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

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***Reserved on: 15.11.2022***

***Pronounced on: 22.11.2022***

+ **CRL.M.C. 664/2020 & CRL.M.A. 2756/2020**

**DHANWANTI @ DHANPATI & ANR. .... Petitioners**

Through: Mr. Dharampal Singh,  
Advocate

versus

**THE STATE & ORS. .... Respondents**

Through: Mr. Satish Kumar, APP for the  
State with SI Prince Kumar,  
P.S. Hauz Khas and ASI  
Amrish, P.S. Maidan Garhi.

Mr. Varun Jain, Advocate for  
complainant with complainant.

**CORAM:**

**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

**JUDGMENT**

**SWARANA KANTA SHARMA, J.**

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of FIR bearing no. 0093 dated 06.04.2018 under Section 379 of the Indian Penal Code, 1860 registered at Police Station Hauz Khas, New Delhi and the proceedings emanating thereon pending in the court of learned Metropolitan Magistrate, Saket Courts, New Delhi.

2. The case of the prosecution is that in the month of February,

respondent no.5 who is an advocate by profession had gone towards Hauz Khas alongwith his clients and had left his mobile phone on the bonnet of a car. After sometime, he asked his client to make a phone call on his phone, after this call was made on his mobile phone, someone from the other side told him that he has taken the phone and was out of station. He also told that his case is pending before a Delhi Court and whenever he will come back to Delhi in April, 2016, he will return the same to him. In the year 2016, he told him that he will return phone in August or September, 2016. Since the phone was not returned. A complaint under Section 156(3) Cr.P.C. was filed for registration of case under Section 379 IPC, on the basis of which FIR No.93/2018 was registered at Police Station Hauz Khas.

3. It is stated by learned counsel for the petitioner no. 1 that petitioner no. 1 had filed a case under Section 376 IPC in District Court Saket against the then SHO, Police Station Hauz Khas wherein he was acquitted and an appeal is pending before the High Court of Delhi. It is stated that the petitioner no. 1 has been receiving threats from the said accused to withdraw the appeal. To falsely implicate the petitioners in some case in connivance with respondent no. 5, the present case was registered against petitioner no.1 and 2. It is stated that petitioner no.1 had found the mobile phone outside a washroom in the Saket Court complex and since no one had told her that they had lost their mobile phone, she had kept the same with her. Thereafter, she had left the mobile phone at Jhajjar at her mother's place. The brother of petitioner no.1 i.e. petitioner no.2 had used the said mobile phone. He was informed later on by police that he was using a stolen mobile phone. Thereafter, petitioner no.1 had

contacted the police at Delhi, who had informed that the phone belonged to respondent no.5, who is the complainant in this case. In the year 2016, she had gone to the Police Station and respondent no. 4 had taken the phone from her on the pretext that he will return it to respondent no.5, the complainant. After about 1 ½ years, she received a call that a case for stealing a phone had been registered against her. Respondent no. 4 again told her that he had returned the phone to respondent no. 5 in the year 2017. Petitioner no.1 had then made a written complaint on 25.04.2018 to the Commissioner of Police regarding the harassment by police. Petitioner no.1 and 2 were granted anticipatory bail. Chargesheet was filed in the present FIR under Section 411/34 IPC against the petitioners. It is stated that the petitioner had filed W.P. Crl. 1688/2018 before this Court wherein a status report was called and it was informed that petitioner no.1 had returned the mobile phone to respondent no. 4 i.e. the investigating officer which had been handed over to respondent no.5, who had given in writing that *"I am very thankful to you. I states that my case be dropped and don't want to proceed with my case further"*. It is stated that the writ petition came up for hearing before this Court on 31.01.2020 and it was stated that the chargesheet has been filed before the concerned Metropolitan Magistrate and therefore, the petition was withdrawn. The petitioner therefore, seeks quashing of the present FIR on the ground that the petitioners had never stolen the phone and since it had been returned to the complainant, the FIR be quashed. More so, in view of the status report filed in the previous writ petition wherein the complainant had informed the police that he did not want to proceed with his case, any further.

4. During the hearing of the present petition, the respondent no. 5 appeared before this Court and stated that he did not want to drop the proceedings and wanted to pursue the case which had been registered pursuant to his complaint filed before the concerned Court. Learned counsel for the petitioners therefore, who was initially addressing arguments that the matter has been settled and the complainant did not want to proceed further with the case, stated that since now the respondent no. 5 had stated before this Court that he wanted to proceed with the case he will, address arguments on merits regarding quashing of the FIR.

5. Learned counsel for the petitioners argued that the allegations leveled in the present case are improbable and there is nothing on record to suggest that the offence in question was committed by the petitioners and that since once the complainant has stated that he did not want to proceed with the case, the FIR be quashed, irrespective of the fact that the complainant now wants to proceed with the case.

6. This Court however does not agree with the contention of learned counsel for the petitioners. The law regarding quashing of FIR and exercising jurisdiction under Section 482 Cr.P.C. for the said purpose is clear as laid down in the case of ***State of Haryana v. Bhajan Lal (1992) SUPP (1) SCC 335.***

7. Section 482 of Cr.P.C. saves the inherent power of the High Court and it reads as follows :

*“S. 482. Saving of inherent power of High Court.—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of*

*the process of any Court or otherwise to secure the ends of justice.”*

8. The learned counsel for the petitioners by calling the whole case false, absurd and a sheer abuse of criminal process has primarily relied on the case of ***Bhajan Lal (supra)*** to contend that the allegations are false and controverted and thus, the charge sheet is liable to be quashed. The relevant portion of the judgment is reproduced below:

*“(a) 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;...*

*(c) 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;...*

*(e) 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.”*

9. In the present case, the mere fact that the stolen phone in question has been returned to the owner cannot be the ground for quashing of FIR since the complainant himself is not interested to settle the matter with the petitioners.

10. After going through the record, it is clear that the stolen phone was recovered admittedly from the possession of the petitioners. The petitioners themselves admit that the phone had been taken by petitioner no. 1 from outside the washroom of Saket District Court complex and instead of depositing it with the police, she had taken it

and had kept it in her custody which was used by petitioner no. 2. Therefore, contrary to the contentions of learned counsels, this Court is of the opinion that this case is not covered by the judgment of ***Bhajan Lal (supra)*** as the said judgment is to be applied in the cases, where the allegations are not only absurd but inherently improbable to implicate the accused. This is not a case where the allegations made in the FIR or the complaint, even if taken at a face value and accepted in their entirety, do not *prima facie* constitute any offence.

11. In view thereof, there is no merit in the present petition and is dismissed. Pending application also stands disposed of.

**SWARANA KANTA SHARMA, J**

**NOVEMBER 22, 2022/ns**

