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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 12th September, 2018

+ CRL. M.C. 4596/2018 & CrI.M.A. 31806-808/2018

R.V. CHINOY

..... Petitioner

Through: Ms. Amrita Panda & Mr. Neil
Chatterjee, Advs.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Ms. Meenakshi Dahiya, APP
for the State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second respondent had filed a complaint (CC No. 17548/17) in the court of Chief Metropolitan Magistrate, South-West district with an application seeking direction to the police under Section 156 (3) of the Code of Criminal Procedure, 1973 (Cr.P.C.) to investigate. The Metropolitan Magistrate, to whom the said matter was entrusted, by his order dated 04.06.2018 issued directions to the police granting the request under Section 156 (3) Cr.P.C., taking note, *inter alia*, of the fact that the averments in the complaint showed cognizable offence having been committed, referring in this context to the rulings of the Supreme Court in *Lalita Kumari vs. State of U.P. & Ors. (2012) 4 SCC 1* and *Arnesh Kumar vs. State of Bihar & Anr. (2014) 8 SCC 273*. The Station House Officer of police station Bindapur, in

compliance of the said order registered first information report (FIR) no. 529/2018 on 29.06.2018 and has taken up investigation into the offence under Section 420 of Indian Penal Code, 1860 (IPC).

2. The petitioner whose role is alleged in the FIR, feeling aggrieved, has come up with the petition under Section 482 Cr.P.C. read with Article 227 of the Constitution of India to pray for quashing of the said order dated 04.06.2018 and FIR registered in its wake, on the submission that the same is in the nature of abuse of the process of law.

3. The learned counsel for the petitioner, on being asked, submitted that copy of the criminal complaint and the documents filed therewith are not available with her, the petitioner concededly being not privy to such record, no process having been issued in his name. She, on being asked, stated that the criminal complaint has been converted into the FIR. On being asked, she stated that the averments in the said complaint (now FIR) are false and even otherwise on the face of it do not disclose any cognizable offence having been committed. She, however, would read the FIR selectively, conspicuously omitting certain crucial portions, which approach was found to be not fair.

4. Be that as it may, on plain reading of the FIR, it cannot be said that it does not disclose any cognizable offence having been committed. The complainant appears to have been engaged by the petitioner as its Selling Agent- cum- Depot (SAD) for North India area. The arrangement between the parties on this score may have given rise to certain rights and obligations that may be civil in nature.

But then, there are allegations of the services of SAD having been brought to an end and the goods from the premises of the complainant having been taken away on mis-representation that the value thereof would be made good and thereby causing wrongful loss.

5. The contentions of the petitioner that the allegations of the complainant are factually incorrect cannot be a ground at this stage of the process of investigation to be brought to an end. The following observations of the Supreme Court in this context in *Rajiv Thapar and Ors. Vs. Madan Lal Kapoor*, (2013) 3 SCC 330 need to be borne in mind.

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable,

and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.”

(emphasis supplied)

6. For the foregoing reasons, this Court declines to interfere with the investigative process at this stage.
7. The petition and the applications filed therewith are dismissed.

R.K.GAUBA, J.

SEPTEMBER 12, 2018

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