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

Date of decision: 29.08.2022

+ W.P.(CRL) 1753/2021 & CRL.M.A. 14419/2021

PROFESOR AJAY KUMAR

..... Petitioner

Through: Mr Nishant R Katneshwarkar, Ms Anisha Mathur, Mr Rahul Kumar, Mr Harikesh Anirudhan and Mr Mohit Goyal, Advs.

versus

STATE (GOVT. OF NCT OF DELHI) & ANR Respondents

Through: Mr Amol Sinha, ASC for State with Mr Kshitiz Garg, Adv. for R-1. SI Heera, PS-Maurice Nagar Mr Gautam Khazanchi and Mr Subham Jain, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition seeking quashing of FIR No. 44/2014 dated 07.03.2014, under Sections 354-A/509 IPC, registered at Police Station-Maurice Nagar, North Delhi District, New Delhi.

2. In the FIR, it has been stated by the complainant as under:

“.... This is to inform you that on 21.01.2014 around 10:23 a.m. while crossing me in the corridor of the Mathematics Department, University of Delhi, Prof. Ajay Kumar (HOD-Maths University of Delhi) stared at me and passed lewd



(wrongly spelt as lend in the complaint) *sexual remarks to me which I am mentioning immediately made verbatim “Fuck you”, As a result, I made a complaint to the Vice-Chancellor about this incident with a copy to the registrar which is a procedure for us to do. But no action/reply was received from the university authorities. Thus, you are requested to kindly lodge an FIR against Prof. Ajay Kumar, Department of Mathematics, University of Delhi for his act of sexual lewd remarks to me and also against Registrar, Ms. Alka Sharma and Vice-Chancellor, Prof. Dinesh Singh for protecting the sexual offender as more than 36 hours have elapsed since I lodged the complaint but no action has been taken by them...*”

3. Mr Katneshwarkar, learned counsel appearing for the petitioner has drawn my attention to the minutes of the ICC findings/observations and more particularly para 2, 4, 6, 6 and 7 which reads as under:

“2. ICC in its meeting decided to request the complainant to appear in person. The complainant, in turn, requested the ICC to transfer the respondent on the ground of threat to her safety. The complainant stated in her written submission that she will not appear in person until the respondent is transferred/suspended A close reading of her complaint dated 21 January 2014 shows that she wanted the VC to suspend the respondent with immediate effect and initiate an enquiry against him. Her subsequent communications suggest that she wanted the respondent to be suspended first and the enquiry be conducted thereafter.



Section 12 of the Act provides for measures like transfer of the aggrieved woman or the respondent, grant of leave up to three months to the aggrieved woman or grant of such other relief during the pendency of the enquiry. ICC observes that though it is vested with the power to recommend any of the measures suggested in Section 12(1) of the Act, it is a discretionary power vested in it. Once ICC decides to exercise such discretion under Section 12 of the Act, ICC has the discretion to decide on the appropriate measures too.

Therefore, Section 12 of the Act is explicit in its wordings that the complainant may make a request (in the form of a right), but she cannot insist on transfer/suspension of the respondent as a condition contingent upon which she will prefer to appear or not to appear before the ICC.

It is pertinent to note that the ICC in its meeting discussed the written request of the complainant seeking transfer/suspension of the respondent. After a perusal, of the documents the ICC recommended the following: “the requirements of fairness in the inquiry will be met if the complainant is not required to report to the Head of the Department or attend departmental meetings during the pendency of the inquiry”.

The University endorsed the recommendation of the ICC and a letter to that effect was sent to the complainant on 24 March 2014. She was advised that correspondence to the University may be forwarded through the Presiding Officer, ICC.

ICC, therefore, observes that it duly considered the request of



*the complainant under Section 12 of the Act and acted in good faith to assist her in pursuing the case. ICC, as an independent body wanted to ensure that the complaint will be able to make her presentation in person to meet the standards of fairness. However, the complainant failed to respect the repeated reminders (**Annexure-VIII**) for a personal hearing before the ICC. She preferred not to appear in person till her demand was met.*

4. ICC during the enquiry made a genuine effort to find out whether any sexual harassment in the kind of the one described by her in the complaint/s throughout occurred. Her allegations were examined in the light of Section 2(n) and Section 3(2) of the Act along with the objectives stated in the Preamble of the Act. ICC observes that no sexual harassment case is made out against the respondent in the instant case for the following reasons:

** the complainant did not substantiate her allegations either through personal appearance or by placing supporting documents;*

** the expression alleged to have been used by the respondent in the corridor of the Mathematics Dept. is neither heard by the two people who were present nor substantiated by her.*

** the respondent appeared in person and submitted written statements wherein he denied the allegations of sexual harassment. The two witnesses who appeared on his behalf also denied of having heard him uttering anything to the*



complainant. ICC notes, that the common fact admitted by all including the complainant is that both the complainant and respondent had come face to face on that day in the corridor on 21/01/2014. However, there was no proof to suggest that some uttering by the respondent took place.

*6. ICC observes that the complainant makes false statements at times to delay the proceedings before the ICC. For instance, in a letter dated 1 April 2014 she wrote to the Administrative Officer (Higher Education) that her complaint on sexual harassment against the respondent is not under examination and inquiry has not been initiated (**Annexure-X**). The records reveal that her complaint was admitted and inquiry was initiated. The complainant is in receipt of communications to that effect. ICC finds such allegations highly objectionable.*

6. The statements and supporting documents submitted by the respondent show that the respondent built up his reputation and credibility over the years through the strenuous efforts of him as an academic scholar. Those who completed studies in M. Phil and Ph. D programmes including female students have submitted statements about how they valued him as a person and his scholarship. Similarly, his colleagues from Rajdhani College (where he taught for 27 years) submitted statement, throwing light on his humane nature and invaluable scholarship. These statements were brought to the notice of the IOC in the form of reaction to a news item which appeared in Mail Today.



The respondent submitted a list of documents (refer to the summary portion of the respondent) which indicate that there were complaints from students over seven years to the effect that the complainant was not taking her classes. These complaints were not isolated events or written by a few students. A perusal of the complaints followed by signatures of the students show that on an average 24-54 students have complained that she was not taking classes. As HOD, the respondent was duly bound to inform the University authorities and make alternate arrangements. The University too in the communications insisted her to take classes and cautioned her about disciplinary action otherwise. On 24th February 2014, the AR (Estab.I) wrote to her: “you are not performing your own duties assigned by the Department over such an extended period while drawing salary from the Government/University” (Annexure-XI).

ICC observes that though the above mentioned matters do not come within the purview of the Act, a complaint about sexual harassment need to be examined in the light of circumstances particularly when there is no substantial proof about sexual harassment. Paramount duty of a teacher is towards students in terms of active, academic deliberation with students. The complaint in the given circumstances is doubtful in the sense that it may be a ploy to divert the attention of the authorities and probably not to take action against her for not performing her duties.



7. *In a letter addressed to the President of India in his capacity as the visitor of the University dated 17 April 2014, the complainant states that she has filed an FIR against the respondent and therefore the charge sheet issued to her by the Registrar becomes infructuous as the respondent is one of the prosecution witnesses mentioned in the charge sheet (Annexure-XII). In other words, she filed an FIR against the respondent for sexual harassment and therefore, now the respondent cannot be a prosecution witness in the charge sheet against her. ICC finds this statement on her part as a self admission that she filed the FIR to stall the proceedings of enquiry initiated against her by the University.”*
4. He submits that once the ICC has recommended that no case of sexual harassment is made out against the respondent, the FIR should be quashed and the petitioner should not be made to undergo the ordeal of trial for a case where the ICC itself finds no case against the petitioner. He further submits that in the appeal filed by respondent No.2, the ACC has failed to interfere in the findings of the ICC and has dismissed the appeal filed by the respondent No.2. He further submits that the charge-sheet supports the petitioner. He has further stated that there is a delay in registering the FIR of three months.
5. The respondent No.2 has filed a response which was not on record and a copy has been handed over in Court today.
6. Mr Khazanchi, learned counsel for the respondent No.2 has drawn my attention to a complaint dated 21.01.2014 and a police complaint dated 23.01.2014 to state that there was no delay in reporting the incident.



7. I have heard learned counsel for the parties and gone through the documents.

8. The law on the subject is clear. In *M/s. Neeharika Infrastructe Pvt. Ltd. v. State of Maharashtra & Ors.* (2021 SCC Online SC 315) para 80 it has been held by the Hon'ble Supreme Court as under:

“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.”

9. I also rely on *Ramveer Upadhyay v. State of U.P.* (2022 SCC Online SC 484), more particularly para 39 which reads as under:

“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the



complaint constitute offence under the Attrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No.19/2018 is not such a case which should be quashed at the inception itself without further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C.”

10. The Hon’ble Supreme Court in **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.”

11. In this view of the matter, I am of the view that the present complaint discloses a cognizable offence against the petitioner. In Section 482 Cr.P.C, this Court for quashing has to exercise its powers only in rarest of rare cases. It is observed that the present case does not fall within the said definition and also no exceptional case is made out for exercising the extraordinary powers under Section 482 Cr.P.C. The findings of ICC and ACC amongst other things is based on the fact that the complainant-respondent No.2 chose not to appear before the ICC and substantiate her allegations. The said fact cannot wash away or mitigate the allegations made in the FIR.



12. For the above reasons, the petition cannot be entertained by this Court at this stage and hence, the same is dismissed.

13. The observations made in the present order is only for the purpose of deciding quashing petition and shall not come in the way of the final adjudication on merits.

AUGUST 29, 2022

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JASMEET SINGH, J

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

