

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

Sr. No.115

CRM-M-43679-2022

Date of decision : 11.01.2023

Rajvir

.....Petitioner(s)

Versus

State of Haryana

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.R.S. Kundu, Advocate for the petitioner

AMAN CHAUDHARY, J.

The present petition under Section 482 Cr.P.C. has been filed for quashing of FIR No.67 dated 10.03.2022, registered under Section 18(C) of the NDPS Act, 1985, at Police Station Mundkati, District Palwal.

Briefly put, the case of the prosecution is that on 10.03.2022, SI Hanish Khan alongwith EHC Sahun, HC Rattan Lal, HC Maan Singh, HC Qutubddin and driver Ct. Shankar Lal while on patrolling duty at Dinghot Mitral Bridge, NH-19 received a secret information that Rajvir s/o Duli Chand r/o Mitral has illegally sown Barsham and Opium on his land and in which crops Doda opium has grown and can be seen on the spot. On this, when they reached at the spot, they found white flowers, pink flowers and Doda flowers standing in one field and opium being cultivated in heavy quantity. On the basis of the same, FIR in question was registered against the petitioner.

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case as it is a counter blast to the

FIR No.363 dated 09.06.2016, registered under Sections 302, 148, 149, 323, 341 IPC and Section 25 of the Arms Act at Police Station Sadar, Palwal against Sunil, Rajender, Sagar, Bahadur @ Kunwar, Rahul, Banti, Keshav, Narvir, Kamlesh and Ranjana, to create a pressure upon him to resile from his statement. Moreover, the petitioner is not the owner of the land, on which the said crops have been sown as he has already sold it to one S.G. Developers vide sale deed dated 19.11.2020. Thus, he prays for quashing of FIR in question.

On advance notice, Mr.Tanuj Sharma, AAG, Haryana has put in appearance on behalf of the respondent-State. He states that there are serious allegations against the petitioner, and as the investigation is going on, the FIR at this crucial stage cannot be quashed as per settled law. Thus, he prays for the dismissal of the present petition.

Heard.

Hon'ble The Supreme Court in the case of **Vinod Raghuvanshi Vs. Ajay Arora**, (2013) 10 SCC 581 has held that, "It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a stillborn child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein."

In M/s Neeharika Infrastructure Pvt. Ltd. vs State of Maharashtra and others Criminal Appeal No. 330 of 2021, decided on 13.04.2021, Hon'ble Apex Court has held thus:

“23. 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:

xx xx xx

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;

xx xx xx

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. xx xx”

In the case of **Ramveer Upadhyay and Another vs. State of U.P. and Another** 2022 SCC OnLine SC 484, Hon'ble The Supreme Court of India has held that, “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 Atrocities 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.”

Reverting to the case in hand, not only are there serious allegations levelled against the petitioner, but there are disputed questions of fact also involved as to the possession over the land in question is concerned wherein the crops, have been sown. It is only after completion of investigation, which is stated to be going on, can it be ascertained. In the present proceedings these issues cannot be decided. Moreover, the counsel for the petitioner has not been able to substantiate his allegation of the present FIR being a counter blast to the FIR lodged by him, inasmuch as, as to how the accused in the FIR lodged by him, can be connected with the police officials, who lodged the present FIR against him.

Considering the facts and circumstances of this case in the light of the principles as enunciated by Hon’ble The Supreme Court of India in the afore-referred judgments, this Court finds no merit in the present petition. Hence, the same is hereby dismissed.

11.01.2023
gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No