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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: September 12, 2022***

+ W.P.(CRL) 3080/2019 & CRL.M.A. 39494/2019 (interim relief)

GEETIKA GULATI

..... Petitioner

Through: Mr. Manish Kaushik, Mr. Kushank
Sindhu, Mr. Anmol Singh, Mr. Gazal
Ghai and Mr. Baibhav, Advocates.

versus

STATE & ANR

..... Respondents

Through: Mr. Yasir Rauf Ansari, ASC with
Mr. Adeeb-ul-Hasan, Advocate for
State/R-1 alongwith SI Bhoop Singh,
P.S. Dwarka, North.

CORAM:
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN
J U D G M E N T (oral)

1. The present petition is filed under Article 226 of Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “**Cr.P.C.**”) for quashing of FIR bearing No. 0419/2019 dated 03.10.2019 registered under sections 497/506/34 of the Indian Penal Code, 1860 (hereinafter referred to as the “**IPC**”) at P.S. Dwarka.

2. The respondent no. 2 filed a complaint titled as **Chetan Anand V Shaurya Shekhar and Another** alongwith an application under section 156(3) Cr.P.C. for registration of FIR against the accused as named in the complaint bearing no. 29173/2018 for commission of offence punishable under sections 497/506/507 IPC. The Court of Shri Deepak Kumar-II, MM-06, South-West District, Dwarka, Delhi, vide order dated 24.09.2019,



allowed the application under section 156(3) Cr.P.C. The relevant portion of the order dated 24.09.2019 is reproduced as under:-

Therefore, in view of the above discussion, I deem it appropriate that SHO PS Dwarka North be directed to investigate the allegations of the complainant after registration of FIR. It is needless to say, that it is the sole prerogative of the investigating agency to arrest the accused, however, investigating agency should not arrest the accused, unless there is sufficient grounds for his arrest. It is hereby clarified that merely the registration of FIR does not mean that the allegations of the complainant are true and correct, rather It has to pass a litmus test of investigation before ascertaining the veracity of the complaint. It has also been alleged that no action was taken local police. The SHO PS Dwarka North is not bound to register the case in accordance with the sections alleged by the complainant, rather he must exercise his discretion judiciously in invoking the relevant sections of IPC as per the facts alleged by the complainant In accordance with law.

3. The petitioner being aggrieved by the order dated 24.09.2019, preferred a revision petition bearing no. 463/2019 titled as **Geetika Gulati V State** under section 397 Cr.P.C. which was decided vide order dated 24.10.2019 by the Court of Shri Ajay Goel, Additional Sessions Judge/Special Judge (NDPS), Dwarka Courts. The relevant portion of the order dated 24.10.2019 is reproduced as under:-

8. Before parting with one argument of Ld. Counsel for petitioner is to be addressed whereby he has argued that section 497 is not now made out as per directions of Hon'ble Supreme court. It is made clear that at this stage, this court is not commenting upon anything because FIR has been lodged and he has appropriate remedy, however, perusal of complaint and FIR show



that the name of accused is not mentioned in the FIR though names of alleged accused are mentioned in complaint as Shaurya Shekhar and Geetika Gulati. Further some allegations of taking away the material from the house by the Geetika Gulati has also been mentioned. Threatening by accused No. 1 and 2 has also been mentioned. Name of one Neha Mathur Rastogi is also mentioned and so on. So in these circumstances, even if argument of Ld. Counsel qua Section 497 IPC is concerned still it is made out that some other accused and sections can be added in the FIR during the course of investigation and this court is not commenting upon anything. Rather, other aspects are also required to be seen in the matter by 10 and if circumstances warrants, he can add appropriate sections. This is not case where due to taking revenge in matrimonial dispute, the boy has come to the court but he had made out the complaint as per the circumstances and averments and this cannot be termed as cross-complaint. So the order of Ld. Trial Court is not liable to be interfered with and same has been passed in the facts and circumstances of the case. There is no illegality and infirmity in the order of Ld. Trial Court even on merits.

9. Accordingly, in view of the above observation, the present revision petition is dismissed. There is no illegality and infirmity in the order under challenge. Copy of this judgment be sent to Ld. Trial Court with Trial Court record. Revision file be consigned to record room.

4. Thereafter, FIR bearing No. 0419/2019 was got registered on 13.10.2019 at P.S. Dwarka North under sections 497/506/34 IPC. The investigation in pursuance of the said FIR could not be proceeded in view of the order dated 01.11.2019 passed by this Court whereby the proceedings in connection with the FIR in question were stayed.



5. The counsel for the petitioner stated that the offence punishable under section 497 IPC was declared unconstitutional by the Hon'ble Supreme Court of India in the case titled as **Joseph Shine V Union of India** passed in W.P. (CRL) bearing No. 194/2017 decided on 27.09.2018. He argued that in view of the section 155(2) Cr.P.C., the investigation for the offence punishable under section 506 IPC cannot be proceeded without the permission of the Magistrate as offence punishable under section 506 IPC is a non-cognizable offence. He further argued that the registration of the present FIR was illegal and in contrast with the judgement delivered by Hon'ble Supreme Court in **Joseph Shine** case.

6. The counsel for the respondent no. 2 during the course of arguments, referred the judgement dated 24.10.2019 passed by the Revisional Court wherein it was observed that, more offences could be made out on the basis of complaint made by the respondent no. 2.

7. It is appearing through the record that the present FIR was got registered under sections 497/506/34 IPC. The offence punishable under section 497 IPC was already declared unconstitutional by the Hon'ble Supreme Court of India in **Joseph Shine** case before the registration of present FIR. Accordingly, the concerned SHO was not obliged to register the FIR under section 497 IPC.

8. Section 155(2) Cr.P.C. provides that no Officer shall investigate a non-cognizable offence case without the order of the Magistrate having power to trial such case or commit the case for trial. It is true that no order was passed by the Magistrate Court for registration of FIR under section 506 IPC. Even otherwise, the order dated 24.09.2019 passed by the trial Court for registration of FIR and order dated 24.10.2019 passed by the Revisional



Court, no reference of section 506 IPC is mentioned.

9. The Supreme Court continuously observed that the extraordinary power Under Section 482 Code of Criminal Procedure should be exercised sparingly and with great care and caution and can be used to prevent abuse of the process of the court or to secure ends of justice and the exercise of inherent powers entirely depends on facts and circumstances of each case. The power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and victim have settled their dispute depending on the facts and circumstances of each case. The Supreme Court in **Sushil Suri v. Central Bureau of Investigation and another**, (2011) 5 SCC 708, considered the scope and ambit of the inherent jurisdiction of the High Court and observed as under:-

16. Section 482 Code of Criminal Procedure itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (i) to give effect to an order under Code of Criminal Procedure; (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists.

10. After considering the totality of the circumstances as detailed hereinabove, the registration of FIR was illegal and contrary to the provisions of law. Accordingly, the present petition is allowed and FIR bearing No. 0419/2019 alongwith consequential proceedings is quashed.

11. The present petition alongwith pending applications, if any, stands



disposed of.

12. However, the trial Court shall be at liberty to proceed with the complaint under section 200 Cr.P.C. filed by the respondent no. 2 in accordance with law.

SUDHIR KUMAR JAIN, J

SEPTEMBER 12, 2022

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