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

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Reserved on: 22.02.2023

Pronounced on: 06.03.2023

+ **CRL.M.C. 1249/2023**

SANJEEV KAKAR

..... Petitioner

Through: Mr. Navesh Kaushik, Mr.
Manoj Joshi, Mr. Anand Singh
and Ms. Shikha John,
Advocates

versus

THE STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Satish Kumar, APP for
State with Insp. Prakash
Chand, P.S. Kalkaji.
Mr. Satya Narayan Vashishth,
Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') seeking quashing of FIR bearing no. 368/2022, registered at Police Station Kalkaji, South East, Delhi for the offence punishable under Section 406 of the Indian Penal Code, 1860 ('IPC')
2. The brief facts of the present case are that on 02.03.2022, complainant Mr. Sandeep Behl, who is Director and Shareholder of

Printland Digital (India) Private Limited (*'the company'*), filed a complaint with police that the petitioner was appointed as an Additional Director on 28.05.2012 in the said company. On 03.04.2016, the company had purchased a car i.e., Creta 1.6 CRDi Auto SX+ Sleek Silver from Koncept Cars India Pvt. Ltd for official purpose. The company had availed loan facility of an amount of Rs.12,60,000/- from ICICI Bank and for smooth functioning of the company, the management of the company had decided to entrust the said car to the petitioner herein. It is further stated that on 22.02.2019, the petitioner had resigned from the directorship of the company. The authorized representative, being one of the directors of the company, while accepting the resignation of the petitioner had requested him to return the car no. DL 12CJ 6451 and other properties given to him at the time of appointment, but he had not returned the same despite various requests and reminders. It was further alleged that the company was forced to send an email to the petitioner for return of car and other properties of the company but he had neither replied nor returned the car and other valuable articles of the company. The company had already paid the entire loan amount to the bank. It is further alleged that the petitioner had misappropriated the car and other valuable properties of the company. On the basis of the complaint, present FIR was registered against the petitioner.

3. Learned counsel for the petitioner states that the facts mentioned in the present case do not make out a *prima facie* case against the petitioner for having dishonestly misappropriated the property of company. It is stated by the counsel for petitioner that the

impugned FIR has been filed maliciously by the complainant with an ulterior motive for wreaking vengeance; moreover, petitioner is having a civil litigation with the company. It is further stated that the petitioner has been constrained to retain the vehicle and is justified in law to do it, since the complainant is unlawfully withholding the amount of salary of the son of petitioner and has misappropriated the same. Hence, it has been prayed that FIR be quashed.

4. *Per contra*, learned APP for the State submits that no valid grounds have been made out for quashing of FIR by the petitioner and a cognizable offence is made out against him.

5. I have heard the rival submissions on behalf of both the parties as well as perused the material on record.

6. Since the petitioner herein has approached this Court seeking quashing of FIR which stands registered against him, it will be appropriate to first refer to and consider the principles governing quashing of FIRs.

7. The Hon'ble Supreme Court has laid down the guidelines for quashing of FIR in ***State of Haryana and Ors. v. Ch. Bhajan Lal and Ors. 1992 SCC (Crl) 426***, which are extracted herein-under:

“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 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 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. Before getting into the merits of the case, it is necessary to take note of the statutory provision whereby offence relating to criminal breach of trust has been dealt with. Section 405 and 406 of IPC are reproduced as under for reference:

“405. Criminal breach of trust. — Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

Explanation 1. A person, being an employer³[of an establishment whether exempted under section 17 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not] who deducts the employees contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have

dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2. A person, being an employer, who deducts the employees contribution from the wages payable to the employee for credit to the Employees State Insurance Fund held and administered by the Employees State Insurance Corporation established under the Employees State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

406. Punishment for criminal breach of trust. — Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

9. In *Deepak Gaba and Ors. State of Uttar Pradesh*, 2023 SCC Online SC 3, the law with regard to criminal breach of trust was explained as under by the Hon’ble Apex Court:

“13. Section 406 of the IPC prescribes punishment for breach of trust which may extend to three years or with fine or with both, when ingredients of Section 405 of the IPC are satisfied. For Section 406 of the IPC to get attracted, there must be criminal breach of trust in terms of Section 405 of the IPC.

14. For Section 405 of the IPC to be attracted, the following have to be established:

- (a) the accused was entrusted with property, or entrusted with dominion over property;
- (b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed

of that property or wilfully suffer any other person to do so;
and

(c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

15. Thus, criminal breach of trust would, *inter alia*, mean using or disposing of the property by a person who is entrusted with or otherwise has dominion. Such an act must not only be done dishonestly, but also in violation of any direction of law or any contract express or implied relating to carrying out the trust”.

10. Learned counsel for petitioner has mainly contended that there was some amount which was due towards petitioner from the side of complainant and that amount has been provided in tabular form as Annexure P/2. However, even if it is presumed that some amount was due towards the petitioner from the side of complainant, it did not give him the right to keep in his custody, the car in question and to refuse to return the same. The attention of this Court has been drawn to the legal notice sent to petitioner and the various reminders as well as messages sent to him for return of car. It is not case of petitioner that the car in question belongs to him or was bought by him. The same was also not registered in his name. Just because there was some amount which was to be paid by complainant to him, it did not give him any right to retain the car in question.

11. In this case, therefore, it is clear that car in question was in possession of petitioner in his capacity as Director. Pursuant to his resignation, petitioner was duty bound to return the car as it was

entrusted to him by virtue of his official post in the company. Considering the same at this stage, when the investigation is under way, this Court is not inclined to interfere with the same.

12. Applying the above mentioned principles, the facts would reveal that there is a strong suspicion and indication that *prima facie* case against the petitioner is made out since the car in question, which did not belong to present petitioner, had been kept by him and he was not returning the same despite legal notices, repeated requests and reminders.

13. Having given thoughtful consideration to the material on record, and considering the relevant principles governing quashing of FIR laid down by the Hon'ble Apex Court in ***Bhajan Lal*** (*Supra*) which is to be applied in the rarest of the rare cases, and the instant case cannot be held to fall within its ambit. This Court is not persuaded to reach a conclusion that the allegations leveled are absurd, highly improbable and that such incident could not have happened so as to direct quashing of the FIR.

14. In view thereof, this Court does not deem it fit to exercise the discretion of quashing the present FIR.

15. Accordingly, the present petition stands dismissed.

16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 6, 2023/kss