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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 04.08.2022

Pronounced on: 22.08.2022

+ W.P. CRL. 1762/2022

PREET SINGH & ORS.

..... Petitioner

Through: Mr Avadh Bihari Kaushik,
Advocate

versus

THE STATE (NCT OF DELHI) & ANR. Respondents

Through: Ms Nandita Rao, ASC for
State

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

CRL.M.A. 15261/2022 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P. CRL. 1762/2022 & CRL. M.A. 15262/2022

3. The present petition has been filed by the petitioner seeking quashing of FIR No. 378/2022 (Impugned FIR) registered under Sections 376/377/323/34 of the Indian Penal Code, 1860 (IPC), at P.S. Begumpur, on merits.



4. The Impugned FIR was registered on a complaint made by respondent no. 2 wherein it is alleged that petitioner no. 1 (husband of respondent no. 2) was addicted to drugs and on a specific day, petitioner no. 1 came with his friends and asked respondent no. 2 to make physical relations with his friends. Thereafter, petitioner no. 1 left the house, around 3 years ago and visited home sometimes. It is also alleged in the FIR that in the absence of petitioner no.1, petitioner no. 4 forcefully established physical relations and even had unnatural sexual intercourse with her. When respondent no. 2 resisted petitioner no. 4, she was badly beaten and threatened. It is also stated that when respondent no. 2 informed her mother-in-law about the aforementioned incidents, the mother-in-law, along with her brother-in-law, also threatened respondent no. 2 with dire consequences. Thus, the FIR was registered on the basis of complaint filed by the complainant alleging offence of rape under Section 376 IPC, unnatural sexual intercourse under Section 377 IPC and hurt under Section 323 IPC against the accused persons where specific allegations were made against each accused.

5. Learned counsel for the petitioner submits that charge-sheet has not been filed in the above-noted FIR. It is submitted that the present case pertains to a matrimonial dispute with regard to the amount of maintenance to be paid by petitioner no.1 to respondent no. 2 and the same has been given the colour of a criminal offence to exert pressure on the petitioners. It is further submitted that the allegations levelled against the father-in-law and husband of the respondent no. 2 are not tenable since petitioner no. 1 has been



residing separately for the last 8 years and has not been in a marital relationship with respondent no. 2 for the last 15 years. It is also submitted that the sister of respondent no. 2 has been harassing petitioner no. 1.

6. It is argued on behalf of the petitioners that the allegation of wrongful confinement is untrue as the CCTV footage is contradictory to the allegations levelled by respondent no. 2 in the FIR and that in the said dispute, except petitioner no.1, all other petitioners are on bail. The learned counsel for the petitioners also brought to the notice of the court that the notice for joining investigation was served at the wrong address i.e., at the residence of the complainant and not at the address where petitioner no. 1 was residing. In order to buttress the claims, the learned counsel for the petitioners has relied on the following judgments:

a) State of Haryana vs. Bhajan Lal & Ors. [(1992) SUPP (1) SCC 335]

b) Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate & Ors. [(1998) 5 SCC 749]

c) G. Sagar Suri & Anr. Vs. State of U.P. [(2000) 2 SCC 636]

d) Indian Oil Corporation [(2006) 6 SCC 736]

Through the above-mentioned judgments, the learned counsel for the petitioner contends that the power of the High Courts under Article 226 and Section 438 Cr.P.C. can be used to quash an FIR whenever a High Court is of the view that the allegations levelled by the complainant are without merit and there is no possibility of the



alleged offence having been committed, it should not wait for the Magistrate to discharge the petitioner in order to prevent the criminal justice system from being used as a tool for arm twisting.

7. Learned APP for the State on the other hand vehemently opposes the submissions made by learned counsel for the petitioner. It is submitted that petitioner no.1 is an absconder against whom non-bailable warrants have been issued and two anticipatory bail applications have also been rejected. Proceedings under Section 82 have been initiated against the petitioner which are pending for 09.08.2022 before the concerned court. It is further submitted that petitioner no. 1 took *sanyas* and subsequently during the lockdown period, the petitioners started abusing respondent no. 2 as everyone was at home during that time. It is also submitted that direct, clear and uncontroverted allegations have been made by the complainant in the FIR which have also been supported in the statements made by her under Section 164 Cr.P.C. Further, petitioner no. 1 has allegedly abandoned respondent no. 2 and there is no one to protect her in the matrimonial home against the atrocities committed by the in-laws of respondent no. 2. It is pointed out in respondent no. 2's recorded statement that petitioner no. 1 has also refused to cooperate during investigation and denied giving his mobile phone to the police officials for the purpose of investigation.

8. I have heard the arguments and perused the record.

9. The learned counsel for the petitioners has primarily relied on the case of *State of Haryana vs. Bhajan Lal (1992) SUPP (1) SCC 335* to contend that the allegations in the impugned FIR are false and



controverted and thus, the FIR is liable to be quashed. The relevant portion of the aforementioned judgment is reproduced below:

“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.”

“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 grudges.”

10. In addition to the case laws relied upon by the counsels, I find it pertinent to refer to the judicial dictum in ***JitulJentilal Kotecha v. State of Gujarat, 2021 SCC OnLine 1045***, pertaining to quashing of FIR under Section 482 Cr.P.C. The relevant portion is as under:

27. It is trite law that the High Court must exercise its inherent powers under Section 482 sparingly and with circumspection. In the decision in Jugesh Sehgal v. Shamsher Singh Gogi, (2009) 14 SCC 683 this Court has held that “[t]he inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice...”

28. The police have a statutory right to investigate a cognizable offence under Sections 154 and 156 of the CrPC. Sub-Section 2(i) of Section 173 of the CrPC provides that after the completion of investigation, the police officer in charge of the police station shall forward the final report to the Magistrate who is empowered to take cognizance of the offence alleged in the report. Before taking cognizance of the offence, the Magistrate has to apply their own mind and is not bound by the conclusions drawn by the police. In Pratibha v. Rameshwari Devi, (2007) 12 SCC 369, a two-



judge Bench of this Court has held that the High Court can neither direct an investigating agency to submit the investigation report before it nor can it quash a criminal proceeding under Section 482 relying on such a report when the report has not been submitted to the Magistrate.

...

30. We would like to clarify that a distinct position arises when the charge sheet has been filed before a Magistrate and proceedings under Section 482 are pending before the High Court. In such cases, the High Court must take into consideration the material collected during the investigation, as has been held by a two-judge Bench of this Court in Kaptan Singh v. The State of Uttar Pradesh (2021) 9 SCC 35, of which one of us (Justice DY Chandrachud) was a part. However, the High Court cannot place reliance on a “draft charge-sheet” which is yet to be placed before the Magistrate to quash the criminal proceedings under Section 482.

31. Recently, in Mahendra KC v. State of Karnataka, (2022) 2 SCC 129 this Court has reiterated the well-settled test to be applied by the High Court for the exercise of its powers under Section 482 for quashing an FIR:

“16...the test to be applied is whether the allegations in the complaint as they stand, without adding or detracting from the complaint, prima facie establish the ingredients of the offence alleged. At this stage, the High Court cannot test the veracity of the allegations nor for that matter can it proceed in the manner that a judge conducting a trial would, on the basis of the evidence collected during the course of trial.”

(emphasis supplied)

11. In the present case, it is observed that the investigation has not yet been completed, the charge-sheet has not yet been filed and non-bailable warrants have been issued against petitioner no. 1. A bare



reading of the FIR reveals that specific allegations against accused persons under Section 376/377/323 r/w 34 IPC have been levelled. In cases where allegations are specifically levelled against each accused, it is established law that courts shall proceed to ascertain as to whether a *prima facie* case exists against them. In cases as the present one, when investigation is pending and charge-sheet is yet to be filed, the situation is even a step premature. In the above case of ***Jitul Jentilal Kotecha (Supra)***, the Hon'ble Supreme Court held that FIR cannot be quashed when even the draft charge-sheet has not been submitted to the Magistrate. In the present case before this court, the current circumstances are procedurally even farther from culmination of investigation into charge-sheet as charge-sheet is yet to be prepared and filed as the investigation is under progress. Therefore, when no other evidence is yet available before the High Court other than specific allegations in the FIR against the accused persons which raise doubt about a *prima facie* offence, the power under Section 482 Cr.P.C. cannot be exercised to quash the FIR.

12. This Court is of the opinion that the present case is not covered by the cases relied upon. The judgment of ***Bhajan Lal (Supra)*** is to be applied in the rarest of rare case, which cannot be said about the present case. As for the other judgments placed on record, I am of the opinion that the case at hand is not covered by those judgments as I am not satisfied that the allegations in the FIR at this stage can be held to be false or vindictive.

13. Keeping in view the contents of the FIR along with supporting statements under Section 164 Cr.P.C. by the complainant, fact that



investigation is yet to be concluded and charge-sheet has also not yet been filed, the contention of the learned counsel for the petitioners that the allegations are baseless and false in nature appears to be premature for the purpose of quashing the FIR. Further, this Court notes that petitioner no. 1 has not joined investigation and non-bailable warrants have been issued against him, therefore it is not a fit case for quashing of FIR.

14. It is clarified that the observations made hereinabove shall have no bearing on the merits of the case during trial.

15. Petition stands dismissed in the above terms.

SWARANA KANTA SHARMA, J.

AUGUST 22, 2022/zp

