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

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Reserved on: 11.01.2023

Pronounced on: 17.01.2023

+ **CRL.M.C. 590/2020**

DEEPAK KHANNA & ORS.

..... Petitioners

Through: Mr. Raghav Mendiratta,
Advocate

versus

STATE, NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Manoj Pant, APP for State
with SI Seetaram, P.S. IGI
Airport.

Mr. R.K. Dhawan, Mr. Vinod
Teng and Ms. Vanshika
Agarwal, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The petitioners herein have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") for quashing of FIR bearing No. 0106/2019 registered at Police Station ("PS") I.G.I Airport, New Delhi, for offences punishable under Sections 406/420/34 of the Indian Penal Code ("IPC").

2. The brief facts of the case are that a written complaint was filed by the Complainant/Respondent No. 2 before PS I.G.I Airport,

New Delhi, wherein the complainant had stated that she works in Air India at a senior level. It was alleged that the petitioners herein, who were friends of her husband, used to meet the complainant at Delhi Airport. In 2013, petitioners met the complainant and induced her to invest in a property in Hoshiarpur (Punjab), despite her reluctance to invest. After that, the complainant and her husband visited Hoshiarpur, where the petitioners showed them some properties/land. It was stated that complainant got entangled in the inducement and got ready to invest her hard-earned money in the land, and paid a total sum of Rs 34,45,114/- (including Rs 16,75,114/- as RTGS & NEFT transfer and Rs 17,70,000/- in cash) to petitioner no. 1, i.e., Deepak Khanna to purchase the land admeasuring as 13 Kanal 18 Marlas. The said land was purchased via a sale deed executed on 27.09.2013 between the seller, namely, Sh. Karnail Singh (Deceased), and the purchaser, i.e., petitioner no. 1, for total consideration of Rs 19,12,000/-. It is further stated that petitioner no.1 induced the complainant to execute a General Power of Attorney ('GPA') dated 07.04.2014 in favour of him and one Mr Anil Kumar, authorizing the said persons to look after the property. It was further stated that in 2014, petitioner no. 1 informed the complainant that they had started to sell the land in small plots to the buyers and in accordance with the same, the sale consideration of Rs 4,40,000/- was given by petitioner no. 1 to the complainant's husband in cash. In 2018, the complainant was informed that some plots from the land of the complainant were sold without her knowledge, and upon inquiring from the petitioners, none replied or answered her calls. It

was also stated that at the time of execution of GPA dated 07.04.2014, petitioner no. 1 and the complainant had decided that the consideration amount against the sale of the lands in small portions to other buyers would be transferred into the bank account of the complainant.

3. Upon receiving the complaint, an inquiry was conducted by the police. After obtaining legal opinion from the prosecution branch, an FIR bearing No. 106/2019 was registered for offences punishable under Sections 406/420/34 of IPC at P.S. IGI Airport.

4. Learned counsel for the petitioners states that the contents of the FIR are false and frivolous and that the complainant, her husband and her brother-in-law came to Hoshiarpur and showed interest in buying a property. It is stated that petitioner no. 1 was paid Rs. 12 lakhs via RTGS by complainant to purchase the land admeasuring 13 kanals and 18 Marlas in the village Lohar Kangana, District Hoshiarpur, Punjab and the deal was finalized with one Karnail Singh for a total consideration of Rs 19,12,000/- in the complainant's presence. It is further the case of petitioners that on 27.09.2013, i.e., when the sale deed was to be executed, the complainant called petitioner no.1 and told him to execute the sale deed in his name and to pay the remaining amount since she could not visit due to her busy schedule at work. It is stated that the relations between both the parties were good at the time of execution of the sale deed and that petitioner no. 1 made the payment and executed the sale deed in the complainant's name. After that, the complainant transferred an amount of Rs 1.75 lakhs to petitioner no.1 and dues owed by the

complainant are Rs 6,45,000/-. It is averred that the complainant, her husband and brother-in-law came to Hoshiarpur and met with the petitioner no. 1 and discussed that they wanted to sell small portions of the purchased land to other buyers and the complainant requested the petitioner to carry out work on the plot in order to sell the same. Thereafter, petitioner no. 1, as per the discussions with the complainant, executed the work, and a total amount of Rs. 10,45,000/- was to be paid by the complainant. It is stated that on 07.03.2014, the complainant and her husband visited petitioner no.1 and raised a concern that since they reside out station and if a general power of attorney can be executed between the complainant and the petitioner no.1 so, that petitioner no.1 can continue to sell portions of the land purchased by the complainant. Accordingly, a general power of attorney was registered on 07.03.2014 in favour of petitioner no.1 and Anil Kumar to sell small plots to recover the amount due.

5. After that, petitioner no.1 sold the said land to eight people and deduced the remaining amount payable by the complainant. Further, as stated, petitioner no.1 had to pay Rs 16,36,375/- to the complainant on account of the sale of small plots from the said land. On 17.01.2016 Complainant, her husband and Dewar came to Hoshiarpur and requested accused to show them some residential property and the complainant wanted to buy a residential plot and for the same, complainant wanted to get the remaining property, i.e., from the said land, transferred to petitioner no.1. The same was executed.

6. Petitioner no.1 executed a sale deed from his wife and sister-in-law of a said residential plot (Kothi) in Bajwara, Punjab, in the complainant's name. The sale deed of the Kothi was executed on 20.01.2016, for which the petitioner had to bear an expense of Rs 1 lakh. The complainant had further demanded construction of a double storey on the said residential plot, which was completed by petitioner no.1 in good faith. Furthermore, the complainant is due to pay an approximate amount of Rs. 10 lakhs to petitioner no.1. Petitioner No.1 tried calling the complainant several times. Still, she never answered the calls and lodged an FIR against the petitioners herein.

7. Learned Counsel for the petitioners states that petitioner no.3 is a resident of New York and has been staying in the USA for the last 22 years and never came to India after 2017, and has been falsely implicated in the FIR. The learned counsel also states that petitioner no. 2 never met with the complainant and that petitioner no. 2 doesn't even know her. It is vehemently submitted that the present dispute is civil in nature and the machinery of criminal law is being misused by the complainant. Learned Counsel for the petitioners also submits that the Police Station IGI Airport has no jurisdiction to deal with instant case as all the transactions have taken place in Punjab.

8. *Per contra*, learned APP for the State, while opposing the present petition submits that there is one more criminal case registered against the petitioners herein bearing FIR No. 37/2019 dated 18.03.2019 at PS Hoshiarpur for offences punishable under Section 420/120 (B) IPC.

9. Learned APP for the state further submits that statement of an independent witness, namely Harinder Kaur, was recorded, who was working as a Deputy Manager at Air India, who stated that the petitioners herein used to regularly visit the complainant at Terminal 3 of IGI Airport during January – May 2013 in relation to the property in dispute. It is also stated that further investigation in the case is required since prima- facia case is made out against the petitioners herein and that the prosecution shall conclude the investigation, and the report shall be filed before the concerned court.

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

11. 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.

12. The Hon'ble Supreme Court has laid the guidelines for quashing the FIR in the ***State of Haryana and Ors. v. Ch. Bhajan Lal and 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 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."

(Emphasis supplied)

13. 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 Article 226 of Constitution of India or 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.

14. Considering the facts and circumstances of the present case, this Court finds that the present case is not covered under the decision of ***Bhajan Lal (Supra)***, as the case in hand does not fall within the criteria mentioned in the said case. Bare perusal of the FIR makes it clear that there were some RTGS & NEFT transactions from the account of the complainant to that of the petitioner no.1. It is the case of prosecution that there is an independent witness namely, Harminder Kaur whose statement has been recorded under Section 161 Cr.P.C wherein it has been stated that the petitioners regularly met the complainant at Terminal 3 IGI Airport during the year 2013 and further used to discuss about the property deals. Furthermore, two more independent witnesses namely, Vishal Kharbanda and Rohit Sharma have also given their statements that a total of Rs 17,70,00/- was given by the complainant to the alleged

persons. The allegations made in the FIR are sufficient grounds for the police to further investigate the matter against the accused. This Court is of the view that by applying principle no. 1, 3 and 5 laid down in the case of ***Bhajan Lal (Supra)***, as reproduced in para 12 hereinabove, it can be safely said that at the present, the FIR does not call for interference as the same is at the stage of investigation. It is the statutory duty of the police/investigating officer to enquire and investigate into the allegations made in the FIR and to find out the truth.

15. The Hon'ble Supreme Court in the case of ***Rakhi Mishra V. State of Bihar and Others***, (2017) 16 SCC 772 has held that the High Courts can use its power under Section 482 of Cr.P.C. only in exceptional circumstances when a prima facie case is not made out against the accused.

16. In the case of ***Sanapareddy Maheedhar Seshagiri v. State of A.P.***, (2007) 13 SCC 165, it has been observed by the Apex Court as under:

"31. A careful reading of the above noted judgments makes it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the Court. In dealing with such cases, the High Court has to bear in mind that judicial intervention at the

threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed for quashing FIR or complaint or restraining the competent authority from investigating the allegations contained in FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in FIR or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Section 482 CrPC."

(Emphasis Supplied)

17. 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 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."

(Emphasis Supplied)

18. Even considering the relevant principles governing quashing of FIR laid down in ***Neeharika Infrastructure (supra)***, this Court is of the view that as per points (iv), (v), (vi), (vii) and (xii) laid down in ***Neeharika Infrastructure (supra)***, as reproduced in para 17 hereinabove without getting into the merits of the allegations made in the FIR, police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on uninvestigated facts that the complaint/FIR does not deserve to be investigated and that it amounts to abuse of process of law. Needless to say, during or after investigation, if it is found that there is no substance in the complaint made by the complainant, the investigating officer may file an appropriate report before the learned Magistrate which may be considered by the learned Magistrate in accordance with the law.

19. Considering the overall facts and circumstances of the case and the allegations and material available on record, this Court finds no reason quash the FIR bearing No. 0106/2019 registered at Police Station I.G.I Airport, New Delhi at the present stage of investigation.

20. Accordingly, the present petition stands dismissed.

21. It is however, clarified that the observations made by this Court are only for the purpose of deciding the present petition and shall have no bearing on the merits of the case during the trial

SWARANA KANTA SHARMA, J

JANUARY 17, 2023/ns

