

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

% **Judgment delivered on: 3rd November, 2017**

+ CRL.M.C. 4467/2015 and CrI.M.A.No.15891/2015

RAM LAL

..... Petitioner

Through: Mr.Mahendra Mishra, Advocate.

versus

GOVT. OF NCT OF DELHI Respondent No.1

SURYA PRAKASH KHATREE Respondent No.2

Through: Mr.Raghuvinder Varma, APP for
State with SI Naveen, P.S. Subzi
Mandi, Delhi.

Mr.Mukesh Kalia and Ms.Sumita
Kapil, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C. for quashing of the FIR No.598/2014 dated 18th November, 2014, under Sections 392/34 of the Indian Penal Code registered at P.S. Subzi Mandi, New Delhi.

2. The brief facts stated are that on 18th November, 2014, the respondent no.2/complainant, who is an advocate by profession and the President of the Roshanara Club had gone to Tis Hazari Court with one Mr. Subhash Kakkar, Secretary of Roshanara Club to lead his evidence in a matter captioned as 'Ram Lal v. Kanhaiya Lal & Ors.' It is the case of the respondent no.2/complainant that around 11:40 am when the petitioner came out of the Court room no. 347, of Tis Hazari Court, the petitioner started abusing the respondent no.2/complainant and his companions vehemently and surrounded them with two of the petitioner's accomplices. It is further alleged that when respondent no.2/complainant tried to escape, the petitioner pushed Mr. Subhash Kakkar and he fell on the floor and he forcibly snatched a small black bag from his hand in which cash of Rs. 4,700/-, his identity card, some documents and some other things were there. It is alleged that the petitioner gave life threats to the complainant/respondent no.2 and his companions and ran away from the place of incidence. Thereafter, the respondent no.2 registered a complaint with the Police Station Subzi Mandi and which was subsequently registered as an FIR bearing no. 598/2014 under Sections 392/34 of IPC against the petitioner herein.
3. Aggrieved by the registration of the said FIR, the petitioner herein has preferred the present petition for quashing of the same.
4. The learned counsel appearing on behalf of the petitioner has submitted that the petitioner is a victim and he has been implicated in a number of false cases. He further submits that the petitioner has

faith in the judicial system of the country and has been facing trial in all cases and cases culminated in acquittal except the pending cases. He has further submitted that the incident is dated 18.11.2014 and the allegation alleged is false. The respondent No.2 caught hold of the petitioner and started beating him mercilessly and in the meantime the petitioner dialled 100 number and reported the incident of his beating to the police headquarter. The communication so made was recorded in the system and the CD of the same along with the transcription has been ordered to be preserved by the direction of the Trial Court. He further submitted that the prepared conversation is also placed on the record.

5. The learned counsel for the petitioner has further submitted that the petitioner is a resident of Roshanara area and whenever any bad incident takes place the same is attributed to the present petitioner, resulting into the registration of FIR against him and in the present case also the petitioner is innocent and the aforesaid FIR registered against the petitioner is misuse of process of law and requires to be set aside and in support of his arguments has relied upon the following judgments:

- i. ***State of Haryana v. Bhajan Lal*, (1992) Supp 1 SCC 335.**
- ii. ***State of Karnataka v. Devendrappa & Anr.* (2002) 3 SCC 89.**
- iii. ***Prashant Bharti v. State (NCT of Delhi)*, (2013) 9 SCC 293.**
- iv. ***Rajiv Thapar v. Madan Lal Kapoor*, (2013) 3 SCC 33.**

6. The learned counsel appearing on behalf of the respondent No.2/complainant has submitted that the invocation of Section 482 Cr.P.C. in the present petition is not proper as the present petitioner is required for determination of the offence punishable under Sections 392/34 of Indian Penal Code. She has further submitted that when there is a specific complaint against the present petitioner, which is to be determined during the course of trial, the present petition is not maintainable and liable to be rejected.

7. I have given my thoughtful consideration to the submissions made by learned counsel for both the parties and have also perused the material on record.

8. The whole dispute hinges around whether in presence of the complaint of the complainant, invocation of the Section 482 of the Criminal Procedure Code is proper?

The answer is:- **NO.**

9. The complaint made by the respondent no.2 to the Police Station Subzi Mandi on 18th November, 2014 is reproduced hereunder:

“To, the Station Incharge, Tis Hazari Court, Delhi-110054. Sir, it is respectfully submitted that I Surya Prakash Khatri am a lawyer by profession and the President of the Roshanara Club. Today on 18.11.2014 before the Court of Ms. Anchal, Ld. Civil Judge, Court n. 347 a case of Roshanara Club titled as ‘Ram Lal v. Kanhaiya Lal & Ors.’

was listed and I had come to attend it. Along with me Mr. Subhash Kakkad, Secretary of the Roshanara Club was also present as he was to depose before the Ld. Court. That after deposing from the side of Roshanara Club before the Court in 'Ram Lal v. Kanhaiya Lal & Ors.' When Subash Kakkad and I stepped out of the Court, we also had my Junior Dheeraj Gupta Advocate with us. At that very time at 11:40am, Ramlal who was the Plaintiff in the case also came out of the Court and started abusing me loudly and said that today you have come with Subhash as an Advocate. I have been seen many advocates like you and You don't know me and with that he also called two of his accomplices there and surround us from all four sides and we tried to escape then Ramlal pushed Subhash Kakkad down and forcibly snatched the small black bag from his hand in which there was around Rs. 4700/-, identity card and some documents and some other things were there. Thereafter he gave us life threats along with that bag and his accomplices ran away. After that along with some advocates we have come to your station. It is our request that please save our lives. The things which have been snatched from me shall be given back to us and against the accused legal action be taken. Sd/- English Surya Prakash Khatri Ch no. 212-213 WW Tis Hazari Court Delhi – 110054 18.11.2014 s/o Sh. Sukh Lal R/o B.D. Estate Timarpur Delhi-54.”

10. On the basis of the complaint made by Mr. Surya Prakash Khatri, the complaint is registered as FIR No. 598/2014 under Sections 392/34 at Police Station Subzi Mandi. There is a specific allegation against the present petitioner that on 18.11.2014, the petitioner along with two of his accomplices surrounded the

respondent/complainant and Subhash Kakkad, Secretary of the Roshanara Club from all the four corners. It is further alleged that the petitioner pushed Subhash Kakkad and forcibly snatched small bag from his hand which contained Rs.4700/-, identity card and some other documents and thereafter, extended life threat and ran away from the spot.

11. In *State of A.P. vs. Gourishetty Mahesh and Others*, (2010) 11 SCC 226, the Hon'ble Supreme Court has held that:

(12) While exercising jurisdiction under Section 482 of the Code, the High 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 accusation would not be sustained. That is the function of the trial Judge/Court. It is true that Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, other wise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and bring about its closure without full-fledged enquiry. Though High Court may exercise its power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or 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 or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the

provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in. Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution.”

12. The factum of robbery amounting to Rs. 4700/- is yet to be determined during the trial. The statement of the two material witnesses i.e. Surya Prakash Khatri and Subhash Kakkad is yet to be examined during the trial. Mere registration of the 23 FIRs against the present petitioner i.e.: FIR No. 235/10 under Sections 325/34 IPC registered at Roop Nagar; FIR No. 17/92 under Sections 147/148/149/427/436/506 IPC registered at Roop Nagar; FIR No. 96/94 under Sections 308/34 IPC registered at Roop Nagar; FIR No. 107/94 under Sections 308/34 IPC registered at Roop Nagar; FIR No. 164/96 under Sections 392 IPC registered at Roop Nagar; FIR No. 448/96 under Sections 160 IPC registered at Roop Nagar; FIR No. 157/99 under Sections 61/1/14 Excise Act registered at Roop Nagar; FIR No. 242/01 under Sections 146/ 147/ 149/ 156/ 332/ 353/ 307/ 309/ 34 IPC & 27 /54 / 59 Arms Act registered at Roop Nagar; FIR No. 243/01 under Sections 25/54/59 Arms Act registered at Roop Nagar; FIR No. 244/01 under Sections 61/1/14 Excise Act registered at Roop Nagar; FIR No. 362/01 under Sections 186/353/506 IPC

registered at Roop Nagar; FIR No. 118/04 under Sections 21/61/85 NDPS Act registered at Roop Nagar; FIR No. 119/04 under Sections 61/1/14 Excise Act registered at Sarai Rohilla; FIR No. 26/09 under Sections 61/1/14 Excise Act registered at Roop Nagar; FIR No. 52/09 registered at Roop Nagar; FIR No. 68/11 under Sections 341/323/506/34 IPC registered at Roop Nagar; FIR No. 78/12 under Section 33 of Delhi Excise Act registered at Roop Nagar; FIR No. 171/12 under Sections 341/506/34 IPC registered at Roop Nagar; FIR No. 68/13 under Section 33 of Delhi Excise Act registered at Roop Nagar; FIR No. 177/13 under Section 33 of Delhi Excise Act registered at Roop Nagar; FIR No. 256/13 under Section 33 of Delhi Excise Act registered at Roop Nagar; FIR No. 598/14 under Sections 392/34 IPC registered at Sabzi Mandi; FIR No. 518/14 under Section 33 of Delhi Excise Act registered at Roop Nagar *ipso facto* does not give benefit to the petitioner to invoke Section 482 Cr.P.C.

13. In view of the aforesaid reasons and circumstances in the present case and in the light of the abovementioned caselaw, I do not find it a fit case to invoke the powers under Sections 482 Cr.P.C.

14. Consequently, the petition being without any merit is hereby dismissed.

No order as to Costs.

I.S.MEHTA, J

NOVEMBER 03, 2017