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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 24.4.2021**
Judgment delivered on 19/05/2021**Writ Appeal No.43 of 2021**

(Arising out of order dated 19.1.2021 passed by learned Single Judge in WPCR No.21/2021)

- Ramanand Nishad, S/o Shri Bhuvneshwar Nishad, aged 31 years, R/o Village Pasoud, P.S. Fingeshwar, Tehsil Rajim, District Gariyabandh (CG)

---- Appellant/Petitioner**Versus**

1. State of Chhattisgarh, through its Secretary, Department of Home, Mantralaya, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, Raipur.
2. The Superintendent of Police, District Raipur (CG)
3. The Incharge Officer, Police Station Amanaka, District Raipur.
4. Smt. Ishwari Dhruw, S/o Shri Chamanlal Dhruv, aged 26 years, R/o village Madwadih, Police Station Gariyabandh, District Gariyabandh (CG).

---- Respondents

For Appellant	: Mr. Faiz Kazi, Advocate
For Respondent	: Mr. Sudeep Agrawal, Dy. Advocate General

Hon'ble Shri PR Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

CAV Order**Per Parth Prateem Sahu, J**

1. Challenge in this appeal is to the order dated 19.1.2021 passed by the learned Single Judge in WPCR No.21/2021 dismissing writ petition seeking quashment of FIR registered under Crime No.0109/2020 against the petitioner/appellant herein for commission of offence punishable under Sections 376 & 506 of the Indian Penal Code (for short 'the IPC').

2. Facts relevant for disposal of this appeal are that complainant, who is an employee of the Department of Police, working in the office of the Home Guard and posted at Police Station City Kotwali, Gariyabandh, has lodged FIR on 18.6.2020 mentioning therein that the complainant and the petitioner were earlier i.e. prior to date of her marriage, having friendly relationship. She broke-up the relationship before her marriage, which was solemnized on 4.5.2020. After the marriage, petitioner started troubling and threatening her over telephone saying that he will inform about their relationship. On 11.6.2020 the petitioner took the complainant along with him to Raipur on the ground that he wanted to have a talk with her. They stayed in a rented accommodation and in the night petitioner committed forcible sexual intercourse with her and thereafter threatened her that if she would disclose this fact to anyone, he will kill her. On 17.6.2020 the petitioner again started troubling the complainant, as a result she lodged FIR against him. On coming to know about registration of FIR against him, the petitioner applied for grant of anticipatory bail before the competent Court, which was rejected. Thereafter petitioner preferred criminal appeal before the High Court under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989'), which came to be dismissed vide order dated 16.12.2020.

3. After dismissal of appeal for grant of anticipatory bail, the petitioner filed writ petition seeking quashment of FIR registered against him on the ground that physical relationship between the complainant and the petitioner was established with her consent and free will. FIR was lodged under the pressure of husband and father of the complainant. There was unexplained delay in lodging FIR.
4. Learned Single Judge dismissed the writ petition stating that the grounds raised in writ petition can only be considered during trial. While dismissing writ petition learned Single Judge has taken into consideration the judgment passed by the Hon'ble Supreme Court in case of **State of Haryana vs. Bhajanlal** reported in (1992) **Suppl. (1) SCC 335**.
5. Mr. Faiz Kazi, learned counsel for the appellant submits that the learned Single Judge erred in dismissing the writ petition without considering the entire facts and circumstances of the case. He further submits that petitioner/appellant in support of writ petition has submitted documents to show that petitioner/appellant and the complainant were in relationship, during that period the petitioner has transferred money in her account more than once. Receipt showing purchase of ornament is also filed. The documents annexed along with writ petition make it clear that false and frivolous complaint has been lodged against the petitioner/

appellant. He further submits that writ Court while exercising jurisdiction under Article 226 of the Constitution of India is having wide power to protect petitioner/ appellant from false implication. In support of his submissions, he placed his reliance on the decision of Hon'ble Supreme Court in cases of **Bhajanlal (supra)** and **Prathvi Raj Chouhan vs. Union of India & ors** reported in **(2020) 4 SCC 727**. He submits that appeal be allowed and FIR registered against the petitioner/ appellant be quashed.

6. Mr. Sudeep Agrawal, learned Deputy Advocate General for the State, controverting the submissions made by learned counsel for appellant, submits that appeal is not maintainable as the same is filed challenging the order passed by the learned Single Judge in WPCR. He further pointed out that learned Single Judge has exercised supervisory jurisdiction, therefore, in view of proviso to Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2007, this appeal is not maintainable. In support of this submission, learned counsel placed his reliance on the order passed by this Court in **WA No.426/2019**, parties being **Faiz Ahmed & ors vs. State of Chhattisgarh & ors**. He further submits that in the verdict passed by the Hon'ble Supreme Court in case of **Lalita Kumari vs. State of UP** reported in **(2014) 2 SCC 1** it was held that registration of FIR is

mandatory if the complaint discloses commission of a cognizable offence; veracity of complaint is not to be considered in a proceeding of quashment of FIR when crime registered is at the stage of investigation. It is only the contents of FIR which are to be looked into to find out whether *prima facie* offence is made out or not.

7. In reply to submissions made by learned State Counsel, Mr. Faiz Kazi, learned counsel for appellant submits that appellant has not challenged any order of the Court below in writ petition, but has only sought for issuance of suitable writ or direction for quashment of FIR, hence writ appeal is maintainable. In support of his submission, he places reliance on the decision of Hon'ble Supreme Court in **Ram Krishan Fauji vs. State of Haryana & ors** reported in **(2017) 5 SCC 533**.
8. From perusal of the facts available on record and copy of FIR, it is clear that FIR is registered on the basis of complaint made by respondent No.4 to the police. It is not the case where the police registered FIR on the basis of an order passed by Magistrate on an application filed under Section 156 (3) of the Code of Criminal Procedure, 1973 (for short 'CrPC'). In view of the above, the submission made by learned counsel for the State that this writ appeal is not maintainable in view of proviso to Section 2 is not sustainable and it is hereby repelled.

9. Coming to the merits of the case. The law with regard to grant of relief of quashment of FIR by High Courts while exercising jurisdiction under Article 226 of the Constitution of India or Section 482 of CrPC, has been made clear by Hon'ble Supreme Court in its various judgments. In case of **Bhajanlal (supra)** where Hon'ble Supreme Court has laid down some parameters / situation for considering grant of relief of quashment of FIR. Relevant paragraph of **Bhajanlal's case (supra)** is extracted herein below for ready reference:-

“**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 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

In above ruling Hon'ble Supreme Court has cautioned that, the power of quashing criminal proceedings should be exercised very sparingly.

10. In case of **State of Telangana vs. Managipet** reported in **(2019) 19 SCC 87** the Hon'ble Supreme Court considering its earlier decision in case of Bhajan Lal (supra) has held that quashing of FIR can only be ordered if upon reading FIR in its entirety no offence is disclosed and held as under:-

“33. In the present case, the FIR itself shows that the information collected is in respect of disproportionate assets of the accused officer. The purpose of a preliminary inquiry is to screen wholly frivolous and motivated complaints, in furtherance of acting fairly and objectively. Herein, relevant information was available with the informant in respect of prima facie allegations disclosing a cognizable offence. Therefore, once the officer recording the FIR is satisfied with such disclosure, he can proceed against the accused even without conducting any inquiry or by any other manner on the basis of the credible information received by him. It cannot be said that the FIR is liable to be quashed for the reason that the preliminary inquiry was not conducted. The same can only be done if upon a reading of the entirety of an FIR, no offence is disclosed. Reference in this regard, is made to a judgment of this Court in *State of Haryana v. Bhajan Lal*¹⁹ wherein, this Court held inter alia that where the allegations made in the FIR 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 and also where a criminal proceeding is manifestly attended with mala fides 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.”

11. Recently, the Hon'ble Supreme Court in **Criminal Appeal No.30/2021** between **M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra** decided on 13.4.2021, where High Court interfered with the investigation of crime by the police, made following observations amongst others:-

“i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest

of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;.....”

12. From the aforementioned rulings of Hon'ble Supreme Court it is evident that to grant the relief of quashment of FIR sought for by a person approaching the Court by invoking jurisdiction under Article 226 of the Constitution of India, it is only contents of FIR which are to be looked into, if at all any extraordinary case is projected, to ascertain whether *prima facie* cognizable offence is disclosed or not. The Courts should not look into the

veracity of complaint on the grounds raised and projected by the person against whom FIR is registered.

13. Under the provisions of the Code of Criminal Procedure it is a statutory duty of the police to register FIR on every complaint of cognizable offence under Section 154 of CrPC. Section 157 of CrPC provides for the procedure of investigation by the police based on information received i.e. search and seizure, recording of statement of witnesses by police under Section 161 of CrPC and submission of final report under Section 173 of CrPC to the Magistrate after completion of investigation. The procedure prescribed under the CrPC to be followed, after receiving the information of cognizable offence clearly shows that no opinion can be formed on the basis of the complaint only. It is to be investigated. It is the exclusive jurisdiction of the police to register the information of cognizable offence and to submit the investigation report (final report) under Section 173 of CrPC before the Court of jurisdictional Magistrate after completion of investigation. The Court should not interfere on the basis of whims and fancies when the complaint of cognizable offence is under investigation unless there are some extraordinary reasons available as discussed by Hon'ble Supreme Court in aforementioned rulings. This Court cannot enquire into the veracity of complaint and interfere with the investigation while

exercising writ jurisdiction. The same can be considered in appropriate proceeding at appropriate stage.

14. Upon perusal of the contents of FIR, which is placed on record as Annexure P-1, on the complaint lodged by respondent No.1, we are of the view that the case projected by the learned counsel for appellant would not come within the parameters / situation as observed by Hon'ble Supreme Court in cases of **Bhajanlal (supra)** and **M/s Neeharika (supra)**.
15. The case law of **Prathvi Raj Chouhan (supra)** relied upon by the learned counsel for the appellant is on different facts. In that case, issue under consideration is of bar under Section 18 of the Act of 1989 for maintaining anticipatory bail.
16. For the foregoing reasons, we do not find any infirmity in the order impugned passed by the learned Single Judge. Writ appeal being sans merit is liable to be and is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Roshan/-