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

% Date of Decision: 11th December, 2019

+ CRL.M.C. 6381/2019

CHANDERBHAN

..... Petitioner

Through: Mr. Gaurav Kumar Singh &
Mr. Sandeep Malik, Advocates

versus

STATE OF N.C.T OF DELHI & ANR Respondents

Through: Ms. Aashaa Tiwari, APP for
the State with SI Dinesh
Kumar, PS:Gokal Puri, Delhi
Respondent No.2 in person

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J. (ORAL)

Crl.M.A.42422/2019 (for exemption)

Allowed, subject to all just exceptions. Application stands disposed of.

CRL.M.C.6381/2019

1. Issue notice. Notice is accepted by the learned APP for the State as well as by respondent No.2, who is present in Court.
2. The petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.PC) for quashing of FIR No.804/2015, under Sections 452/392/395/397/34 of the Indian Penal Code, 1860 ('IPC'), registered at P.S.: Gokul Puri, Delhi and the proceedings

emanating therefrom on the following grounds:-

- (i) The petitioner was not present at time of occurrence, hence, his presence is disputed.
- (ii) There is no specific role of the petitioner in the chargesheet.
- (iii) The petitioner is not even remotely connected with the crime.
- (iv) The Investigation Officer has not conducted a fair and impartial investigation in the matter.
- (v) The Investigation Officer is biased on the face of record in the matter and same can be seen in the Petition No.4963/2019 filed by the real brother of the accused, namely, Deshraj, which is pending in this Court.
- (vi) PW-3, father of the complainant, gave contradictory statement and falsely claimed that he is an eye witness in the case and the same is on the face of record.
- (vii) There was some quarrel between the father of the complainant and the main accused Gaurav @ Hitesh just two days prior, i.e., 3.10.2015 to the registration of FIR No.798/2015 under Sections 323/341/506/34, P.S. Gokulpuri.
- (viii) Almost one month prior to the registration of the instant FIR, one another FIR No.738/2015 dated 8.9.2015 under Sections 323/341/506/34, P.S. Gokulpuri was registered against the main accused and many criminal litigation are pending between the parties.
- (ix) The Investigation Officer failed to conduct an investigation as to the

location of mobiles of all the accused persons, including that of the petitioner and whether there was any conversation or call records among all the accused and the petitioner, which could prove that there was any conspiracy among them against the complainant.

- (x) All the prosecution witnesses in the present case are family members, therefore are all interested witnesses; further, no statement of public or independent witness have been recorded by the police.
- (xi) It is stated by the eye witness, PW-13, in his cross-examination that there were about 250 public persons gathered at the spot. Further, non-joining of any public or independent witness raises some doubts on the entire story of the complainant.
- (xii) The petitioner's family and complainant's family belong to the same village and District Mahoba, U.P. and there is old enmity between both the family.
- (xiii) There is a financial dispute between the main accused Hitesh and the complainant.
- (xiv) The petitioner has been falsely implicated in the present FIR at the instance of the complainant.

3. The brief facts of the case emanating from the record are that on 5.10.2015, the complainant, Rajender Kumar, in his statement, stated that eight boys carrying knives and revolver entered his house. One boy, named Hitesh, gave a cut to his wife on her right hand. The boys, namely, Hardin, Dharamvir,

Chanderbhan (the petitioner herein), Deshraj, Gagan, Sunny and Sajid were accompanying Hitesh. In his complaint, the complainant further stated that Hitesh, Dharamvir and Hardin caught hold of him. It is further alleged that Hitesh showed the complainant revolver and gave him a cut on his left thigh with a knife. Further, it has been alleged by the complainant that the accused persons forcibly took away Rs.36,000/- kept at his home and also forcibly snatched gold chains from his sisters. Further, the accused persons threatened to kill the complainant and his family members and thereafter fled the spot. The complainant dialled No.100 and HC Vijay, No.117/NE, PS:Gokal Puri, Delhi took him to the GTB Hospital for treatment and the instant FIR under Sections 452/392/395/397/34 of the IPC was registered.

4. Learned counsel for the petitioner submitted that the incident is stated to have occurred at around 6:30 pm on 5.10.2015, however, the petitioner was in his office at 7:00 pm and this fact has not been investigated by the IO.

5. Learned counsel for the petitioner, on the query of the Court, submitted that the Trial Court has already framed the charge and the petitioner never challenged the same.

6. Learned APP submitted that all the witnesses, except the Investigating Officer (IO), have already been examined and the next date fixed before the Trial Court is 15.1.2020 for the evidence of the IO and the prosecution shall positively examine the IO on that date.

7. The Supreme Court in the case of *Madhu Limaye vs. Maharashtra*, AIR 1978 SC 47 laid down the following principles which would govern the exercise of the inherent jurisdiction of a High Court given by Section 482 of the Cr.P.C:

(1) the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) it should be exercised very sparingly to prevent abuse of the process of any court or otherwise to secure the ends of justice;

(3) it should not be exercised as against the express bar of the law engrafted in any other provision of the Code.

8. The inherent powers of the High Court are certainly wide and wholesome. If the court has to examine and determine whether the continuation of the criminal proceedings would be just or would be improper, there is no reason why there would be any limitation on the powers of the Court to look into all the materials available on the record. There is nothing in law to place any such limitation on the powers of the High Court. However, the powers under Section 482 of the Cr.P.C. are to be exercised sparingly and not as an Appellate/Revisional Court.

9. The Court must be careful to see that its decision in exercise of its power under Section 482 of the Cr.P.C. is based on sound principles. The inherent powers should not be exercised to stifle a legitimate prosecution. Admittedly, the

High Court while exercising the power under Section 482 of the Cr.P.C. does not function as a Court of appeal or revision. Hence, the inherent jurisdiction under Section 482 of the Cr.P.C., though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the test specifically laid down in the Section itself.

10. The power under Section 482 of the Cr.P.C. has to be exercised, as discussed hereinabove, to render real and substantial justice to the parties. It would not be fair on the part of the High Court to interfere with judicial exercise of the discretion vested in the lower courts on the mere allegations/submissions of the accused. Such powers under Section 482 of the Cr.P.C. should be exercised with due care, caution and circumspection and in the rarest of rare cases. Once the Trial Court has commenced the trial, the petition under Section 482 of the Cr.P.C. for quashing the proceedings, normally should not be entertained.

11. The question of fact should not be interfered with in exercise of the inherent jurisdiction, more so, when it becomes a matter for evidence, normally, it will not be appropriate to invoke the jurisdiction under this Section. It is the duty and the jurisdiction is vested in the Trial Court in such a case to dispose of the case according to law in the light of the evidence on record.

12. It is held in the case of ***Maheswari Oil Mill v. State of Bihar, 1978 Cr LJ 659 (Pat)*** that the High Court will not enter

enquiry of disputed facts and thereafter hold in favour of the accused.

13. In the case of *Amar Nath Misra v. State of UP*, 1989 (1) Crimes 737 (All), it has been held that when the Magistrate has taken cognizance of the matter, and has committed the case to the Court of Sessions and the Trial Judge has framed the charges against the accused, it is not proper to interfere.

14. In the case of *State of HP v. TR Seth*, 1990 (1) Crimes 510, 514 (HP), it has been held that in exercise of powers under Section 482 Cr.PC, the High Court is not entitled to express any view on matters which relate to the realm of appreciation of evidence to decide the credibility of the case put forward. The observation that it would be open to the State to proceed against the accused in any manner which may be permissible under law is nothing but a surplusage.

15. In the case of *Prabhakar N Shetty v. State of Maharashtra*, 1990 (1) Crimes 192 (Bom), it has been held that it is not open for the High Court to embark upon an enquiry as to whether the evidence is reliable or not.

16. It has been held in the case of *Jagarlamudi Durga Prasad v. State*, 1991 (3) Crimes 832 that in a proceeding under Section 482 Cr.PC, it is not for the High Court to go into the question of fact.

17. It has been held in the case of *Zoom Vision v. P Manickam & Co*, 2001 (4) Crimes 96 (Mad) that once trial has commenced, the petition under Section 482 Cr.PC for quashing the proceedings does not lie.

18. The High Court, hence, while exercising its jurisdiction under Section 482 Cr.PC, would not embark upon an enquiry as to whether the evidence in question is reliable and/or sufficient or not. This function is clearly within the domain of the Trial Court, more so, after the framing of the charge. The High Court would not assume the functions of the Trial Court and it would be for the Trial Court to decide the case in accordance with law, in the light of the evidence. Such an intervention or interference, in the powers of the Trial Court, is uncalled for.

19. Now, reverting back to the facts of the case, the grounds raised in the petition as well as the submissions made by the learned counsel for the petitioner pertain to the factual matrix of the case. The Trial Court has already framed the charge and the petitioner has never challenged the same. The prosecution has already led evidence, except that of the IO. The cross-examination of the witnesses has already been done for and on behalf of the petitioner before the Trial Court.

20. The trial is at the fag end and the grounds raised by the learned counsel for the petitioner relate to the factual matrix of the case. The prosecution, as discussed hereinabove, has already led evidence, except that of the IO and the cross-examination of the witnesses has already been conducted for

and on behalf of the petitioner before the Trial Court, it is not within the realm of this Court to express any view and/or to embark upon an enquiry at this stage as to whether the evidence led before the Trial Court is reliable or not. It is within the jurisdiction of the Court where the matter is pending to appreciate the evidence and decide about the credibility of the evidence recorded before it on merits as per law while deciding the case. Thus, I do not find any merit in the present petition and the same is accordingly dismissed.

21. Learned counsel for the petitioner, at this stage, submitted that the petitioner may be allowed to raise the aforementioned grounds before the Trial Court at the time of final arguments. The petitioner is granted liberty to raise the aforesaid grounds, as per law, before the Trial Court at the time of final arguments which the Trial Court may consider and dispose of, in accordance with law.

22. It is clarified that whatever is stated hereinabove shall not tantamount to any expression or opinion on the merits of the case pending before the Trial Court.

CHANDER SHEKHAR, J

DECEMBER 11, 2019

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