

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

CRL.M.C. 3601/2019

Reserved on : 04.09.2019

Date of Decision : 11.09.2019

IN THE MATTER OF:

PRIYA KAPOOR & ANR

..... Petitioners

Through: Mr. P.K. Dey, Ms. Shreyasi
 Chakrabarty and Ms. Shilpi Dey,
 Advs.

versus

STATE (NCT) OF DELHI & ANR

..... Respondents

Through: Ms. Radhika Kolluru, APP for
 State with SI Pooja Saraswat, P.S.
 Krishna Nagar.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. By this petition filed under Section 482 Cr.PC, the petitioners seek quashing of the charge-sheet dated 06.06.2019 filed under Section 506/34 IPC in FIR No. 60/2019, P.S. Krishna Nagar, Delhi and all proceedings emanating therefrom on the ground that the basic ingredients of Section 506 IPC are missing against the present petitioners.

2. The aforesaid FIR was registered against Lakshay Kapoor, the son of the present petitioners, under Section 376/377/34 IPC on 15.03.2019. Initially, the FIR was lodged only against the said Lakshay Kapoor, however, after conclusion of the investigation, the charge-sheet was filed not only against Lakshay Kapoor, but also against his parents, i.e., the present petitioners under Section 506/34 IPC.

3. Mr.P.K.Dey, learned counsel for the petitioners submits that there is not even an iota of allegation against the present petitioners in the FIR or the statement of the complainant recorded under Section 164 Cr.PC. He further submits that the allegations, if any, are only against Lakshay Kapoor. Learned counsel further submits that neither any date nor any details of the alleged threats are mentioned anywhere in the charge-sheet. He submits that the present petitioners had lodged complaints on 26.03.2019 and 25.04.2019 against the complainant regarding threats given to them by the complainant. The learned counsel also invited attention of this Court to the statements of the relatives of the complainant, recorded under Section 161 Cr.PC during the course of investigation. He has specifically drawn the attention of the Court to the statements of brother, mother and another cousin of the complainant wherein not a single allegation has been levelled by them against the present petitioners. In support of his submissions, learned counsel for the petitioners has relied upon the following decisions:-

- (i) Tammineedi Bhaskara Rao vs. State of A.P. **2007 CRLJ 1204.**
- (ii) Geeta Mehrotra v. State of U.P. **(2012) 10 SCC 741.**
- (iii) Bobbili Ramakrishna Raja Yadad v. State of A.P. & Anr. **(2016) 3 SCC 309.**
- (iv) Pramod Goyal v. State & Ors. **2016 (3) JCC 1966.**

4. On the other hand, learned APP for the State vehemently opposed the petition and submitted that the charge against the petitioners is yet to be framed. She further submitted that in the FIR, the complainant has

referred to the petitioners and their son collectively and as such the said allegations have to be in entirety against the present petitioners as well.

5. I have heard learned counsel for the parties and gone through the case records.

6. The brief facts necessary for the disposal of the present petition are:

(i) On 15.03.2019, the complainant lodged an FIR against Lakshay Kapoor, the son of the present petitioners, under Sections 376/377/506 IPC. In the said FIR, the complainant alleged that while working in an MNC, she met the said Lakshay Kapoor.

(ii) In the marriage party of one of the colleagues, Lakshay Kapoor proposed to marry the complainant whereafter they constantly remained in touch on phone calls and messages. On her birthday, Lakshay Kapoor proposed to marry her, which proposal was accepted by her.

(iii) The relations between the complainant and the petitioners' son were also known to the family of both sides. On 08.10.2016, Lakshay established physical relations with her on account of his promise to marry.

(iv) Subsequently, on 31.12.2016, Lakshay Kapoor introduced the complainant to his brother and sister-in-law. They celebrated the new year whereafter, Lakshay and the complainant stayed the night in the hotel and they again established physical relations, though forcibly.

(v) The mother of Lakshay Kapoor, i.e., petitioner No.1 tried to find out about the financial status of the complainant and on coming to know

that the complainant's family will not be able to fulfil their wishes, the behavior of petitioner No.1 changed towards the complainant.

(vi) On 13.10.2018, Lakshay's father, i.e. petitioner No.2, promised that they would soon come to her house to finalise the marriage. On one day, when she asked Lakshay Kapoor as to when he would bring his parents to finalise the marriage, he replied that the marriage won't take place till he gets a Fortuner Car. Thereafter, the complainant went to meet his parents at their house when petitioner No.1 told her that she was from other side of Jamuna and that the marriage won't take place till the demand of Fortuner Car and cash amount of Rs.25 lacs is met.

(vii) On 09.03.2019, she had gone to meet Lakshay at Hauz Khas Village where he threatened that he had made her MMS and he would viral the video. It was stated that Lakshay Kapoor and his family were demanding dowry for which the complainant and her family were threatened. She had stated that she apprehends danger to her life and property from Lakshay Kapoor and his family.

7. In her statement recorded under Section 164 Cr.PC on 18.03.2019, the complainant reiterated her earlier statement and no additional facts were mentioned against the present petitioners.

8. Although, initially the FIR was registered only against Lakshay Kapoor, however, the charge-sheet has also been filed against the present petitioners under Section 506/34 IPC.

9. To delve into the controversy, I feel it necessary to reproduce Section 506 IPC, which reads as under:-

“506. Punishment for criminal intimidation.—Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 8 [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

10. Criminal intimidation has been defined in Section 503 IPC, which reads as under:-

“503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.”

11. The scope and ambit of Section 482 Cr.PC is well defined. Section 482 Cr.PC reads as under:-

“482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

12. Under Section 482 Cr.PC, the Court has inherent powers to prevent the abuse of process of court or otherwise to secure the ends of justice. The inherent powers of the Court are extraordinary and the provision is devised to advance justice and not to frustrate it. The inherent jurisdiction, though wide, has to be exercised *ex debito justitiae*, to do real and substantial justice. The inherent powers under Section 482 Cr.PC can be exercised (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of the Court and (iii) to otherwise secure the ends of justice. At the same time, the inherent jurisdiction has to be exercised with great caution.

13. In R.P.Kapur v. State of Punjab reported as **AIR 1960 SC 866**, the Supreme Court outlined some category of cases where the inherent power can be and should be exercised to quash the proceedings, as under:-

“(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.”.

14. In State of Karnataka vs. Muniswamy, reported as **(1977) 2 SCC 699**, it was held as under:

“Section 482 Cr.PC entitles the High Court to quash the proceedings when it comes to the conclusion that allowing the proceeding to continue would be an abuse of process of the Court or that ends of justice require that the proceedings ought to be quashed.”

15. In Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre reported as **1988 1 SCC 692**, it was held as under:-

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage.”

16. In State of Haryana vs Bhajan Lal reported as **(1992) Suppl.(1) SCC 335**, it was held as under:-

"102. 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 of 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 a 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 a malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. In Zandu Pharmaceuticals v. Mohd. Sharaful Haque reported as **2005 1 SCC 122**, it was held as under:-

“8.It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the

complainant has alleged and whether any offence is made out even if the allegations are accepted in toto”.

18. In Geeta Mehrotra (supra), it was held that it would not be just to direct them to go through protracted procedure by remanding for consideration of the matter all over again by the High Court and make the unmarried sister of the main accused and his elder brother to suffer the ordeal of a criminal case pending against them specifically when the FIR does not disclose the ingredients of offence charged against them.

19. Recently, in the case of Seerivasan v. State by Inspector of Police and Another reported as **2019 SCC Online SC 1089**, by applying the ratio laid down in the case of Bhajan Lal (supra), it was held that in the absence of any allegation against the accused, if proceedings are allowed to go against the accused, it will amount to an abuse of process and therefore the proceedings were quashed.

20. On a careful reading of the FIR, statement of the complainant recorded under Section 164 Cr.PC as well as statements of the relatives of the complainant recorded under Section 161 Cr.PC, which are filed along with the charge-sheet, it is seen that the allegations are against Lakshay Kapoor with respect to the offence of rape on the alleged promise to marry. The complainant has stated that the family members of both sides were aware of their relationship. She has rather stated that petitioner No.2 (father of Lakshay Kapoor) on being approached by the complainant, in fact assured her that they would visit her house to speak to her parents for finalization of their marriage. The only allegation against the petitioner No.1 is of demand of Fortuner Car and cash amount of Rs.25 lacs. It was stated that since Lakshay Kapoor and his family are demanding dowry for which reason the complainant and her family are

feeling threatened. In her statement recorded under Section 164 Cr.PC, the complainant had stated that *“when I asked for legal action, they threatened me that they will kill me and my family. Lakshay said that he had made my MMS and if this will go before Court then he will exploit it.”* However, in her complaint to the Police, the said allegation is attributed only to Lakshay Kapoor. The complainant has neither given any date nor any details of her meetings with the petitioners and as to where and when any such threats were extended by the petitioners to her. A reading of the statements of the relatives of the complainant recorded under Section 161 Cr.PC reveal that not a single allegation has been made against the present petitioners.

21. The primary allegations of establishing physical relations on the promise to marry are against Lakshay Kapoor, the son of the present petitioners. The pre-marriage demand of dowry by petitioner No.1, even if believed, does not amount to criminal intimidation within the meaning of Section 506 IPC.

22. It is a fit case where this Court, after analyzing the evidence that has come on record, is of the opinion that allegations in the FIR, even if they are taken at their face value and accepted in entirety, do not make out a case against the petitioners. Further, I am of the opinion that continuing criminal trial against the present petitioners would be a gross abuse of the process of the Court in absence of any specific allegations against them.

23. Consequently, for the reasons stated above, the present petition is allowed and the charge-sheet u/s. 506/34 IPC arising out of FIR No.60/2019, registered at Police Station Krishna Nagar, Delhi and all

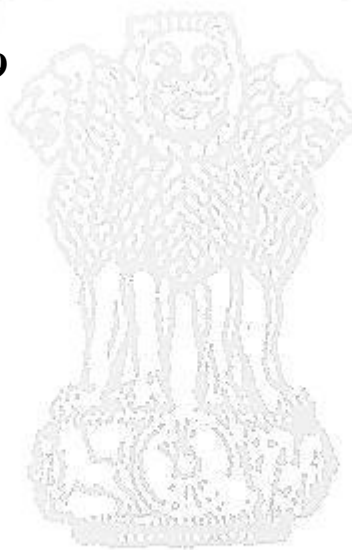
proceedings emanating therefrom qua the present petitioners are hereby quashed.

24. The petition and the pending application are disposed of in the above terms.

25. A copy of this order be sent to the trial court.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 11th, 2019
'dc'



सत्यमेव जयते