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

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Reserved on: 03.08.2023
Pronounced on: 04.09.2023

+ **CRL.M.C. 268/2020 & CRL.M.A. 1142/2020**

ASHISH GUPTA

..... Petitioner

Through: Mr. Kanhaiya Singhal, Mr.
Ujwal Ghai, Mr. Prasanna, Mr.
Ajay Kumar & Mr. Om Saran
Gupta, Advocates

versus

STATE & ANR.

..... Respondents

Through: Mr. Naresh Kumar Chahar,
APP for State with SI Anuj M.
PS Rajouri Garden

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') on behalf of the petitioner seeking quashing of complaint no. 379/1/2014 dated 22.07.2014 under Section 354A/354B/323/34 of Indian Penal Code, 1860 ('IPC') and all other consequential proceedings emanating therefrom including the summoning order dated 01.12.2015 under Section 354A/354B/356/379 of IPC and order on point of charge dated 01.10.2019 passed by learned



Metropolitan Magistrate-02, West, Tis Hazari Courts, Delhi ('Magistrate').

2. Factual background of the present case is that the respondent no. 2 i.e. complainant had lodged a complaint *vide* DD No. 68B with the Police Station Rajouri Garden on 18.07.2014, addressed to the SHO, regarding an alleged offence which had taken place on 01.12.2013 at B-83, Tagore Garden, New Delhi. It was alleged that on 01.12.2013 about 7:30 A.M., the complainant with her mother had gone to the said premises where the accused persons namely Ashish Gupta i.e. the petitioner and his father i.e. Om Saran Gupta had verbally abused the complainant and they had also started physically man-handling the complainant and her mother. It was alleged that petitioner had touched the chest of the complainant and had also touched her body inappropriately and had also snatched gold chain of the complainant. It was further alleged that he had also torn the shirt which the complainant was wearing. It was stated that after this incident, she had immediately made a call on 100 number and had given a complaint to the police officials but no action had been taken on her complaint. It was thus requested that an FIR be registered under Sections 354A/354B/323/341/34 of IPC. A copy of the complaint was also forwarded to the Commissioner of Police.

3. Aggrieved by the non-registration of FIR by the police, four days thereafter, the complainant had filed the present complaint under Section 156(3) Cr.P.C. before the learned Magistrate seeking registration of FIR in respect of the alleged acts committed on



01.12.2013 by the accused persons. The learned Magistrate, *vide* order dated 23.07.2014 had directed the concerned SHO to file Action Taken Report (ATR).

4. The ATR in the present case was filed on 06.08.2014 by the concerned SHO. After perusing the contents of ATR and hearing the arguments on behalf of complainant, the learned Magistrate *vide* order dated 13.08.2014 had observed that no investigation was required to be conducted by the police and the complainant may prove her case by leading evidence in the Court. Accordingly, application under Section 156(3) Cr.P.C. was dismissed, and the matter was put up for recording pre-summoning evidence. The relevant portion of order dated 13.08.2014 is reproduced as under:

“...In the present case, it is alleged by the complainant that on 01.12.2013, her step father and step brother had outraged her modesty and also snatched her chain when she along with her mother had gone to B-83, Tagore Garden, Delhi. The offences are alleged under Section 354A/354B/323/341 read with Section 34 IPC. As per status report, brother of the complainant and alleged accused person no.1 Om Saran Gupta got married each other and they got separated due to differences. On 01.12.2013, DD No.20A qua quarrel was received at the PS but the same was filed as matter was compromised between mother of the complainant and the accused persons.

From the nature of the allegations, I am of the opinion that no investigation is required by the police and complainant may prove his case by leading evidence in the court. In this regard, reliance can be place on the case of Subhkaran Luharuka Vs. State & An. In Crl. M.C. No. 6122-23/2005 which was decided by our own High Court wherein it has been observed that.....

Keeping in view the nature of allegationsand the aforesaid established position of law, the application U/s 156 (3) Cr.PC is dismissed...”



5. On 10.03.2015, the pre-summoning evidence of CW-1 i.e. the complainant and CW-2 i.e. the mother of complainant was recorded and closed. The learned Magistrate, after hearing arguments on summoning, had dismissed the complaint against accused Om Saran Gupta i.e. father of present petitioner and had issued summons against petitioner *vide* impugned order dated 01.12.2015 for allegedly committing offences under Section 354A/354B/356/379 of IPC.

6. Pursuant to issuance of summons, the petitioner/accused had entered his appearance before the court of learned Magistrate. The CW-1 and CW-2 were examined in chief on 04.03.2017. Thereafter, the matter had been adjourned on multiple occasions, primarily due to repeated absence of CWs, and the cross-examination of CW-1 was partly conducted only on 05.04.2019. However, on 09.07.2019, the complainant had given a statement before the learned Magistrate that she was willing to settle the present case as other parties were also willing to settle all other connected cases pending between the parties. The accused/petitioner had also given a statement to the same effect. The order dated 09.07.2019 further records that both the complainant and petitioner had stated that they will approach this Court jointly for quashing of present case, and in view thereof, it was recorded by the learned Magistrate that there was no need to proceed with recording of pre-charge evidence on that day.

7. Perusal of trial court record, however, reveals that CW-1 was further cross-examined and discharged on 27.07.2019. CW-2 was partly cross-examined on 19.08.2019 and further cross-examined and



discharged on 04.09.2019. Thereafter, pre-charge evidence stood closed.

8. After hearing arguments on point of charge, the learned Magistrate *vide* impugned order dated 01.10.2019 had held that *prima facie*, there were sufficient grounds to frame charges against the petitioner under Sections 354A/354B/356/379 of IPC.

9. By way of present petition, the petitioner has sought setting aside of summoning order dated 01.12.2015 and order on point of charge dated 01.10.2019 as well as quashing of the complaint case.

10. Learned counsel for the petitioner argues that no such incident as alleged had ever taken place on 01.12.2013 and the complaint dated 18.07.2014 filed with the police and complaint dated 22.07.2014 filed before the learned Magistrate is false and fabricated. It is stated that the learned Magistrate had called for an ATR and the police had informed the Court that no complaint had been received on behalf of the complainant regarding alleged incident of 01.12.2013, contrary to what she had stated in her complaint before the Court which was filed only on 22.07.2014. It is stated that the learned Magistrate has committed an error as there was unexplained delay in lodging the complaint. The learned Magistrate also did not appreciate that neither any phone call was made at 100 number by the complainant, nor any written complaint was filed by the complainant on 01.12.2013 with the concerned police station.

11. The actual reason for implicating the petitioner in the present case, as described by the petitioner and argued by the learned counsel is



that on 05.12.2013, when the petitioner was vacating his rented premises, the complainant and her mother had come there and had stolen petitioner's complete cheque book of 50 leaves. It is stated that on 26.04.2014, 29.04.2014 and 01.05.2014, seven SBI Bank SMS were received by the petitioner regarding dishonour of 07 cheques of Rs. 10,00,000/- belonging to the same series which shocked him. It is stated that the petitioner had made a complaint to the police authorities for registering an FIR under Section 406/424/68/428/34 of IPC against the complainant/respondent no. 2, her mother, and other persons namely Surjit Singh, Satir Hussain and Satpreet Kaur that they had stolen the chequebook of the petitioner and had misused seven cheques. Thereafter, he had filed a complaint no. 326/2014 under Section 156(3) Cr.P.C. before the Magistrate on 12.05.2014. It is stated that in retaliation to this complaint lodged against her, the mother of the complainant had concocted a false story and while giving her statement to ASI Gurucharan Gill who was conducting enquiry pursuant to complaint filed by petitioner against complainant's mother, she had alleged that the petitioner herein and his father had misbehaved and assaulted her and her daughter on 01.12.2013, however, the entire statement is completely silent on the specific acts which the complainant had later on mentioned in the present complaint. It is stated that it was only after the police had recorded this statement of complainant's mother in connection with the complaint filed by petitioner herein, that four days thereafter, the complainant on 18.07.2014 had lodged a complaint at P.S. Rajouri Garden, Delhi stating that no action had been taken on her previous complaint. It is



thus argued by learned counsel for the petitioner that the present complaint is an example of abuse of process of law and malice on part of complainant as it is a counterblast to the criminal complaint which was filed by the petitioner against the complainant herein, her mother and some other persons.

12. It was also argued on behalf of petitioner that mother of respondent no. 2 on 27.28.11.2013, at about 10:00 A.M., along with respondent no. 2 and two other persons had come to their residence at B-83, 2nd Floor, Tagore Garden where the petitioner resides with his parents, brother and his sister, and they had attacked the petitioner and had extended threats to kill him. The petitioner herein had called a PCR, however, police had taken no action against the complainant and her mother. Thereafter in furtherance of their criminal conspiracy, mother of complainant and the complainant along with one Sardar Surjit Singh on 01.12.2013, at about 09:00 A.M., had again come to their residence and had attempted to forcibly enter their house, but the petitioner and his family had made call to the police. It is stated that the father of the petitioner and the petitioner did not allow the complainant and her mother to enter their house till the police had come to the spot and, therefore, no incident as alleged in the complaint could have occurred. It is also stated that a story was made by complainant that her mother had filed a complaint at P.S. Rajouri Garden, Delhi against father of the petitioner. It is stated that the police had illegally forced the father of the petitioner to give in writing that he will not take any legal action against the complainant and her mother since the mother had withdrawn her complaint on 01.12.2013. It is also stated that the



petitioner had filed an RTI before the competent authority to enquire as to whether any written complaint had been lodged by the complainant's mother with the police but the authority had informed no written complaint was received at the police station except the statements of complainant's mother and petitioner's father.

13. It is also stated that on the same day when the present complaint was filed before the learned Magistrate i.e.22.07.2014, the mother of complainant had also lodged a complaint at P.S. Punjabi Bagh against petitioner's father under Sections 376/379/420/406/494/323/506 of IPC and had filed a complaint under Section 156(3) Cr.P.C. before the Magistrate on the next day i.e. 23.07.2014. However, she had then withdrawn the complaint on 22.08.2014 on the ground that it was not as per instruction. But on the same day i.e. 22.08.2014, she had got another FIR registered at P.S. Vikaspuri against petitioner's father under Section 498A/406/34 of IPC and had also filed a complaint under Protection of Women from Domestic Violence Act, 2005. It is stated that though the mother of respondent no. 2 had contended that she had got married to petitioner's father on 25.12.2007 after getting divorce from her earlier legally wedded husband, in reality, she had got divorce from her earlier husband only on 07.08.2010.

14. It is argued that it is apparent from the record that the present proceedings are abuse of process of law and that the complaint was lodged by the complainant with *mala fide* intention. It is, therefore, stated that the summoning order in this case and the charge framed on the basis of it is a clear misuse of process of law and thus, the



complaint no. 379/1/2014 filed under Section 156(3) Cr.P.C. by the complainant which culminated into Case No. 9446/2016 and all the consequential proceedings thereto be quashed.

15. A perusal of record reveals that respondent no. 2/complainant was served in this case on 10.08.2021, however, she did not appear despite service. Thereafter, court notice was also issued to her, but even after issuance of such notice, no appearance was marked on behalf of respondent no. 2 before this Court. Further, neither any reply nor any written submissions have been filed on behalf of her.

16. Therefore, this Court had heard arguments on behalf of petitioner and after filing of written submissions on behalf of petitioner, the judgment in this case had been reserved.

17. This Court has considered the material placed on record by the petitioner and perused the trial court record.

18. In this present case, this Court notes that the complainant/respondent no. 2 has levelled specific allegations against the petitioner herein had pushed her and touched her chest with bad intention and had also snatched her gold chain. It is also alleged that petitioner had threatened the complainant to disrobe her.

19. After recording of pre-summoning evidence of both CW-1 and CW-2, the learned Magistrate had summoned the petitioner herein for allegedly committing offences under Sections 354A/354B/356/379 of IPC. The relevant portion of summoning order dated 01.12.2015 reads as under:



“...It is alleged by the complainant that on 01.12.2013 accused No. 2 Ashish Gupta pushed her and touched her breast with bad intention and also snatched her gold chain. It is also alleged that accused Ashish Gupta also threatened the complainant to disrobe her. Complainant has examined herself as CW and Nishi Gupta as CW2 and both the witnesses have deposed on the lines of her complaint. Therefore, considering the pre-summoning evidence and material available on record, there is enough material available on record to summon accused Ashish Gupta as an accused for committing offences under section 354(A)/354(B)/356/379 IPC. No record is available in pre-summoning evidence against accused Om Saran Gupta. Therefore, complaint against accused Om Saran Gupta stands dismissed under section 203 CrPC.

Issue summons to accused Ashish Gupta on filing of PF for next date of hearing...”

20. After recording of pre-charge evidence and cross-examination of the complainant witnesses, the learned Magistrate had passed the order on point of charge dated 01.10.2019, relevant portion of which reads as under:

“7. The learned Defence counsel for the accused during the course of the arguments on charge had pointed out certain contradictions in the depositions of the CWs towards the mode and delay in lodging of the complaint made to the police. The contradictions that were pointed out by the defence can of course be considered but the same can be considered only at the time of the trial. **At this stage, we merely have to see whether on the basis of the complainant case a prima-facie case for framing of charge is made out or not. This court cannot go into the aspect of weighing and sifting the complainant case or certain contradictions in its minute particulars that may appear here and there. It is only at the time of trial that it can be decided as to whether such contradictions are minor in nature so as not to corrode the case of the complainant; or are major in nature going to very roots of the prosecution case.**

8. Both the CWs stood their ground during their cross examination at length by the Ld. Defense counsel and there is nothing in their cross-examination so as to discard or disbelieve their case at the stage of charge itself. It is always to be remembered that at the



stage of framing charges, the trial has not yet commenced. Accordingly, only the sufficiency of ground for proceeding against the accused on a general consideration of materials placed before the Court by the Investigating Police Officer or the complainant are to be considered. Truth, veracity and effect of the evidence which the prosecution or the complainant proposes to adduce are not to be meticulously judged. Same standard in appreciation of evidence as would be applied at trial to find whether accused is guilty is not exactly to be applied at the stage of consideration of framing a charge. At that stage even a very strong suspicion founded on materials before the Court which leads the Court to form a presumptive opinion as to existence of factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence. (See Supdt. And Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja AIR 1980 SC 52; Nitaipada Das Vs. Sudarsan Sarangi & Anr. 1991 CriLJ 3012).

9. In view of the testimonies of CWs, material available on record and the facts and circumstances of the case, prima-facie there are enough grounds to frame charges against accused namely Ashish Gupta for offence u/s 354A/354B/356/379 IPC. Ordered accordingly..."

(Emphasis supplied)

21. A perusal of records reveal that complainant i.e. CW-1 has consistently taken the same stand and reiterated her allegations in the complaint dated 18.07.2014 lodged with the police, complaint and application under Section 156(3) of Cr.P.C. before the learned Magistrate on 22.07.2014, pre-summoning evidence recorded on 10.03.2015 as well as in her pre-charge evidence recorded on 04.03.2017 before the learned Magistrate. CW-2 has also supported the version of CW-1 in her pre-summoning and pre-charge evidence. As noted by learned Magistrate, no discrepancies of such a nature were pointed out by the learned Defence counsel in the statements of the CW-1 and CW-2 that would discard the case of complainant at the



stage of charge itself. Even before this Court, no arguments were addressed in this regard.

22. The Three-judge bench of Hon'ble Apex Court in case of *Neeharika Infrastructure (P) Ltd. v. State of Maharashtra* 2021 SCC OnLine SC 315 has analysed the law on quashing of criminal cases and the relevant observations in this regard are as under:

“...36. In the case of *Kurukshetra University (supra)*, this Court observed and held that inherent powers under Section 482 Cr. P.C. do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice; that statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. In the case before this Court, the High Court quashed the first information report filed by the Kurukshetra University through Warden and that too without issuing notice to the University, in exercise of inherent powers under Section 482 Cr. P.C. This Court noticed and observed that the High Court was not justified in quashing the FIR when the police had not even commenced investigation into the complaint filed by the Warden of the University and no proceedings were at all pending before any Court in pursuance of the FIR.

37. Then comes the celebrated decision of this Court in the case of *Bhajan Lal (supra)*. In the said decision, this Court considered in detail the scope of the High Court powers under Section 482 Cr. P.C. and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:

“102.(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 FIR 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 FIR 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 Act concerned (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 Act concerned, 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.”

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.

23. As regards the contentions that complainant had not filed any complaint with the police earlier with respect to incident dated 01.12.2013 and that the mother of complainant had withdrawn her complaint on the same day, this Court has taken note of the statements of petitioner's father and complainant's mother which were recorded by the police officials on 01.12.2013. The same were referred to by the police in the ATR filed before the learned Magistrate and have also been placed on record by the petitioner before this Court. The statement of the petitioner's father recorded on that day mentions that the complaint filed by complainant's mother "*with content of Section 354B against me and my son Ashish Gupta, I shall not proceed into any legal action in the said complaint as the complainant has withdrawn the complaint*". This reflects that there were some complaint which had been lodged by complainant's mother with the police on the same day containing allegations qua offence punishable under Section 354B against petitioner herein and his father, but the same had been then withdrawn by complainant's mother after consulting her family members as written in the statement of complainant's mother.



However, records reveal that both the parties have disputed their statements, and while the complainant's mother has stated in her evidence before the learned Magistrate that her signatures had been obtained on some blank papers by the police officials, the petitioner and his father on the hand state that their signatures were forcefully obtained by the police officials on the said statement. Be that as it may, at this stage, this Court does not deem it fit to enter into the realm of such disputed question of facts, especially when specific allegations have been levelled against the petitioner herein by the complainant.

24. Further, as far as present case being a counter-blast to petitioner's complaint against complainant, her mother and other persons is concerned, this Court is of the opinion that existence of other disputes between the parties cannot be the ground to arrive at a conclusion that the present case has been instituted with malice and the incident as alleged could not have taken place.

25. The learned Magistrate *vide* impugned order on charge dated 01.10.2019 has already observed that at the stage of charge, the primary concern of the Court is to determine whether, based on the complainant's case, there exists a *prima facie* basis for framing charges and the discrepancies if any in the case of complainant and the defence raised by the accused can be appreciated at the stage of trial. Needless to say, the petitioner shall be at liberty to raise all the contentions raised in the present petition at appropriate stage of trial before the learned Magistrate.



26. Thus, this Court finds no reasons to interfere with the impugned orders dated 01.12.2015 and 01.10.2019, and to quash the impugned complaint case.

27. Accordingly, the present petition alongwith pending application stands dismissed.

28. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.

29. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 4, 2023/zp