

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

% ***Date of Decision: 16.12.2019***

+ **W.P.(CRL) 2251/2017 & Crl. M.A. 12734/2017**

NARENDER MUKHI Petitioner

Through Petitioner in person.

versus

THE STATE & ANR Respondents

Through Mr. Rajesh Mahajan, ASC for
State.

Mr. Pramod K. Tiwary, Adv. for R-2.

RAJNISH BHATNAGAR, J. (ORAL)

1. The petitioner filed the present petition with the following prayer:

“(a) Quash the criminal proceedings against the petitioner in case FIR No.:826/2016, U/s 380/323 IPC P.S.: Prashant Vihar, Delhi, in the interest of justice.”

2. In brief, the facts of the case are that the petitioner is a practising Advocate and was allotted a Chamber in District Court, Rohini, Delhi, bearing Chamber No.318, IIIrd Floor, in Chambers Block and it was a joint allotment along with the respondent No.2. On 12.07.2016 at about 2:30 pm, when the petitioner went to his chamber, respondent No.2 stopped the petitioner from entering and stated that he is the allottee of the chamber and the petitioner has no right to enter into it. When the petitioner tried to enter into the chamber then respondent No.2 started abusing him and when he asked respondent

No.2 not to abuse him, then respondent No.2 assaulted him and gave merciless beating. He was saved by other Advocates but respondent No.2 went on abusing the petitioner and said that he would break the partition wall in the chamber and he hit his fist on the glass of the partition wall due to which the glass broke and the respondent No.2 received injury on his hand. Thereafter, the petitioner lodged a complaint with the Police against respondent No.2 vide DD No.38PP dated 12.07.2016. The Police got the petitioner medically examined. Since FIR was not registered by the Police, the petitioner sent complaints to various senior officers. Thereafter, FIR bearing No.664/2016 under Section 325 IPC dated 10.08.2016 was registered against the respondent No.2. Since the FIR was not registered under proper provisions of law, the petitioner filed a complaint before the concerned MM.

3. Because of this fight, Chamber No.318 was sealed on 13.07.2016 and the keys of the Chamber were taken from the petitioner as well as from the respondent No.2. The petitioner then filed a complaint with Higher Authorities against the locking of the Chamber and on his complaint a meeting of Chamber Allotment Committee, District Courts, Rohini, was held on 27.10.2016 and respondent No.2 was transferred to another Chamber by the Chamber Allotment Committee and he was directed to remove his articles from the Chamber. Despite directions of the Allotment Committee, respondent No.2 did not remove his articles so a list of articles was prepared by the members of the Chamber Allotment Committee on

4.11.2016 under the signatures of the Secretary of Rohini Court Bar Association.

4. Respondent No.2 then lodged a complaint against the petitioner on 11.8.2016 alleging that petitioner had stolen his articles in March, 2016 and on 12.07.2016, he was attacked by petitioner. Thereafter, FIR No.826/2016, under Sections 323/380 IPC, dated 21.11.2016, Police Station Prashant Vihar, was registered against the petitioner of which he is seeking quashing by way of this petition.

5. The State has filed the reply. As per the status report, when on 28.03.2016, complainant reached his Chamber after Holi vacation, table and chairs were missing and his Chamber was divided into two parts and when he enquired about the same from the petitioner, he told that he would return his goods but despite various requests the goods of the complainant were not returned and the petitioner refused to do so on one pretext or the other. It is further stated in the report that when on 12.07.2016 complainant was sitting on his chair, petitioner after breaking the glass inflicted injury upon him and gave fist blows. Complainant was medically examined and the present FIR was registered on his statement.

6. It is further stated in the reply that the petition involves disputed questions of facts which cannot be gone into in this writ jurisdiction and a cross FIR against the complainant/respondent No.2 has already been filed.

7. Respondent No.2 has filed his counter affidavit in which he has stated that he is 45% disabled since childhood. It is stated that on 16.01.2014 respondent No.2 and petitioner jointly purchased the furniture articles for their Chamber No.318 and since the respondent No.2 started growing in his practice, which was not to the liking of the petitioner who then started commenting upon the physical disability and cast of the complainant (respondent no.2) and also started to mislead and solicit his clients.

8. It is further stated in the counter-affidavit that the petitioner illegally partitioned the Chamber without his knowledge and without taking the permission from the Chamber Allotment Committee. He removed jointly purchased articles without the consent of the respondent No.2, who then lodged a complaint dated 7.04.2016 with the District and Sessions Judge, Rohini. In counter affidavit, he has also quoted about the incident of 12.07.2016 about receiving the injuries at the hands of the petitioner after which he was taken by Arund Bansal, Advocate to Dr. Baba Saheb Hospital, Rohini, for treatment. It is stated that the matter was reported to the Secretary, Bar Association, Rohini, on the same day at about 3:30 pm but the Secretary requested respondent No.2 not to report the matter with the Police as it was a case involving two lawyers. Along with the counter affidavit, the respondent No.2 has also filed photographs of his right hand.

9. In rejoinder, it has been stated that respondent No.2 has been making various complaints with regard to illegal acts of the petitioner

to the Chamber Allotment Committee and BMC of the Hon'ble High Court with regard to illegal acts of the petitioner in dividing the Chamber. It is stated that since no action was taken so the respondent No.1 had also given complaint to the then District Judge on 26.10.2016 and exhausting all his remedies with great difficulty he got the present FIR registered against the petitioner on 21.11.2016. In rejoinder the petitioner denied the contents of the counter affidavit and reiterated and reaffirmed what has been stated by the petitioner in his petition.

10. It is submitted by the petitioner that this case is a perfect example of abuse of the process of law. He further states that present FIR has been registered by the respondent No.2 as a counter blast to the FIR which was got registered by the petitioner against him. He further alleged that Chamber was locked on 13.07.2016 i.e. next day of the incident so there was no occasion for the petitioner to remove the articles and a list of articles was prepared on 4.11.2016 which shows that all the articles which are alleged to have been stolen were lying in the portion of the respondent No.2. It is further submitted that it was not possible for the petitioner to have inflicted injury to the respondent No.2 with a piece of glass without injuring his hand.

11. On the other hand, it is submitted by the learned APP for the State with the assistance of the counsel for the respondent No.2, that all the pleas, which have been raised by the petitioner, are disputed question of facts and cannot be decided in writ jurisdiction. They can only be decided when the parties lead their evidence. It is further

urged that the respondent No.2 has not lodged the report immediately on the advice of the Secretary of the Bar as the dispute was between the two lawyers and efforts were made to settle disputes amicably. It is further urged that complaint of respondent No.2 is corroborated by his MLC which was done on 12.07.2016 i.e on the day of the incident.

12. Since the petitioner is seeking quashing of FIR, it is pertinent to mention here that the Hon'ble Supreme Court after discussing various precedents on the subject summarized the following broad principles in relation to Section 482 for quashing FIR :-

- i. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognizes and preserves powers which inhere in the High Court;
- ii. The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.
- iii. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;
- iv. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised;

- a. to secure the ends of justice or
 - b. to prevent an abuse of the process of any court;
- v. The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;
- vi. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim has settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;
- vii. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;
- viii. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavor may in appropriate situations fall for quashing where parties have settled the dispute;
- ix. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and
- x. There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences

involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanor. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

13. The Apex Court dismissed the appeal holding that the High Court was justified in declining to entertain the Application for quashing FIR in the exercise of its inherent jurisdiction.

14. The present dispute relates to two Advocates who were allotted a by Chamber Allotment Committee of Rohini. FIR No.826/2016 was registered under Section 325 IPC against the petitioner and FIR No.664/2016 was registered against the respondent No.2 which are cross FIRs emanating out of the incident of the same date. Medical certificate of the respondent No.2 issued by Dr. Baba Saheb Hospital, Rohini, is dated 12.07.2016 which is the date of incident which records "history of glass injury". Petitioner, who argued in person laid mere stress on the point that the injury received by respondent No.2 could not have been received by him in the manner as stated by respondent No.2. Now this question is again disputed question of fact which cannot be decided in writ jurisdiction. He has also relied upon the list of articles, which were removed from the portion of the respondent No.2, and was prepared on 4.11.2016. But again as per the complaint, the theft had taken place on 28.03.2016. No doubt, there is a delay in reporting this matter but we cannot lose the sight of the fact

that the dispute is between two lawyers and it is not that the FIR against the lawyers are registered immediately. First of all, the Bar Association takes steps for resolving the matter amicably between them so that the lawyer's fraternity is not brought to disrepute and only when all the conciliation efforts fail it is only then FIRs are registered which the instant case as has been argued and evident from the record. In these circumstances, as the matter involves disputed question of facts which can only be decided at the time or trial therefore, this Court is not inclined to exercise its writ jurisdiction. The case of the petitioner is not covered under the guidelines laid down by the Hon'ble Supreme Court for quashing of the FIR.

15. The petition is dismissed.

DECEMBER 16, 2019

jitender

RAJNISH BHATNAGAR, J