

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

CRL.M.C. 6429/2018 and Crl.M.A.No.49928/2018 (stay)

Reserved on : 30.01.2020

Date of Decision : 06.02.2020

IN THE MATTER OF:

SUKHDEV SINGH & ORS. Petitioners

Through: Mr.Gaurav Goel Advocate

Versus

STATE Respondent

Through: Mr.Mukesh Kumar, APP for State
along with SI Kishan Lal, P.S.
Chanakyapuri, Delhi

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of the FIR No.154/2006 registered under Sections 420/468/471/120B IPC P.S. Chanakyapuri, New Delhi.

2. Briefly, the present case came to be registered on the complaint of Mr. Reed Beck Meyar, Assistant Regional Security Officer, US Embassy, New Delhi. In the complaint it was alleged that the petitioners applied for US Tourist/Business Visa and along with their visa applications, forged and fraudulent documents were submitted. The Investigating Officer has filed charge-sheet against four other persons including Jai Prakash Ojha. It is stated that two of the co-accused namely, Pardeep Kumar @ Bittu and Devender Pal Singh have expired and Jung Bahadur @ Jung has been declared proclaimed offender.

3. The Metropolitan Magistrate vide order dated 21.08.2017 directed obtaining of original /fake documents from US Embassy which were submitted by the petitioners. A request letter dated 06.11.2017 through Ministry of External Affairs, Government of India was sent seeking original visa application forms, original affidavit of support in name of one Balbir Singh Thind (American citizen) and original affidavit of support in name of Jaswant Kaur (U.S. permanent resident). As per the complaint, neither Balbir Singh Thind nor Jaswant Kaur were related to the petitioners. The documents relating to them were stated to have been purchased by the petitioners from co-accused Jung. As per the Status Report, a reply was received from the US Embassy that the inviolability accorded to the documents requested cannot be waived however, as and when a request from the Indian Court in the required format is received, a limited waiver of immunity for the purpose of enforcing the US and Indian Laws, may be approved.

4. Learned counsel for the petitioner contended that there is very bleak possibility of the prosecution resulting in conviction as the original documents are yet not seized and neither the complainant nor aforesaid Balbir Singh Thind nor Jaswant Kaur have been arrayed as witnesses.

5. The parameters to exercise the powers at this stage have been enunciated time and again. In State of Maharashtra and Ors. v. Arun Gulab Gawali and Ors. reported as (2010) 9 SCC 701 the Supreme Court held as under:-

“27. The High Court proceeded on the perception that as the complainant himself was not supporting the complaint, he would not support the case of the prosecution and there would be no chance of conviction, thus the trial itself would be a

futile exercise. Quashing of FIR/Complaint on such a ground cannot be held to be justified in law.

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29. Thus, while exercising such power the court has to act cautiously before proceeding to quash a prosecution in respect of an offence which hits and affects the society at large. It should be a case where no other view is possible nor any investigation or inquiry is further required. There cannot be a general proposition of law, so as to fit in as a straitjacket formula for the exercise of such power. Each case will have to be judged on its own merit and the facts warranting exercise of such power.”

6. In State of A.P. v. Gourishetty Mahesh and Ors. reported as **(2010)**

11 SCC 226, the Supreme Court held as under:-

“18. While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, other wise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry.

19. Though High Court may exercise its power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice, the power should be exercised sparingly....

21... That being so, the interference at the threshold quashing the FIR is to be exceptional and not like routine as ordered by the High Court in the present case. It is not a case where it can be said that the complaint did not disclose commission of an

offence. The acceptability of the materials to fasten culpability on the accused persons is a matter of trial.”

7. Recently, the Supreme Court in State of Madhya Pradesh v. Yogendra Singh Jadon and Ors. reported as **2020 SCC Online SC 111** held that the power under Section 482 Cr.P.C is not to be exercised where allegations are required to be proved in the court of law.

8. It has been informed that the matter is pending before the concerned Metropolitan Magistrate at the stage of prosecution evidence. Along with the charge-sheet, the Investigating Agency has filed the copies of the visa applications, affidavit of support, immigration and naturalisation service letters, copy of the U.S. visa of Balbir Singh, copy of the permanent resident visa and other supporting documents.

9. In view of the above enunciation of law, this court is not inclined to accept the petitioner's contention that the continuation of prosecution will be a futile exercise. The exercise of power at this stage has to be exercised only sparingly. Accordingly, the petition is devoid of merit and is dismissed alongwith the pending application.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 06, 2020

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