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

% *Decided on: 12th November, 2021*

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CRL.M.C. 1748/2020

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CRL.M.A. 12167/2020 (stay)

NADEEM KHAN

..... Petitioner

Represented by: Mr. Tarun Chandiok, Adv.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondent

Represented by: Mr. G.M. Farooqui, APP for State
with SI Manish Kumar, PS
Parliament Street.

Mr. Sher Afgon, proxy Adv. for Mr.
Feroz Khan Ghazi, Adv. for R-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

The hearing has been conducted through Physical Mode.

1. By this petition, the petitioner seeks quashing of FIR No. 84/2019 under Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 (in short the 'Act') and Section 323 IPC registered at PS Parliament Street on the complaint of respondent No.2 on merits.
2. Learned counsel for the petitioner contends that the ground on which the petitioner seeks quashing of the FIR in question is that FIR has been lodged with malafide, to wreck vengeance which is one of the criteria laid down by the Hon'ble Supreme Court in the decision reported as 1992 SCC

(Crl.) 426 State of Haryana Vs. Bhajan Lal for quashing of the FIR. To buttress this contention, learned counsel for the petitioner states that there is a chequered history between the two parties.

3. Learned counsel for the petitioner states that the petitioner and respondent No.2 were married on 18th February, 2018. On the complaint of the petitioner, FIR No. 185/2019 under Sections 395/511/398/201/120-B/34 IPC and Section 25 Arms Act was registered at PS Pandav Nagar against the respondent No.2 and her associates wherein the allegations of the petitioner were that since the respondent No.2 was in an extra-marital alliance, she along with her paramour and others decided to kill the petitioner and in this regard hired two local goons and paid them a sum of ₹1 lakh who attempted an attack on the petitioner on 16th May, 2019 and due to the sheer luck, the petitioner's life was saved. It is stated that thereafter the respondent No.2, her father and mother physically assaulted and threatened the petitioner within the Karkardooma Court premises on 21st June, 2019 for which the petitioner lodged FIR No. 208/2019 under Section 323/341/506/34 IPC at PS Farsh Bazar.

4. Learned counsel for the petitioner states that in the meantime, the respondent No.2 filed proceedings before the CAW Cell, Central District and the petitioner faithfully attended the mediation and conciliation proceedings before the CAW Cell. During these proceedings on 29th August, 2019 when the petitioner had gone along with two of his associates to attend proceedings, the complainant and her father were also present, however, no re-conciliation could take place. According to the learned counsel for the petitioner, the petitioner and his associates waited for the respondent No.2 and her father to leave and left the mediation room after few minutes.

However, when they came out, respondent No.2 initiated an altercation and lodged the above-noted FIR falsely, quashing whereof is sought by the petitioner.

5. It is stated that the FIR has been lodged to wreck vengeance. Petitioner being a lawyer knows the consequences of Triple Talaq and that the same is not a valid Talaq, hence he would not pronounce the Talaq in the fashion, as stated by the respondent No.2. Version of the petitioner was duly supported by his two associates which fact was not looked into by the investigating officer and based on the complaint of the respondent No.2, FIR was lodged and whereafter charge-sheet has been filed and summons have been issued to the petitioner.

6. Learned counsel for the petitioner further states that the FIR in question has been lodged so as to overcome the two FIRs lodged against the respondent No.2 by the petitioner. Further, the petitioner also seeks to take the legal plea that the Triple Talaq as made an offence in the Act was discussed by the five Judge Bench of the Supreme Court in the decision reported as Shayara Bano Vs. Union of India & Ors. being W.P.(Civil) No. 118/2016 decided on 22nd August, 2017. It is further stated that the version in the FIR itself shows that it has been drafted by someone else on behalf of respondent No.2. Further, the allegations of the complainant that she was beaten on the face, forehead and strangled are not corroborated by the MLC, hence the FIR in question be quashed.

7. Before advertng to the facts of the case, it would be relevant to note that the prayer in the present petition is to quash FIR No. 84/2019 lodged at PS Parliament Street. During the course of hearing of this petition on 4th September, 2020 a Coordinate Bench of this Court noted that since the

petitioner apart from quashing of the FIR, also challenges the constitutionality of the Muslim Women (Protection of Rights on Marriage) Act 2019, the petition be listed before appropriate Bench. Learned counsel for the petitioner states that on 18th September, 2020 the Division Bench was of the view that since in the petition no ground has been taken challenging the vires of Section 4 of the Act, the present petition is a petition simplicitor seeking quashing of the FIR and hence the petition was returned back to be heard by the Single Bench.

8. During the course of arguments before this Court, learned counsel for the petitioner also sought to challenge the order summoning the petitioner passed by the learned Trial Court on 3rd October, 2019. However, it may be noted that no amendment in the petition has been carried out, challenging the order summoning the petitioner. Further learned APP for the State informs that the order summoning the petitioner in the above-noted FIR was duly challenged by the petitioner in a revision petition filed before the learned ASJ, which was dismissed on 7th March, 2020 and the said order has not been challenged by the petitioner either in this petition or in any other petition. Therefore, the scope of the present petition is only whether based on the allegations of the FIR as also the law laid down by the Supreme Court in State of Haryana & Ors. Vs. Bhajan Lal (supra), the FIR in question can be quashed.

9. Relevant portion of FIR No. 84/2019 registered at PS Parliament Street on 29th August, 2019 reads as under:

“Complaint regarding “Triple Talaq” & Criminal Force outraging the modesty and also physical assault. It is stated that I, Nagma Naaz W/o Nadeem Khan R/o C-103, Mata Sundari road, DDA Flat, New Delhi Age-26 years phone No. 9350960388. I

am an advocate practicing in Patiala house court. Today mediation hearing conducted in Women Cell (Parliament Police Street Police Station. After that mediation proceeding were finished finally. When we were out of the mediation cell my husband Nadeem Khan S/o Khaleel Khan R/o 223 Patpar ganj village Mayur Vihar, Phase One. These mediation proceeding are relating to Matrimonial complaint filed on 07/05/2019, I spoke to him please settle the matter and you be happy at your home & let me be happy at my home. Then on this my husband Nadeem outrightly uttered “Talaq” “Talaq” “Talaq” “Lo Ho gaya tumhara settlement finally” or “Ab tum apne ghar jao” Meri taraf se tum pahele bhi azad thi or aj bhi azaad ho – Vnon his utterance of Triple Talak I objected & become angry and said to him are you in your senses? Do you know what are you saying? Do you know the effects of “Triple Talaq” and in anger and abusing he started beating him on face, forehead and also strangulated me fainted I fell down on the ground. My father tried to protect me from him (Nadeem). He also started beating my father also said that you people can’t do anything with me. Finding no other option, my father called on Hundred Number (100) via, 9350960388 Mobile Number PCR came and took me to RML Hospital for treatment. My treatment conducted in RML Hospital this is my statement. I am afraid & have threats to my life. Police protection should be given to me. It is therefore humble request as per the stated facts above bring the culprit to justice under the relevant sections of laws.”

10. The main ground seeking quashing of the FIR by the petitioner is that the FIR in question has been lodged to wreck vengeance, with a malafide intent because two FIRs had been got registered by the petitioner against the respondent No.2. It is trite law that even if there are previous FIRs against the complainant at the instance of the accused, in case the complainant alleges commission of a cognizable offence, the same cannot be quashed merely on the ground that there are previous FIRs registered at the instance

of the alleged accused against the complainant in the FIR in question. Whether the FIR has been lodged malafidely without the offence having taken place should be either so writ large as per the contents or can be ascertained during the course of trial. In the FIR, the complainant has alleged that the petitioner outrightly uttered Talaq, Talaq, Talaq in one go and the same constitutes an offence under Section 4 of the Act. Learned counsel for the petitioner has strenuously argued that in her complaint itself the complainant did not state that she wanted to live with the petitioner but stated that the petitioner be happy at his home and she be happy at her home, and thus the intention of the respondent No.2 was also to seek divorce. Even if the intention of the respondent No.2 was to seek divorce, the same had to be done in a legal manner including by way of an amicable settlement and could not have been done in the form of a Triple Talaq, which is an offence as per the law.

11. MLC of the respondent No.2 was performed at Dr. Ram Manohar Lohia Hospital on 29th August, 2019 at 4.45 itself when she was taken from the PS Parliament Street by Constable Rajesh and the same notes a laceration mark on the left interior chest wall below the clavicle. The injury was opined to be simple in nature. Even if there were no marks of injury on the face, cheek or neck, the same would not show that no assault on those parts of the body were caused. The same would again be a matter of appreciation of evidence and prima facie it cannot be said that the version of the complainant is not supported by the MLC.

12. Learned counsel for the petitioner further argues that the petitioner was accompanied by two of his associates and they also made statements which were not taken into consideration and that at the stage of trial it would

be his word against the word of the respondent No.2. If the contention of learned counsel for the petitioner is to be accepted, than any case based merely on statement of the victim will have to be discarded. As noted above, at this stage this Court is not required to dwell into the realm of appreciation of evidence and has to see whether the complaint discloses commission of a cognizable offence and as noted from the contents of the FIR, the contents of both the offences i.e. Section 4 of the Act as also 323 IPC are prima facie made out.

13. Consequently, this Court finds no ground to quash the FIR in question. It is, however, clarified that any observation made hereinabove will have no bearing on the merits of the matter during the course of the trial.

14. Petition and application are dismissed.

15. Order be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

NOVEMBER 12, 2021
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