



\$~

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

%

Reserved on: 07.07.2023
Pronounced on: 12.07.2023

+ W.P.(CRL) 60/2023

JAVED QURESHI & ANR. Petitioners

Through: Mr. M.N. Dudeja and Mr.
Aditya Mishra, Advocates

versus

STATE GOVT OF NCT OF DELHI & ORS. Respondents

Through: Mr. Anand V. Khatri, ASC for
the State with Inspector Jitender
Singh, SI Ashok Kumar and SI
Avneesh Kumar

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioners seeking issuance of appropriate writ/order/direction to quash the FIR bearing no. 685/2022 registered at Police Station Jagatpuri, Delhi for offence punishable under Sections 429/34 of Indian Penal Code, 1860 ('IPC') and Section 4/7/8/12/13 of Delhi Agricultural Cattle Preservation Act, 1994 ('DACP Act') and to transfer the inquiry on the complaints of the petitioners from the Public Grievance Cell, Delhi Police to Vigilance Branch, Delhi



Police, or to Anti-Corruption Branch, Directorate of Vigilance, Government of NCT of Delhi.

2. Brief facts of the present case are that on 09.11.2022, an information was received *vide* DD No. 9A regarding slaughtering of cow, however, when the police had reached the spot i.e. House No. B-34, Gali No.5, Khureji Khas, Jagatpuri, Delhi-110051, they had found that blood was flowing from inside the above-mentioned house. Upon investigation, it was found that the petitioners herein were cutting and cleaning two animals. Crime team was called at the spot and during investigation, the petitioners informed the police that they had bought two baby buffalos from Ghazipur market and they were cutting them in pieces. When the police had asked them to produce valid license for the same, they could not produce it. During investigation, 'sharp iron knives' were also recovered from the possession of petitioners. Thereafter, an FIR was registered against petitioners under Section 429/34 of IPC and Section 4/7/8/12/13 of DACP Act as they had killed and were selling the meat of animals used for agriculture purposes.

3. Learned counsel for the petitioners states that the petitioners have not violated any law and they have been falsely implicated in the present case. It is stated that petitioners have valid MCD license to cut and sell buffalo meat at their shop and that they also had valid receipt of purchase of buffalo meat from Ghazipur meat market, both of which they had submitted to the concerned police officials. It is also stated that during the raid at the shop of petitioners, buffalo skin, bone or dung could not be found to substantiate the allegations leveled in the FIR and, therefore, there is nothing incriminating on record for them to face trial.



It is also stated that they are running their butcher shop in the area for the past 20 years and though there are several CCTV cameras installed near the petitioners' shop, there is no evidence to support the prosecution's case. It is stated that as per schedule of the DACP Act, only cows of all ages, calves of cows of all ages, bulls and bullocks have been included in the definition of agricultural cattle, and buffalo has been excluded from this category, and thus, petitioners are not liable to face any action under the said Act. It is also stated that the petitioners had filed a complaint against the police officials concerned and an inquiry had been conducted wherein conduct of two police officials was found suspicious in the present case, and they were accordingly transferred as they could influence or threaten the accused persons in the present case.

4. Learned ASC for the State, on the other hand, submits that the case is pending trial and is fixed for arguments on charge before the learned Trial Court. It is stated that the arguments raised before this Court are all probable defence of the accused. It is further stated the petitioners were found cutting animals inside their residence and not at the shop, and that the distance between the two is about 700-800 meters. It is stated that petitioners do not have any licence for cutting animals at their residence and, therefore, there are no grounds to quash the present FIR.

5. This Court has heard arguments on behalf of both parties and has perused the case file.



6. As the petitioner has approached this Court seeking quashing of the FIR registered against him, it becomes imperative to delve into the fundamental principles that govern the quashing of FIRs.

7. In *State of Haryana and Ors. v. Ch. Bhajan Lal and Ors.* 1992 SCC (Cri) 426, the Hon'ble Apex Court had laid down the principles to be considered while quashing FIRs. The same are reproduced as under for reference:

"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 series 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 the 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 channelised 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 F.I.R. 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 F.I.R. 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.

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."

8. The Hon'ble Supreme Court in *Neeharika Infrastructure v. State of Maharashtra* 2021 SCC OnLine 315, has analysed the precedents and culled out the relevant principles that govern the law on quashing of FIRs under Section 482 of the Cr.P.C. The Court has held as under:

"57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

- 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 cognizable offences;
- ii) Courts would not thwart any investigation into the cognizable offences;



iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

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 and a rarity 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. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

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. During or 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 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; and

xv)When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

9. After going through the record, it emerges that in this case, the report of the veterinary doctor reads as under:

"Sh. Ashok Kumar, SI of Police, Police Station Jagatpuri along with FIR No 685/2022 dated 09.11.2022 of PS Jagatpuri Dist. Shshadara, Delhi requested to examine the body Bars of found animal.

On examination it is found that

1. One body part (only head and four legs were found) of animal black in colour, other body part with visceral organs were missing. Head amputated from the neck region. All the four legs were amputated from Knee joint. The skin was intact on head and four legs.



2. One head amputated from the neck, Eyes of animal was opened. Tongue and teeth are intact.

3. One pair of front legs and One pair of hind legs of bifurcated hoofs from the knee joint. The skin was intact on the legs.

4. After examination, all the above parts (only head and four legs were found), Face of animal recognized as buffalo calf.

The post Mortem examination could not be conducted as there is no carcass only body parts without viscera were found at examination. So that, the above parts were handed over to the Police, Police Station Jagatpuri to discard the same rendering *** Gazipur Delhi.”

10. In the present case, the allegations against the petitioners primarily relate to killing, cutting and selling animals used for agriculture purpose without having any valid license for doing so. It has been contended on behalf of petitioners that petitioners had only bought buffalo meat from Ghazipur market and due to the same, the police officials were unable to recover any buffalo skin, bone or dung during the raid. This is however, contrary to the report of veterinary doctor wherein it is clearly mentioned that the material recovered from the spot consisted of body parts of an animal including one head which had been amputated from the neck with eyes open and tongue and teeth intact, and one pair of front legs and one pair of hind legs, but post-mortem could not be conducted as only carcass was recovered without any other body parts. The prosecution has also placed on record the photographs of the spot to substantiate recovery of such material.

11. Another argument of the learned counsel for the petitioners is that the petitioners herein were cutting, cleaning and selling the buffalo meat in their shop, whereas the prosecution has filed on record documents and



claimed that the investigation has revealed that they were doing so at their house at a residential complex. The licence issued by MCD in this regard authorizes the petitioners to cut or clean the meat, etc. not at their residence but in their shop. It is a triable issue as to whether such acts were being done by the petitioners in a residential complex or in the shop. In this Court's view, the writ jurisdiction of this Court cannot be invoked for the purpose of proving as to whether on the basis of material on record case, a *prima facie* case made out against the petitioners or not.

12. The other arguments of learned counsel for petitioners that the CCTV footage from the cameras installed near the shop of the petitioners were not collected is also a triable issue which can be answered by the prosecution at appropriate stage before the learned Trial Court.

13. This Court remains conscious of catena of judgments of Hon'ble Supreme Court and the guiding principles as to under which circumstances, the Court can use its jurisdiction and powers to quash the FIR. In view of the same, this Court holds that the contentions raised before this Court are probable defence of the accused/petitioners. Charges in the present case are yet to be framed. A perusal of the record also reveals that *vide* order dated 10.02.2023, the learned Trial Court had posted the matter to 26.04.2023 *vide* which the investigating officer was asked to explain as to how the case is made out against the accused persons, which shows that arguments on charge are yet to be heard and as to whether offence against petitioners is made out or not, is yet to be tested on the touchstone of the law of framing of charge.



14. Upon subjecting the facts of present case to the scrutiny of the principles laid down by the Hon'ble Apex Court in *Bhajan Lal (supra)* and *Neeharika Infrastructure (supra)*, this Court finds no grounds to conclude that the allegations against the petitioners are inherently absurd, improbable, or that the alleged incidents could not have occurred. Considering the facts, circumstances, and evidence available on record, it is evident that the present case does not fall within the guiding principles that govern the exercise of the extraordinary jurisdiction to quash the FIR.

15. Accordingly, the present petition stands dismissed, along with pending application if any.

16. It is, however, clarified that the observations made hereinabove are solely for the purpose of deciding present petition and the same shall not tantamount to an expression of opinion on the merits of the case.

17. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 12, 2023/ns