appellant herein has filed a protest petition before learned ACMM, New Delhi, to the closure report filed by the Police in FIR No. 610/2007 registered at Police Station, Malviya Nagar. The learned Magistrate on finding sufficient material which suggests prima facie an offence of gang rape and taking cognizance of the offence, issued summons against the private respondents – accused herein. The accused persons separately challenged the cognizance order passed by learned Magistrate before the High Court by filing Criminal M.C. Nos.2019/2011, 2022/2011

and 3182/2011 under Section 482 of Cr.P.C. urging various grounds. The learned Single Judge examined and appreciated the allegations made in the complaint by the complainant and observations made in the impugned order and also extracted certain paragraphs from the decisions of this Court in exercise of power under Section 482 of the Code of Criminal Procedure ("Cr.P.C."), which is not permissible in law. In our considered opinion, the High Court has exceeded its jurisdiction vested under Section 482 Cr.P.C., in view of the established parameters laid down by this Court....."

8. After the lodging of the FIR No.89/2013 under Sections 354/354B/509 IPC on the victim's complaint, the investigation was carried out. The Investigating Agency filed a closure report which was protested by the complainant. The learned Trial Court in its order dated 02.01.2015 observed that the investigation carried out so far was not satisfactory; the Investigating Officer had not got recorded victim's statement under Section 164 Cr.P.C. statement and no sincere efforts were made by the Investigating Officer to join the complainant. Hurriedly, three consecutive dates were given to the complainant to appear before the Investigating Officer. The Court observed that the haste on the part of the Investigating Officer to only insist on the presence of the complainant on those three consecutive dates and making no efforts to visit her residence to record her statement revealed his callous approach towards the investigation and the rights of the victim. Accordingly, the Investigating Agency was directed to investigate the matter further and to take appropriate steps to join the victim in the investigation

and record her 164 Cr.P.C. statement besides other investigation. Subsequently, victim's statement under Section 164 Cr.P.C. was recorded. Again for the second time, the closure report was filed showing lack of evidence. A protest petition was filed by the complainant. The Trial Court, by the impugned order, after taking into consideration report under Section 173 Cr.P.C., initial complaint and victim's statement under Section 164 Cr.P.C. found that there was sufficient material on record to take cognizance and summon the petitioner to face trial. Apparently, the Id.Court was within its power to differ from the conclusion arrived at by the investigating agency.

9. In '*M/s. India Carat Private Limited vs. State of Karnataka & Anr.*', 1989 (2) SCC 132, Supreme Court held :

“Court should exercise utmost restraint and caution before interfering with an order of taking cognizance by the Magistrate, otherwise, the holding of a trial will be stalled. Even if the police report is to the effect that no case is made out against the accused, the Magistrate can take into account the statements of the witnesses, examined by the police during the investigation and take cognizance of the offence and order of the issue of process of the accused.”

10. At the stage of taking cognizance, the Magistrate is required to apply his mind to the facts and materials before him. In doing so, he is not bound by the opinion of the Investigating Officer and he is competent to exercise his discretion irrespective of the views expressed by the police in its

report and may prima facie find out whether an offence has been made out or not. No detailed reasons are required to be recorded while taking cognizance and/ or issuing process. In '*Nupur Talwar vs. CBI*' (supra), Hon'ble Supreme Court held :

“13. Whether an order passed by a Magistrate issuing process required reasons to be recorded, came to be examined by this Court again in Chief Controller of Imports & Exports vs. Roshanlal Agarwal wherein this Court concluded as below :

“9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in U.P. Pollution Control Board vs. Mohan Meakins Ltd. (2000) 3 SCC 745 and after noticing the law laid down in Kanti Bhadra Shah vs. State of W.B. (2000) 1 SCC 722 it was held as follows :

The legislature has stressed the need to record reasons in certain situation such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to the accused cannot be quashed merely on the ground that the

Magistrate had not passed a speaking order.”

14. Recently, in Bhushan Kumar vs. State (NCT of Delhi) (2012) 5 SCC 424 the issue in hand was again considered. The observations of this Court recorded therein, are being placed below :

“ 12. A ‘summons’ is a process issued by a court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in court. A person who is summoned is legally bound to appear before the court on the given date and time. Wilful disobedience is liable to be punished under Section 174 IPC. It is a ground for contempt of court.

13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued.

14. Time and again it has been stated by this Court that the summoning order under Section 204 of the Code requires no explicit reasons to be stated because it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the police report and the materials filed therewith.”

(emphasis supplied)

15. It is therefore apparent, that an order issuing process, cannot be vitiated merely because of absence of reasons.”

11. The Investigating Agency did not give convincing reasons to discard or ignore the statement of the prosecutrix whereby she implicated the petitioner by name and assigned / attributed a specific and definite role to him in the commission of occurrence. The testimony of the victim in sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts can act on her testimony alone to base conviction, if her testimony inspires confidence and is found to be reliable. Corroboration is to be looked at only if the Court finds that it is difficult to accept her testimony on its face value.

12. The plea of alibi set up by the petitioner is to be considered during trial. Whether the instant complaint was at Paramjeet Singh's behest as alleged, again is a matter of trial. The acquaintance of the petitioner with Paramjeet Singh was way back in 2008. After a gap of about five years, the prosecutrix is not expected to suddenly implicate the petitioner on his mere asking, particularly when nothing has emerged on record if any litigation

whatsoever is pending between the petitioner and the Paramjeet Singh over any monetary / business transaction.

13. In ‘*Mrs.Rupan Deol Bajaj & Anr. Vs. Kanwar Pal Singh Gill & Anr.*’, 1995 SCC (6) 194, discussing the powers under Section 482 Cr.P.C., Supreme Court held :

“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 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.”

14. It further observed :

“We are constrained to say that in making the above observations the High Court has flagrantly disregarded – unwittingly we presume – the settled principle of law that at the stage of quashing an FIR or complaint the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein. Of course as has been pointed out in Bhajan Lal’s case (supra) an FIR or a complaint may be quashed if the allegations made therein are so absurd and

inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused but the High Court has not recorded such a finding, obviously because on the allegations in the FIR it was not possible to do so. For the reasons aforesaid we must hold that the High Court has committed a gross error of law in quashing the FIR and the complaint. Accordingly, we set aside the impugned judgment and dismiss the petition filed by Mr. Gill in the High Court under Section 482 Cr.P.C.”

15. In the instant case, it cannot be said at this juncture that prima facie there is no legal evidence to proceed against the petitioner. In exercise of powers under Section 482 Cr.P.C. this Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, accusations would not be sustained.

16. In view of above, I find no illegality or material irregularity in the impugned order. The petition is devoid of merits and is dismissed. Pending application also stands disposed of.

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

(S.P.GARG)
JUDGE

AUGUST 31, 2016 / sa / tr