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

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Reserved on: 11.11.2022
Pronounced on: 22.11.2022

+ **CRL.M.C. 4774/2022 & CRL. M.A. 19237/2022**

HARDEEP

..... Petitioner

Through: Mr. Mukesh Kumar Sharma,
Advocate

versus

STATE

..... Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State with SI Amit

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Section 482 Code of Criminal Procedure Code has been filed by petitioner seeking quashing of Charge Sheet dated 22.09.2019 filed in FIR No. 280/2019 for the offences punishable under Sections 420, 120-B of Indian Penal Code, 1860 ("IPC") read with Section 66 Information Technology Act, 2000 ("IT Act").

2. Brief facts as disclosed in the petition are that on 22.09.2022, a secret informer came and informed one of the officer at Crime Branch/ISC that online recruitment of exam of group X and Y in armed forces were in process and few suspected persons will gather in room at Nehru Vihar, Near Mukherjee Nagar, Delhi to leak the question papers

and solve the same by sending the solutions to the candidates for some money. As per the information received through informer, a raiding party was constituted and SI Surender Rana along with staff conducted the raid by going to the room on 3rd floor of the building. When they entered the room, they found many persons inside. The accused persons were solving the examination paper of one candidate Naveen Poonia, who was appearing in exam at a lab in Jaipur, Rajasthan, by using the software of screen sharing namely Ammy Admin Software. All the seven persons were apprehended including the accused/petitioner were identified. Allegedly Naresh was the organizer of the racket. He was in contact with many other labs and with the involvement of his contacts in these labs, he used to get the software of screen sharing used for cheating which was installed in computers in labs. Laptops were procured by co-accused Anuksh which were used in commission of crime and candidates were also arranged by him who were willing to appear in exams.

3. During investigation, petitioner disclosed that he was preparing for government service exams up to the level of combined graduate level and he has a good command on every competitive exam. It was admitted that for greed of money, he had agreed to solve the exam papers for Rs 15,000/- to co-accused Naresh. A mobile phone was recovered from the possession of accused in which conversation of all the accused persons were recorded. There are details of exchange of messages and centers between them for arranging the candidates to clear the examination. Mobile phones of all the accused persons along with laptops were taken into police possession *vide* separate seizure

memos. A notebook containing incriminating details was also recovered from the possession of accused Naresh. To procure the Call Details Record (CDR), Router Modem and CAP details, notices under Section 91 Cr.P.C. were served upon the Nodal Officers of various mobile and internet network companies and replies to the same are still awaited. After receiving the FSL report, Investigation qua mobile Phones of accused persons will also be conducted. The question paper allotted to the candidate Naveen Pooniya was also sought from C-DAC and matched with the video recording of operation laptop done during the raid. During investigation, CPU used by the alleged candidate Naveen Pooniya was also seized by the officials of C-DAC from concerned lab i.e., Alpha Cyber Lab, Jaipur. The same was taken into police possession vide separate seizure memo from them. In this regard, case *vide* FIR No. bearing no. 280/19 was registered at Police Station Crime Branch, New Delhi for the offences punishable under Sections 420/120B IPC. Chargesheet has been filed and the same has been challenged before this Hon'ble Court.

4. Learned APP for the State strongly opposed the quashing petition and has drawn the Court's attention towards the statements under Section 161 Cr.P.C. and status report and submitted that since the next date of hearing is fixed for arguments charge on 02.12.2022, petitioner has filed the present petition for quashing the Charge Sheet to vexatiously delay and avoid trial.

5. Learned counsel for the petitioner stated that the petitioner has been falsely implicated on the basis of circumstantial evidence though he was going to the library when he was apprehended. There is no

evidence available on record to suggest any role played by the petitioner in the alleged offence.

6. 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.”

7. The learned counsel for the petitioner has primarily relied on the case of ***State of Haryana v. Bhajan Lal (1992) SUPP (1) SCC 335*** to contend that the allegations are false and concocted 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.”

8. After hearing argument and going through the record, this Court is of the opinion that the present case has been registered under Sections 420/120B IPC. The petitioner has been alleged to be part of

the criminal conspiracy for the commission of offence of cheating with the help of laptops and mobile phones. The laptops and mobile phones, a C.P.U. used by the alleged candidate have been seized and taken into possession by the police. The mere fact that the petitioner has been charge sheeted on the basis of circumstantial evidence cannot persuade this court to hold that the case does not prima facie constitute any offence or the allegations leveled in the FIR are absurd or inherently improbable on the basis of which no prudent person can reach a just conclusion that there is sufficient ground of proceeding against the accused. Specific role has been attributed to the petitioner wherein the disclosure statement of the co-accused reveals that he was willing to solve paper online for some money and he was present on 22.09.2019 with all other co-accused when raid was conducted. After completion of the entire investigation, chargesheet had been filed and case is listed for hearing arguments on charge before the learned Trial Court. It has been held in the case of ***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.”

9. Therefore, contrary to the contentions, the allegations leveled in the FIR cannot be termed as absurd or inherently improbable and therefore, the present case is not covered by the judgment of the Apex Court in case of ***Bhajan Lal (supra)***.

10. While exercising power under Section 482 Cr.P.C., the Court needs to be extremely cautious and has to use the power of quashing sparingly as per settled law by the Apex Court in ***Bhajan Lal's*** case, in which it is stated as under:

“We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

11. The allegations at this stage, cannot be held to be false or vindictive considering the material placed on record. At this stage, this Court cannot test the veracity of the allegations. There is nothing to suggest that there has been any abuse of the process of any Court or otherwise for this Court to exercise its jurisdiction under Section 482 Cr.P.C.

12. As stated earlier, the case is listed for arguments on charge on 02.12.2022 before the learned Trial Court, and the contentions raised before this Court can be raised at the time of arguments on charge by the petitioners. In view of the same, the petition has no merit and is dismissed. Pending application also stands dismissed.

13. Nothing expressed herein shall have any bearing on the merits of the case during trial.

SWARANA KANTA SHARMA, J

NOVEMBER 22, 2022/ns

