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

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***Reserved on: 03.08.2023
Pronounced on: 09.08.2023***+ **CRL.M.C.1370/2023****PRADEEP ALEXANDER & ANR. Petitioners****Through: Mr. Sitikanth Nayak & Mr.
Yash Ahluwalia, Advocates****versus****STATE (NCT OF DELHI) & ANR. Respondents****Through: Mr. Amol Sinha, ASC for
State, Mr. Khitiz Garg, Mr.
Ashvini Kumar, Advocates
with Inspector Awadhesh Kr.
Singh, PS EOW, New Delhi
Mr. S.K. Sharma, Advocate
for R-2****CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGEMENT****SWARANA KANTA SHARMA, J.**

1. The present petition has been filed on behalf of the petitioners under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') seeking quashing of FIR bearing no. 0184/2021 registered at Police Station Economic Offences Wing, New Delhi for offences punishable under Sections 406/420/120B of the Indian Penal Code, 1860 ('IPC').



2. Brief facts of the case as per the present FIR are that petitioners had persuaded the respondents to invest Rs. 3.50 Crores in a project, videlicet, American University of India incorporated on 25.08.2009 under Companies Act, 2013 and later had allegedly syphoned off the entire amount. The Hon'ble Madras High Court had quashed the FIR bearing no. 51/2018 *vide* order dated 12.04.2019 on the basis of amicable settlement between petitioner no.1 and third party. The respondent no.2/complainant had filed two complaints dated 22.01.2021 and 12.04.2021 against petitioners. The petitioners had received two notices dated 19.07.2021 and 29.07.2021 for preliminary investigation into the said complaints, respectively. Thereafter, on 03.12.2021, the present FIR was lodged against petitioners. The learned Trial Court had rejected an anticipatory bail application preferred by petitioners *vide* order dated 24.12.2021. The coordinate bench of this Court had dismissed an anticipatory bail moved by petitioners *vide* order dated 17.02.2022. Thereafter, learned Trial Court had granted interim protection to petitioners *vide* order dated 28.05.2022, however, the interim protection was vacated *vide* order dated 08.06.2022.

3. Learned Counsel for the petitioners states that respondent no. 2 had knowledge of the activities of the company that later converted into a trust and there was no intention to cheat respondents.

4. *Per contra*, learned counsel for the respondents states that petitioners/accused persons were actively involved in defrauding people. It is also stated that students have also been defrauded as fee



was collected from them. Further, the allegations levelled against petitioners are of serious nature.

5. This Court has heard contentions raised on behalf of both sides and has perused the material on record.

6. In light of the above-mentioned facts and circumstances, this court must look into the law laid down by the Hon'ble Supreme Court regarding the quashing of FIR in various judgments.

7. The Hon'ble Supreme Court has laid the guidelines for quashing the FIR in the *State of Haryana & Ors v. Ch. Bhajan Lal & Ors*. 1992 SCC (Cri) 426, which reads as 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 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. It is to be noted that in **Bhajan Lal** (*Supra*), the Hon'ble Supreme Court has cautioned that High Court, in exercise of powers under Section 482 Cr.P.C may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any court or



otherwise to secure the ends of justice, but such power should be exercised sparingly and that too in the rarest of rare cases.

9. The Hon'ble Supreme Court in its recent decision of *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 a First Information Report 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 482Cr.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 Neeharika Infrastructure (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."

10. After hearing arguments and going through the case file, this Court is of the opinion that in the present case, allegations against petitioners primarily are that petitioners, who were the Directors of AUI Higher Education company, had represented to the complainant that they are owners of five acres of land at Kodaikanal, Tamil Nadu which could accommodate 100 students and had offered 49 percent of shares in the AUI whereby complainant agreed to invest Rs. 5 Crores. The petitioner had also represented that an MoU dated 31.08.2009 had been signed with Bradley University, Illinois, USA for conducting management programs. However, it was later found out that the petitioner did not own any land. The complainant/respondent no. 2 had invested Rs. 3.50 Crore as capital investment on



30.04.2010 in the said project which the petitioner had allegedly siphoned off. The petitioners, on 17.08.2010, had first changed the name of company from American University of India Pvt. Ltd. To American University of India Higher Education Pvt. Ltd. Thereafter again on 29.06.2012, petitioners had converted the company into a trust, namely, Kodai International Business School Foundation (KIBSF). However, the said name change was not made in terms of bank account and petitioners had continued to obtain money from complainant/respondent no. 2. There are several dubious transactions reflected in the bank ledger regarding which the petitioners have failed to give explanation.

11. In the facts and circumstances of the case, when the principles enumerated above in the several judgements of Hon'ble the Supreme Court with regard to quashing of FIR are applied, it is clear that an FIR/complaint can be quashed only in the cases which are covered by principles laid down in abovementioned decisions. Applying the same principles to the present case, the allegations levelled by the respondent no. 2 that he had been cheated on account of promise to establish a university and the payment was made under that impression and on the promise that the university will be established in order to help hundreds of students in pursuing their dreams. The case at hand is yet to be investigated as it is at initial stage of investigation and the facts as disclosed in the FIR need to be investigated further by the police. Extraordinary power of the High Court under Section 482 of Cr.P.C. cannot be used to curtail the



investigation at its initial stage when even the charge-sheet has not been filed.

12. In view thereof, this Court does not find it a fit case to quash the abovementioned FIR. The chargesheet is yet to be filed in the present case. The present petitioner will have ample opportunity to address the arguments on charge before the learned Magistrate in case charge- sheet is filed.

13. Considering the overall facts and circumstance of the case, this Court is of the opinion that no ground for quashing of the FIR is made out and therefore, petition stands rejected.

14. A copy of this judgment be forwarded to the learned Trial Court and concerned Jail Superintendent for necessary information.

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 9, 2023/dk

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