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

Judgment reserved on: 03.06.2022

Judgment delivered on: 31.08.2022

+ **CRL.REV.P. 151/2022**

HARSHITA GANDHI

..... Petitioner

Through: Ms. Ruchi Munjal, Adv.

versus

STATE & ANR.

..... Respondents

Through: Ms. Kamna Vohra, ASC for State
Mr. Ranjit Kumar, Sr. Adv. with Mr.
Tanveer Ahmed Mir, Mr. Vaibhav
Puri, Mr. Saud Khan, Advs.
ASI Virendra Pal, PS Malviya Nagar

+ **W.P.(CRL) 612/2021 & CRL.M.A. 4506/2021, CRL.M.A.
19477/2021, CRL.M.A. 160/2022 CRL.M.A. 159/2022**

RYAN SEQUEIRA

..... Petitioner

Through: Mr. Ranjit Kumar, Sr. Adv. with Mr.
Tanveer Ahmed Mir, Mr. Vaibhav
Puri, Mr. Saud Khan, Advs.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Ms. Kamna Vohra, ASC for State
ASI Virendra Pal, PS Malviya Nagar

+ **W.P.(CRL) 1210/2021 & CRL.M.A. 10238/2021**

M.K. GANDHI & ANR.

..... Petitioners

Through: Mr. Ranjit Kumar, Sr. Adv. with Mr.
Tanveer Ahmed Mir, Mr. Vaibhav
Puri, Mr. Saud Khan, Advs.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Piyush Singhal, Adv. for Mr.
Ashish Aggarwal, ASC for State
Ms. Ruchi Munjal, Adv.



+ **W.P.(CRL) 1211/2021 & CRL.M.A. 10241/2021**

AASTHA GANDHI

..... Petitioner

Through: Mr. Ranjit Kumar, Sr. Adv. with Mr.
Tanveer Ahmed M
ir, Mr. Vaibhav Puri, Mr. Saud Khan,
Adv.

versus

STATE NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Piyush Singhal, Adv. for Mr.
Ashish Aggarwal, ASC for State
Ms. Ruchi Munjal, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

W.P.(CRL) 612/2021

1. This petition is filed seeking quashing of the FIR No. 526/2020 dated 25.12.2020 registered at PS Malviya Nagar, Delhi under Section 323/354/506/34 IPC and proceedings emanating therefrom.
2. As per the FIR, it is alleged that the petitioner, Ryan Sequeira was a friend of Ms. Aastha Gandhi and is looking to settle down in matrimony with her.
3. As per the FIR, the complainant has said she was married to Mr. Nimit Gandhi (an Architect by profession) on 06.12.2019 and was living at 86, Navjeevan Vihar, New Delhi. His sister, Ms. Aastha Gandhi is a divorcee and has a son, master Amogh from her first marriage. The petitioner, Ryan Sequeira is a friend of Ms. Aastha Gandhi and they claimed to be in a relationship. The allegations in the FIR relate to the



act of molestation and sexual advances made by the petitioner, Ryan Sequeira.

4. It is stated that on 13.12.2019, the petitioner Ryan came to meet Aastha Gandhi at her residence. At around 9 PM, the parents of Ms. Aastha Gandhi, Mr. M.K. Gandhi (father-in-law of the complainant) and Mrs. Neeru Gandhi (mother-in-law of the complainant) had gone to their bedroom and the petitioner's husband, Mr. Nimit Gandhi was working in his office in the basement of the same building.
- 4.1 The petitioner wanted to use the washroom and Ms. Aastha Gandhi asked the complainant to show him the same as she was busy with the homework of her son. The complainant alleges in the FIR that she went inside the bedroom to show him the washroom, suddenly, outside the washroom, the petitioner held the complainant from behind and tried to drag her towards the bed.
- 4.2 The complainant resisted the advance and screamed, as a result of which, the petitioner, Ryan ran away out of the room. Mr. M.K. Gandhi and Mrs. Neeru Gandhi were told about the incident and all of them scolded the complainant and slapped her many times.
- 4.3 It is further submitted that Ms. Aastha Gandhi verbally abused the complainant. Mrs. Neeru Gandhi dragged the complainant from her hair and tried to bump her head against the wall. It has also been stated in the FIR that Mr. M.K. Gandhi tried to suffocate the complainant by his hands, so much so that the complainant choked. Thereafter, all requested the complainant not to tell anyone about the incident.
- 4.4 It is further stated in the FIR that the complainant did not inform her husband about the incident of 13.12.2019. On 19.09.2020, Nimit took



the complainant for a drive and after driving for 1 or 2 km, he revealed that he was taking the complainant to the house of Aastha Gandhi at Gurgaon where the Petitioner, Ryan would have been present. It was on that day that Respondent no. 2 informed her husband about the incident of 13.12.2019. To her surprise, Nimit informed her that he knew about the incident and wanted her to please the Petitioner, Ryan. The complainant was shocked and then made an excuse to go to her parental home for picking up her clothes and instead planned to escape from the clutches of Nimit Gandhi. It is further alleged in the FIR that that Nimit, her husband is absconding and Ryan and the entire family would do the same. She further states that this is a clear case of molestation, physical abuse and outraging of her modesty.

5. On 17.03.2021 the respondent no. 2 was directed to file a reply which she has so done. The matter was referred to Mediation vide order dated 03.09.2021, however, the mediation failed.
6. On 24.05.2022, the Ld. Senior Counsel for the Petitioners, Mr. Ranjit Kumar addressed his arguments. He stated that the complainant made a complaint on 16-17 December, 2020 while the incident took place on 13.12.2019. That the petition is *mala fide* and an abuse of the process of law as there is a delay of more than one year in registering the complaint.
7. On 25.12.2020, the FIR was registered under Section 323/354/506/34 IPC against the accused persons. In the charge sheet filed, the offence against the petitioner Ryan is only under Section 354 IPC.
8. Learned senior counsel further submits that the complainant made a complaint on 08.10.2020 at PS Malviya Nagar, New Delhi against her



sister-in-law alleging that she instigated lies against her to the complainant's husband, but there was no mention of the incident of 13.12.2019. She even mentioned that her in-laws cut all contact with her and if something was to happen to the complainant then her husband, in-laws and Aastha Gandhi would be responsible for the same in the said complaint.

9. On 26.10.2020, the complainant wrote an email to her husband asking why he hasn't been responding to her calls and mails and also, asking him to reconcile their differences.
10. The learned senior counsel for the petitioner submits that the husband of the complainant, Mr. Nimit Gandhi filed a divorce petition under Section 13(1)(ia) on 07.12.2020 against the complainant. It is this divorce petition which instigated the petitioner to file a complaint on 16-17 December, 2020 of an incident dated 13.12.2019, and the complaint is nothing but a mere concoction of blatant lies, is malafide and vindictive.
11. The senior counsel submits that the factual matrix as per the FIR does not align with the events of the day of the incident. It is stated that the petitioner, Ryan and Ms. Aastha Gandhi went to South Extension, Delhi at around 6:45 PM and from there, they went to Lajpat Nagar to do shopping and visited Fab India store at Lajpat Nagar and remained there till around 8:47 PM.
12. At Fab India store, Lajpat Nagar, the petitioner made purchases and used his HDFC credit card for an amount of Rs. 2450/-. It is submitted that if the petitioner was at Fab India store, Lajpat Nagar at around 8:40/8:47 PM, he could not have reached Navjeevan Vihar, Malviya



Nagar, New Delhi (the matrimonial home) at around 9 PM.

13. He further submits that after the purchases at Fab India store, Lajpat Nagar, the entire family and respondent No.2 went to Chor Bizaar Restaurant at Bikaner House for dinner and they were there from 9:09 PM till 11:12 PM where the payment of Rs. 8252/- was made by Mr. M.K. Gandhi in cash.
14. The petitioner, Ryan, thereafter, went to the house of the complainant and was there from 11:40 PM to 1:15 AM, and everyone was playing a Board Game, named, '*Catan*'. Thereafter, the petitioner left the house at around 1:33 AM and the same is reflected from his Ola receipt.
15. On 17.03.2021, this Court directed the respondent no. 1 i.e., the State, to file a status report. The Respondent no. 1 has filed 3 status reports.
16. It is submitted by the learned senior counsel that as per the status report and per the google location, it can be noted that the petitioner and Ms. Aastha Gandhi were at Fab India store, Lajpat Nagar till around 8:32 PM as per the mobile tower location. The status report corroborates the same through google location obtained.
17. It is submitted by Mr. Ranjit Kumar, learned senior counsel for the petitioner that the complaint is a counter-action to divorce petition as the incident complained of is more than a year earlier.
18. Despite the complaint dated 08.10.2020 filed by the complainant in the intervening period, there is no mention regarding the incident of 13.12.2019. Learned senior counsel for the petitioner further submits that this Court has held that the invocation of Section 354 IPC is used as an arm-twisting tactic and he has relied on '*Suraj Aggarwal v. State*' [Delhi High Court, W.P. (CRL) 1227/2021 dated 17.05.2022].



19. He has further drawn my attention that delay in lodging the FIR is fatal. He has placed reliance on the Supreme Court judgment of *Kishan Singh v. Gurpal Singh and Others*. [(2010) 8 SCC 775] and more particularly on the following paras:-

“21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. (Vide Sahib Singh v. State of Haryana [(1997) 7 SCC 231 : 1997 SCC (Cri) 1049 : AIR 1997 SC 3247] .)

22. In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (Vide Chandrapal Singh v. Maharaj Singh [(1982) 1 SCC 466 : 1982 SCC (Cri) 249 : AIR 1982 SC 1238] ; State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC



(Cri) 426 : AIR 1992 SC 604] ; G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513 : AIR 2000 SC 754] ; and Gorige Pentaiah v. State of A.P. [(2008) 12 SCC 531 : (2009) 1 SCC (Cri) 446])”

20. The learned counsel relied upon the judgment of *Prashant Bharti v. State (NCT of Delhi)* [(2013) 9 SCC 293] wherein the Supreme Court has quashed an FIR on the basis of alibi.
21. Additionally, he has also relied upon the Delhi High Court judgment of *Alok Kumar v. State*. [(2010) SCC OnLine Delhi 2645] where the court has observed that the FIR can be quashed when it registered on the basis of malafide intent. The relevant paragraph is as under:

“8. It is settled law that the Court should refrain from quashing FIR on the ground that allegations made in FIR were false. However, when FIR is lodged with mala fide motives to wreck vengeance, the Courts have interfered as an exceptional matter and quashed the FIRs. In *M/s Eicher Tractors Limited & Ors. v. Harihar Singh & Anr.* 2009(1) JCC 260, *State of Karnataka v. M. Devendrappa* 2002 (1) JCC 214, *State of Haryana v. Bhajan Lal* 1992 SCC (Crl.) 426 and *Madhavrao J. Scindhia v. Sambhajirao C. Angre* 1988 SCC (Crl.) 234, Supreme Court held that where allegations made in an FIR or complaint were so absurd and inherently improbable on the basis of which no prudent person could ever reach a just conclusion, this was sufficient ground for quashing the FIR. The Apex Court also held that where criminal proceeding is manifestly attended with mala fide and where proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and person grudge, the FIR can be quashed.”

22. Mainly, he relies upon the Supreme Court judgment of *State of Haryana v. Bhajan Lal* [1992 Suppl. (1) SCC 335] wherein the court has laid down guidelines for quashing of FIR:



“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.”

23. Lastly, he submits that on 03.09.2021, this Court had directed that the parties “*will not precipitate the issue any further before the matter comes up for mediation.*” Despite the same, the complainant wrote to the employers of the petitioner as a result of which the petitioner had to resign from a lucrative job at the United Nations. He draws my attention to email dated 22.11.2021 and 24.11.2021 wherein he has resigned from his job with an opportunity to withdraw his resignation on being found innocent.
24. In opposition of the quashing, the learned counsel, Ms. Malvika Rajkotia for the Respondent no. 2 has stated that the averments, as made by the counsel for the Petitioners, would constitute as a matter of evidence and would be required to be adjudicated after trial. The preponderance of probabilities cannot come to the aid of the Petitioner. All that the court is required to see at this stage is that the allegation of the offence is made from a bare reading of the FIR. The complainant who has registered the FIR cannot be asked to explain the allegations, the delay, the contradictions, the conduct, at the time of quashing as



these are all matters of trial. The complainant can very well be asked these questions at the evidence stage and thereafter, the competent court can pass a final verdict after appreciating the entire evidence. She submits that the complainant has not yet entered the witness box and assumptions and presumptions are being drawn against her.

25. She stated that the location of the accused is no indicator of the absence of the accused from the place of incidence. Merely relying upon the call detail record and mobile location of other accused persons that too of a different time period even though nearly to time of incidence, the case should not fall fit for quashing of FIR as the same has to be appreciated at the time of trial and not at the stage of quashing of FIR especially when the trial court has taken cognizance of the case.
26. Furthermore, delay in registering the FIR of a sexual offence is no ground to quash the FIR. She stresses that the complainant was a newlywed woman and the incident had taken place merely seven days after her marriage and in an effort to keep her marriage intact she had kept quiet.
27. The law on quashing has been crystallised. The Ld. Counsel for the complainant has relied on certain judgments of the Supreme Court sounding a word of caution w.r.t. quashing of FIRs. She relied upon the judgment of *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra* [2021 SCC OnLine SC 315] wherein the Supreme Court has observed the following:

“80. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”,



during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

- 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;*
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*
- 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;*
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*
- 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;*
- xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;*
- xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P.*



Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

- xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;*
- xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.*
- xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant*



of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

28. Additionally, in the case of *Kaptan Singh v. State of Uttar Pradesh and others* [(2021) 9 SCC 35] the Supreme Court has observed the following:

“9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 CrPC has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 CrPC quashed the criminal proceedings, by the time the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC and even the learned Magistrate also took the cognizance. From the



*impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in Dineshbhai Chandubhai Patel [Dineshbhai Chandubhai Patel v. State of Gujarat, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683] **in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court.** It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with*



such material as to how far and to what extent reliance can be placed on such material.

9.2. *In Dhruvaram Murlidhar Sonar [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191 : (2020) 3 SCC (Cri) 672] after considering the decisions of this Court in Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , it is held by this Court that exercise of powers under Section 482 CrPC to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 CrPC though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 CrPC. Similar view has been expressed by this Court in Arvind Khanna [CBI v. Arvind Khanna, (2019) 10 SCC 686 : (2020) 1 SCC (Cri) 94] , Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] and in XYZ [XYZ v. State of Gujarat, (2019) 10 SCC 337 : (2020) 1 SCC (Cri) 173] , referred to hereinabove.*

9.3. *Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.*

10. *The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarized affidavit of Mamta Gupta*



Accused No.2 and Munni Devi under which according to Accused no.2 Ms. Mamta Gupta, Rs.25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27.10.2010, the sale consideration is stated to be Rs.25 lakhs and with no reference to payment of Rs.25 lakhs to Ms. Munni Devi and no reference to handing over the possession. However, in the joint notarized affidavit of the same date i.e., 27.10.2010 sale consideration is stated to be Rs.35 lakhs out of which Rs.25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused No.2. Whether Rs.25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs.25 lakhs as mentioned in the joint notarized affidavit dated 27.10.2010. It is also required to be considered that the first agreement to sell in which Rs.25 lakhs is stated to be sale consideration and there is reference to the payment of Rs.10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation.”

ANALYSIS:-

29. This court has to answer the following questions before undertaking the quashing of the FIR:
 - a) Whether the case of petitioner falls within any of the parameters of Bhajan Lal (Supra)?
 - b) Whether the allegations in the FIR disclose commission of a cognizable offence?
30. The Supreme Court in *Jagmohan Singh v. Vimlesh Kumar & Ors.*, Crl.



Appl. no. 741 of 2022 dated 05.05.2022 has issued a word of caution to the High Court for its jurisdiction under section 482 of the CrPC. The Supreme Court has observed the following:

“At this stage, we are not inclined to look into the correctness of the allegations made in the FIR. Ex-facie, the allegations in the FIR disclose an offence. Whether the persons named in the FIR have committed the offence or not, has to be decided upon trial, in the criminal proceedings.

The Court interferes in criminal proceedings, in exercise of the power under Section 482 of the Cr.P.C., in rare and exceptional cases, to give effect to the provisions of the Cr.P.C. or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

While exercising jurisdiction under Section 482 of the Cr.P.C., the High Court should not ordinarily embark upon an enquiry into whether there is reliable evidence or not. The jurisdiction has to be exercised sparingly, carefully and with caution only when such exercise is justified by the specific provisions of Section 482 of the Cr.P.C. itself.”

31. It is material to note in this case that before filing of the FIR, the complainant had lodged a complaint dated 08.10.2020 and then subsequently the FIR dated 25.12.2020. In the complaint dated 08.10.2020, the complainant has not mentioned anything regarding the incident dated 13.12.2019. Moreover, the complaint does not mention any involvement of the accused Ryan Sequeira. It only mentions that the complainant's life was threatened by the accused persons, MK Gandhi and Aastha Gandhi.
32. It can be seen that there are contradictions between the complaint and



the FIR filed and there is a delay of filing of the FIR by one year. Even though these aspects poke holes in the case of the complainant, this has to be adjudicated before the trial court. The complainant needs to be given an opportunity to explain the delay and also the contradictions in the complaint and the FIR. It is a sensitive matter requiring that the side of the complainant is heard. At this juncture, the Ld. Counsel for the complainant has not offered explanation for the contradiction in the FIR and the complaint. It would not be fair to the complainant to thwart the investigation at this stage, especially when the chargesheet has been filed.

33. The conduct of the respondent no. 2, the contradictions in the complaint and the FIR, need to be explained before the trial court. The google location as disclosed in the status report needs to be put to Respondent no. 2 in her cross-examination and should constitute as part of trial. The Ld. Counsel for the complainant/Respondent no. 2 has explained the delay in FIR by stating that the Respondent no. 2 wanted to work on her marriage and did not want any disturbances in the family peace as she was a newlywed and her alleged harasser was the boyfriend of her sister-in-law. She has also explained the delay to the police officers while getting the FIR registered, which has been recorded in the Status Report dated 04.04.2021 as follows:

“...she was forced to keep quiet and not to report the said incident by her in-laws and her family and pleaded that in the event she complained of the same to Police or even to her parents, then the proposed marriage between her sister-in-law and Mr. Ryan sequeirra shall break. She only therefore was forced to keep quiet to keep the honour of the family and no



disrepute befalls upon the family.”

34. Now the only question that remains for adjudication is whether this court should quash the FIR and chargesheet. I am conscious of the limitation of this court under section 482 of CrPC. The factual matrix as recapitulated above shows that a cognizable offence has been alleged in the FIR where the modesty of the victim/complainant was outraged. There may be contradictions in the complaint filed by her and the FIR, but the same needs to be examined in trial. The Court cannot rush to quash an FIR when the chargesheet has been filed. In this scenario, where a cognizable offence has been disclosed in the FIR, chargesheet has been filed after investigation, the only course that commends itself is that the trial court commences with the trial as per *Neeharika* (Supra) and *Kaptan Singh* (Supra).
35. At this stage, this court cannot act as an investigating agency or as the trial court going into the intricacies of the evidence and the submissions. I have perused the FIR, which discloses a cognizable offence. However, contradiction as stated above need to be explained in the trial but cannot be short circuited at this stage.
36. Therefore, the petition for quashing of the FIR and the chargesheet is dismissed with a direction to the Trial Court to expeditiously dispose of the matter.
37. However, a note of caution needs to be sounded in this case. In the facts of the present case because of the allegations in the FIR, the Petitioner had to resign from his lucrative job in UN. It is hereby observed and directed, in case the trial court acquits the Petitioner and



the allegation levied against the Petitioner are found to be baseless, the Petitioner will be entitled to damages including loss of salary for the intervening period, from Respondent No. 2. The above direction is further necessitated as on 03.09.2021, this Court had directed both the parties not to precipitate the issue any further as they were in mediation. Despite the same, Respondent no. 2 seems to have written to the employer of the Petitioner.

W.P.(CRL) 1210/2021 & W.P.(CRL) 1211/2021

38. The present matter is connected to the above writ petition, W.P.(CRL) 612/2021. The Petitioner No. 1, M.K. Gandhi and Petitioner No. 2 Neeru Gandhi in W.P. (CRL) 1210/2021 and Petitioner, Aastha Gandhi in W.P. (CRL) 1211/2021 have prayed for quashing of the Cognizance Order dated 31.03.2021 passed by the Ld. MM-03/Mahila Court, Saket District Court, South District and also the Chargesheet dated 26.03.2021 in FIR no. 526/2020 under sections 323/354/506/34 IPC and consequential proceedings emanating therefrom.
39. Against the Petitioner No. 1, M.K. Gandhi, the offence is under section 323/34 IPC. In the FIR, the Respondent no. 2 has stated that when she informed the petitioner of the incident with Ryan Sequeira, he scolded the Respondent no. 2 and slapped her multiple times in a fit of rage. While she was trying to escape the clutches of the Petitioner and his wife (Respondent no. 2's mother-in-law), she states that the Petitioner tried to suffocate her neck by his hands so much that she almost choked. Since the chargesheet has been filed, the petitioner no. 1 has been charged under Sections 323 and 34 IPC.
40. As regards, the Petitioner No. 2, Neeru Gandhi, she has been charged



under sections 323/506/34 IPC. The FIR states that the mother-in-law, on the night of the incident tried to pull the Respondent No. 2/complainant's hair and tried to bang her head against the wall. She further abused her. Also, on occasions she would stop the Complainant from going to her parents' house.

41. Against the Petitioner, Aastha Gandhi the offence is under section 506/34 IPC. In the FIR, the complaint against Aastha Gandhi is of criminal intimidation that she asked the Respondent no. 2 to keep quiet of the incident that allegedly happened between Respondent no. 2 and Ryan Sequeira.
42. In light of the observations made in W.P.(CRL) 612/2021, I am of the view that the present petitions also stands dismissed. The FIR discloses a cognizable offence and further cognizance has been taken as the chargesheet has been filed. Additionally, a summoning order has been issued against all the accused persons in Column 11 of the chargesheet by the Mahila Court by order 31.03.2021. The course of justice cannot be thwarted by this court. I also place reliance on the decision of *Neeharika* (Supra) and *Kaptan Singh* (Supra) which have held that the jurisdiction under section 482 CrPC should be exercised in rare situations where no cognizable offence is disclosed.

CRL. REV. P. 151/2022

43. This is a revision petition filed by the petitioner (Respondent No. 2/ complainant in the above mentioned writ petitions) seeking setting aside of the order dated 05.02.2022 passed by the ASJ, South, Saket Courts, Delhi in Bail Cancellation Application No. 189/2022 in FIR No. 526/2020 u/s 323/354/506 IPC, PS Malviya Nagar.



44. By the order dated 14.01.2021 passed by the ASJ, South, Saket Courts, Respondent no. 2 was granted anticipatory bail. It is the case of the Petitioner that she is being harassed by the Respondent no. 2 and she has filed some complaints on record.
45. The Status Report records as follows:
- “As per evidence coming on record alibi of Ryan Sequiera was found to be correct and was not present at time of incident. The complaints referred by the Petitioner in present petition as filed in P.S Malviya Nagar are not against the Respondent Ryan Sequiera but against Mr. M.K. Gandhi. They are from one year prior to present petition and allegations could not be confirmed on investigation. The complaints filed in ICAI and MCD South have no connection with the Ryan Sequiera or with FIR bearing No. 526 of 2020 dated 25/12/2020, PS Malviya Nagar.”*
46. I have also noted in the W.P. 612/2021 that there are contradictions in the complaint of the Petitioner dated 08.10.2020 and the FIR. I have already observed in para 31 and 32 that the petitioner had made a complaint on 08.10.2020 and thereafter lodged an FIR with regards to the incident which occurred on 13.12.2019. In the complaint of 08.10.2020, the complainant has not mentioned anything regarding the incident of 13.12.2019 or regarding the involvement of accused, Ryan Sequeira. The FIR has been filed after a delay of one year. While the same may not be enough for quashing of the FIR, they are enough for upholding the grant of anticipatory bail vide order dated 14.01.2021. The Ld. Session Court has correctly held that there is no misuse of the bail conditions by the Respondent no. 2. I find no infirmity in the order of the Ld. Sessions Court dated 05.02.2022.



47. With these observations, this petition is also dismissed.

JASMEET SINGH, J

AUGUST 31, 2022 / (MS)

[Click here to check corrigendum, if any](#)

