

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

Date of decision: 26th October, 2021

IN THE MATTER OF:

+ **W.P.(CRL) 1625/2020 & CRL.M.A. 13867/2020**

RAMESH CHAND TANWAR

..... Petitioner

Through Mr. Abhinav Ramkrishna, Advocate

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through Mr. Sanjay Lao, Standing Counsel for the State with Mr. Karan Jeet Rai Sharma, Advocate and S.I. Amit Grewal, P.S. Lajpat Nagar.
Ms. Pritish Sabharwal, Advocate for the Respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C for quashing FIR No.339/2020 dated 16.09.2020, registered at Police Station Lajpat Nagar for offences punishable under Sections 354/506/509 IPC.

2. The facts, in brief, leading to the present petition are as under:

- a) The present FIR was registered at the instance of one – Mrs. Bhawana R/o 2/8, MCD Flats South Ex Part-II, New Delhi. It is alleged by the complainant that on 10.01.2020, she along with a staff namely, Jyoti was present in the office. When the petitioner herein came to the office and asked the complainant as to why she was not responding to

his phone calls and started making videos and taking photos of the office. It is stated that the petitioner further threatened the complainant that his son was working in the office of some Member of Parliament, and, therefore, she needed to work according to his directions. He threatened that if she could not work as per his directions, he would get her sacked from the office and be kidnapped. It is stated that after hearing this, the complainant tried to leave the office to inform about the incident to the authorities. It is stated that the petitioner closed the door and pushed the prosecutrix back and told her that there was no one to help her. It is stated that the prosecutrix then made a phone call and reported the misbehaviour of the petitioner to the higher authorities.

- b) It is stated that Mr. K. C. Bhardwaj (S.S.), Central Zone came to complainant's office with his staff to look into the matter. It is stated that the situation got out of control, and the petitioner started abusing and hitting Mr. K. C. Bhardwaj in front of the other staff. It is stated that some members of the staff called the security personnel, who got the petitioner out of the office.
- c) The complainant gave a written complaint to the Deputy Commissioner, Central Zone, Lajpat Nagar for taking action against the petitioner for his misbehaviour. Subsequently, the instant FIR No. 339/2020 dated 16.09.2020 was registered at Police Station Lajpat Nagar for offences punishable under Sections 354/506/509 IPC.

3. The petitioner has filed the instant petition under Article 226 of the Constitution of India for quashing of the present FIR by stating that the instant FIR is an abuse of the process of law. Learned counsel for the

petitioner states that the petitioner is 75 years old and got superannuated from his service at South Delhi Municipal Corporation. He states that the petitioner is rendering social service for Swachhta Karamchari Union of the Municipal Corporation of Delhi in the capacity of General Secretary of the Union. It is stated that a representation dated 28.06.2020 had come before the petitioner from one – Mahesh, whose request for appointment on compassionate grounds was pending for consideration for a long time. It is stated that when the petitioner went to meet the concerned official, namely, Rahul Singh, Sr. A.C at MCD office, the said official insulted and abused the petitioner, and his staff pushed the petitioner out of the office. It is stated that after that incident, the petitioner made a complaint dated 02.09.2020 against the official Rahul Singh in Police Station Lajpat Nagar. It is stated that the present FIR is a counterblast to the complaint given by the petitioner.

4. It is further contended by the learned counsel for the petitioner that the incident is of 10.01.2020 and the instant FIR was registered on 16.09.2020. There is an inordinate delay of eight (8) months in filing the instant FIR. He states that the delay is fatal. He further contends that there was no reason given by the complainant in the FIR as to why the FIR was registered after an inordinate delay of eight months.

5. Learned counsel for the petitioner places reliance upon some judgments in Kishan Singh (Dead) Through LRs. vs. Gural Singh and Ors., (2010) 8 SCC 775, in Jai Prakash Singh vs. State of Bihar and Another, (2012) 4 SCC 379 and Shiv Shankar vs. State (Govt. of NCT of Delhi), (2017) 2 DLT (Cri) 151 to contend that the delay in filing of the instant FIR is fatal.

6. It was further contended by the learned counsel for the petitioner that the present FIR is only a counterblast to the police complaint dated 02.09.2020 given by the petitioner against the official, namely, Rahul Singh, Sr. A.C at MCD office.

7. Per contra, Mr. Prithish Sabharwal, learned counsel appearing for the complainant, states that the charge sheet has been filed. He states that on investigation, the police has found that there is enough material to proceed ahead against the petitioner. He further states that the petitioner had informed her senior officials about the incident. He states that on the complaint of respondent No.2/complainant, the competent authority of SDMC i.e. the Assistant Commissioner wrote letters of reminders to the Deputy Commissioner of Police, South East, Lajpat Nagar for registration of FIR. The instant FIR was registered at Police Station Lajpat Nagar and the delay cannot be attributed to the respondent.

8. The Supreme Court in State of Haryana v. Bhajan Lal, **1992 Supp (1) SCC 335** has laid down the following parameters while exercising extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.P.C which has been off quoted and relied on reads 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 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. (emphasis supplied)

9. A reading of the present FIR shows that the ingredients of the offence alleged against the petitioner have been made out. The petitioner filed the complaint against one - Rahul Singh, Sr. A.C at MCD office and no material has been brought out to show that the present complaint has been filed at the behest of Mr. Rahul Singh, Sr. A.C. and therefore, it cannot be said that the present FIR is only a counterblast to the complaint filed by the petitioner against Rahul Singh, Sr. A.C at MCD office. As correctly stated by the learned counsel for the complainant that Assistant Commissioner had written letters of reminders to the Deputy Commissioner of Police, South East on 13.03.2020, 01.07.2020 and 02.09.2020 regarding the complaint of the respondent No.2/complainant about the present incident and subsequently, the FIR No.339/2020 dated 16.09.2020 was registered at Police Station Lajpat Nagar. The learned counsel for the petitioner, therefore, is not correct in stating that there was a delay in filing of the present FIR and the delay cannot be attributed to the respondent.

10. Considering the fact that reasonable explanation has been given by the respondent No.2/complainant explaining the delay in filing of the FIR, the

delay in filing of the FIR cannot be fatal in every case. A reading of the FIR shows that the ingredients alleged against the petitioner make out the offence against the petitioner, and additionally the case of the petitioner does not fall within the four corners of the parameters laid down by the Supreme Court in **State of Haryana v. Bhajan Lal (Supra)**. This Court is, therefore, not inclined to quash the present FIR only on the basis of delay and on the ground that the FIR is a counterblast to the complaint filed by the petitioner against Rahul Singh.

11. Accordingly, the petition is dismissed along with all the pending application(s), if any.

OCTOBER 26, 2021
S. Zakir

SUBRAMONIUM PRASAD, J