

CRM-M-9423 of 2023

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of decision: 22.02.2023

Sudhir Gulia and another

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Surender Saini, Advocate,
for the petitioners.

Ms. Gaganpreet Kaur, AAG, Haryana.

NAMIT KUMAR, J.(ORAL)

This petition has been filed by the petitioners under Section 482 Cr.P.C. for quashing of FIR No.0634 dated 13.10.2022 under Sections 323, 447, 506 IPC, registered at Police Station Kharkhoda, Sonapat along with all subsequent proceedings arising therefrom.

Brief facts of the case are that present FIR has been registered on the complaint of respondent No.2-complainant-Bimla stating therein that in the absence of complainant, petitioner No.1-Sudhir Advocate and Dharambir broke open the lock of their house and have given the same for residence to accused Meena and Rajesh. When the complainant visited her house, she found that accused Meena and Rajesh were present there. On asking, they said that petitioner No.1-

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Sudhir and Dhambir had rented out the said house to them. Respondent No.2-complainant had Rs.4,00,000/- in cash, jewellery of her daughter-in-law besides household items in the house, which are in possession of the accused persons. She further alleged that the abovesaid accused persons were not allowing her to enter into the house. When complainant party tried to enter her house, abovesaid accused persons gave beatings to them and threatened to kill them.

Learned counsel for the petitioners contends that it is a case of version and cross version. He further submits that present FIR is a counter-blast to FIR No.0442 dated 21.07.2022 under Sections 323, 34, 341, 506 IPC got lodged by the petitioners against the complainant party at Police Station Kharkhoda, District Sonipat. The bone of contention in the present case is a house measuring 134 sq. yards between two brothers i.e. Dhambir (father of petitioner No.1 and husband of petitioner No.2) and Bijender (husband of respondent No.2-complainant). He further submits that as per oral settlement, said house came to the share of Dhambir. He further submits that petitioner No.2 has also filed a civil suit against the complainant party regarding the aforesaid house. He further submits that Dhambir has already expired on 20.09.2022 and Meena has been declared innocent. He further submits that present FIR is vague and has been got lodged to settle personal grudge. No physical harm has been caused to anyone, therefore, no offence against the petitioners is made out. Hence, the FIR is liable to be quashed.

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Per contra, learned State counsel, who appears on receipt of advance copy of the paperbook, opposes the prayer for quashing of FIR against the petitioners stating that investigation in the present case is at initial stage, therefore, the same cannot be scuttled.

I have heard learned counsel for the parties and perused the record.

In the case of ***State of A.P. v. Golconda Linga Swamy (2004) 6 SCC 522***, after considering the decisions of this Court in the cases of ***R.P. Kapur v. State of Punjab AIR 1960 SC 866*** and ***State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335*** and other decisions on the exercise of inherent powers by the High Court under Section 482 Cr.P.C., in paragraphs 5, 7 and 8, it is observed and held as under:

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to

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unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.....

8. *As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : (1992) 4 SCC 305 : AIR 1993 SC 892] and Raghubir Saran (Dr.) v. State of Bihar [AIR 1964 SC 1 : (1964) 1 Cri LJ 1]. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for*

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only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognisance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/FIR has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding.”

The scope of interference by the High Court under Section 482 Cr.P.C. has been discussed by the Hon’ble Supreme Court in the case of ***State of Haryana v. Ch. Bhajan Lal 1992 Supp (1) SCC 335***, which reads as follows:

“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 serious

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of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give a 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 channelized 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.

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(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.

103. 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 F.I.R. 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.”

Hon’ble Supreme Court in ***Neeharika Infrastructure Pvt.***

Ltd. v. State of Maharashtra and others, 2021 SCC OnLine SC 315

held as under: -

40. In the case of Sanapareddy Maheedhar Seshagiri (supra), in paragraph 31, it is observed and held as under:

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*“31. A careful reading of the abovenoted judgments makes it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the Court. In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed for quashing FIR or complaint or restraining the competent authority from investigating the allegations contained in FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. **If the allegations contained in FIR or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm***

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of possible harassment which may be caused to the petitioner on account of investigation of FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Section 482 CrPC.”

X

X

X

43. While considering the issue involved, the rights and duties of the police to investigate into cognizable offences are also required to be considered.

44. The powers of investigation into cognizable offences are contained in Chapter XIV of the Code of Criminal Procedure. Section 154 deals with information in cognizable offence and Section 156 with investigation into such offence and under these sections the police have the statutory right to investigate into the circumstances of any alleged cognizable offence.

45. The Privy Council in the case of Khwaja Nazir Ahmad (supra) observed that in India, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities. It is further observed that it would be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. It is further observed that the functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of

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law and order is only to be obtained by leaving each to exercise its own function.

46. When the High Court would be justified in interfering with the investigation by the police, while exercising the inherent powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India, few decisions of this Court are required to be noticed and referred to, which are as under.

47. In the case of State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554, this Court, after referring to the precedents including the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), has observed in paragraphs 25 and 26 as under:

“25. There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounded duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the court requesting the court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine

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whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the court, and to award adequate punishment according to law for the offence proved to the satisfaction of the court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This had been recognised way back in King Emperor v. Khwaja Nazir Ahmad [AIR 1944 PC 18 : (1943-44) 71 IA 203, 213] where the Privy Council observed as under:

“In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities and it would, as Their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it, and not until then.”

26. This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its subsequent trial and it would appear that the power of the police to

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investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary.”

In view of the law laid down by the Hon’ble Supreme Court, this Court is not to look into the correctness and falsity of the version as contained in the FIR. The only fact to be seen is as to whether *prima facie* case on the basis of the allegations leveled by the prosecution is made out or not. In the present case, FIR was registered on 13.10.2022 and investigation is at very initial stage being carried out by the police, challan has not been presented as yet. The attribution of role to the petitioners shall be decided by the further course of action taken by the prosecution. As a sequel to discussion made above, no ground is, therefore, made out to quash FIR No.0634 dated 13.10.2022 under Sections 323, 447, 506 IPC, registered at Police Station Kharkhoda, Sonapat.

Dismissed.

22.02.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No