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

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Reserved on: 10.05.2023
Pronounced on: 15.05.2023

+ **CRL.M.C. 1385/2023 & CRL.M.A. 5358/2023**

PRAVEEN KUMAR

..... Petitioner

Through: Mr. Sumit Nandwani, Advocate

versus

THE STATE & ANR.

..... Respondents

Through: Mr. Satish Kumar, APP for the
State
Mr. Sunil Kumar, Advocate for
R-2

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

CRL.M.A. 5358/2023 (delay of 02 days)

1. By this application under Section 5 of Limitation Act read with Section 482 of the Code of Criminal Procedure, 1973, the petitioner seeks condonation of delay of 02 days in re-filing the present petition. In view of the reasons stated in the application, the delay of 02 days in re-filing the present petition stands condoned.

2. Application stands disposed of.

CRL. M.C. 1385/2023

3. The instant petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') for quashing of proceedings arising out of FIR bearing No. 0720/2021 registered at Police Station Nand Nagri for offences punishable under Sections 323/341/506 of the Indian Penal Code, 1860.

4. Briefly stated, the present FIR was registered on 29.10.2021 on the complaint filed by the complainant/respondent no. 2 whereby it was stated that complainant had married the petitioner on 25.11.2007 as per Hindu rites and ceremonies, and due to constant physical abuse by the petitioner after the solemnisation of marriage, matrimonial disputes had arisen between the parties, and the matter had once been settled in mediation in December, 2012. She had alleged that on night of 17/18.10.2021, the petitioner had attacked her with a heavy steel pot from the kitchen and had hit her with it on her head and foot, and thereafter had also hit her with a *lathi* which had resulted in severe bruises and swelling on many of her body parts. Following this, the complainant had contacted her brother who had sent one of his acquaintances to take her from her matrimonial house. While she was on her way in the car, it is alleged that the petitioner had stopped her car and had brutally attacked her with a lathi, kicked and punched her till she had fallen on the ground and then had continued to throttle her with her chunni and had threatened to kill her. It was stated that subsequently, she had been taken to GTB Hospital where her MLC was prepared.

5. Learned counsel for the petitioner submits that matrimonial disputes are pending between the petitioner and complainant, and the

present FIR has been lodged at her behest in order to falsely implicate him and for wreaking vengeance against the petitioner. It is stated that the photographs taken from the CCTV footage would show that complainant was fit and fine on the day when she claims to have been beaten by the petitioner. It is further stated that there is a delay of 10 days in lodging FIR and no offence under Sections 323/341/506 of IPC is disclosed from a bare reading of FIR. It is also stated that a false MLC has been procured by the complainant since her brothers are doctors by profession and had previously worked in GTB Hospital. It is argued that since the entire FIR is absurd and the incidents alleged therein are inherently improbable, the same is liable to be quashed.

6. Learned APP for the State, duly assisted by learned counsel for respondent, argues that no case for quashing of FIR is made out since there are specific allegations levelled by the complainant against the petitioner. It is stated that she has given details of the alleged incidents which disclose commission of cognizable offences and her case is supported by her MLC.

7. This Court has heard arguments addressed by both sides and has gone through the case file.

8. Since the petitioner seeks quashing of FIR under Section 438 Cr.P.C., it will be relevant to discuss the principles laid down by the Hon'ble Apex Court in this regard in case of *State of Haryana v. Bhajan Lal* 1992 SCC (Cri) 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.

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 FIR 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.”

9. In *Neeharika Infrastructure v. State of Maharashtra* 2021 SCC OnLine 315, the Hon’ble Supreme Court has analysed the precedents and culled out the relevant principles that govern the law on quashing of an FIR under Section 482 of the Cr.P.C. The relevant observation are 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."

10. The Hon'ble Apex Court in *CBI v. Aryan Singh 2023 SCC OnLine SC 379* held that while exercising the powers under Section 482 Cr.P.C., the Court have a very limited jurisdiction and are only required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not".

11. In the present case, the contention of learned counsel for the petitioner that the allegations *per se* are improbable and absurd and have no merit, since the allegations levelled in the FIR are specific in nature that the complainant was beaten with a steel pot as she was hit with it by the petitioner. Further, another contention raised on behalf of petitioner was that the allegations levelled against him are not true since in case the complainant was beaten up brutally, the CCTV footage would have shown the injuries suffered by the complainant when she was leaving the house. However, this Court notes that the present FIR has been registered under Section 323 IPC. Whether the CCTV footage would have been able to capture any injury as to be covered under Section 323 IPC can only be seen and appreciated at the time of trial after appreciating the evidence before the learned Trial Court and at the outset, it cannot be said that the allegations are improbable and absurd, given the history of matrimonial disputes between the parties.

12. The other contention of the learned counsel for petitioner was that the brothers of the complainant being doctors, at some point of time were posted at G.T.B. Hospital, and therefore, it may be possible that on the date of incident, the MLC might have been prepared under their influence. This Court is unable to agree with this contention for the purpose of using its powers under Section 482 Cr.P.C. to quash the FIR since this is a contentious issue which can be raised and decided only at the time of trial of the proceedings, and it cannot be presumed that the MLC was prepared under the influence of some persons, who at some point of time, the time or day or year not been provided by the petitioner or not even known to the petitioner, were posted at the G.T.B. Hospital.

13. It was also argued that the complainant herself was guilty of her own wrong as she was not looking after the children etc.; she had lodged a false complaint against the petitioner; and that there were discrepancies in the statements of witnesses. Needless to say, these arguments have to be raised before the learned Trial Court either at the time of framing of charge or at the time of trial when the evidence will be led by the parties.

14. As already mentioned in the preceding paragraphs, this Court is guided by the guidelines laid down by the Hon'ble Supreme Court as to under which circumstances or cases, an FIR can be quashed. Considering the facts and circumstances of the case, this Court finds that the present case is not covered under the guidelines laid by Hon'ble Apex Court for quashing of FIRs in *Bhajan Lal (supra)* and *Neeharika Infrastructure Pvt. Ltd. (supra)* as the allegations levelled in the FIR cannot be termed as absurd or improbable.

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

16. Accordingly, the present petition stands dismissed. Pending application, if any, also stands dismissed.

17. It is, however, clarified that nothing expressed herein-above shall tantamount to be an expression on the merits of the case.

18. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 15, 2023/ns