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

% *Decided on: - 17.12.2019*

+ W.P.(CRL) 110/2019

RAMESH CHANDER @ RONIT DAYAL & ORS..... Petitioners

Through: Mr. B.P.Singh, Advocate

Versus

STATE

..... Respondent

Through: Mr. Amanpreet Singh & Mr. Jamal
Akhtar, Advocates for Mr. Rahul
Mehra, Standing Counsel for
respondent/State

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J (*oral*)

1. Quashing of FIR No. 576/2017, under Sections 376/511/354/ 354D/342/120B/506/509/34 IPC, registered at police station Punjabi Bagh, Delhi is sought in this petition.

2. Learned counsel for petitioners submits that for the alleged complaint of eve teasing and quarrel, complainant had called the police PCR on 17th October, 2017, whereas the complaint was given in writing only on 20th October, 2017, on the basis of which FIR in question was got registered on that day. Leaned counsel for petitioner submits that statement of prosecutrix under Section 164 Cr.P.C. was recorded after a lapse of eight days on 24th October, 2017 and thereafter, Sections 376/511

IPC were added. Learned counsel for petitioners further submits that there is inconsistency in the statement of complainant recorded on 17th October, 2017 and her statement recorded under Section 164 Cr.P.C. on 24th October, 2017 and also that the complainant had refused to undergo medical examination on 17th October, 2017.

3. On the other hand, this petition is opposed by learned Additional Public Prosecutor for respondent/State who submits that the allegations levelled against the petitioners are serious in nature and that charge sheet in this case has been already filed and the matter is now fixed for framing of charge on 23rd January, 2020 before the trial court.

4. Heard.

5. Upon perusal of FIR of this case and the complaint in question, this Court finds that the allegations levelled against petitioners are serious in nature. On the basis of statement of prosecutrix recorded under Section 164 Cr.P.C, offences under Sections 376/511 IPC have been added. This Court is informed that charge sheet in this case has already been filed and matter is now pending before the learned trial court for framing of charge. Hence, the petitioners have an alternate and efficacious remedy of urging the pleas taken herein before the trial court at the stage of hearing on the point of charge.

6. The Hon'ble Supreme Court in *Padal Venkata Rama Reddy Alias Ramu v. Kovvuri Satyanarayana Reddy & Ors. (2011) 12 SCC 437* has observed as underlaid down the law regarding exercise of powers under Section 482 Cr.P.C. when an alternative efficacy remedy is available which reads as under:-

"13. It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide Kavita v. State and B.S.Joshi v. State of Haryana). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specifically when the applicant may not have availed of that remedy."

7. There is one more ground which persuades this Court to dismiss this petition. As per the decision of the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that to in the rarest of rare cases. Supreme Court in *Bhajan Lal (Supra)*, has categorically observed as under:-

"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8. A perusal of FIR of this case *prima facie* reveals commission of offence under Sections 376/511/354/ 354D/342/120B/506/509/34 IPC by the petitioner and, therefore, the case of petitioner does not fall within the aforesaid parameters as enunciated by the Hon’ble Supreme Court in *Bhajan Lal (Supra)*. In view of the foregoing narration of

facts and law laid down by the Hon'ble Supreme Court, this Court is not inclined to quash the FIR in question.

9. This petition stands dismissed accordingly.

BRIJESH SETHI, J

DECEMBER 17, 2019

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