



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

% ***Judgment Reserved On: 6th September, 2023***
Judgment Delivered On: 18th September, 2023

+ **CRL.M.C. 2388/2023 and CRL.M.A. 9073/2023 (stay)**

RAMEZ FAQIRI

..... Petitioner

Through: Mr.Siddharth Agarwal, Senior Advocate with Mr. Chirayu Jain, Mr.Vishwajeet Singh and Mr.Vinayak Chitale, Advocates.

versus

STATE OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mr.Ritesh Kumar Bahri, APP for State.

Mr.Parth Goswami, Advocate for R-2 and R-3

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

1. The present petition has been filed seeking quashing of:
 - (i) FIR No.261/2021 dated 10th September, 2021, under Sections 354/509 of the Indian Penal Code, 1860 (IPC) registered at Police Station Greater Kailash;
 - (ii) Charge sheet dated 2nd December, 2021 and;
 - (iii) Consequential proceedings pending before the learned Chief Metropolitan Magistrate, South East, Saket District Court, New Delhi.
2. The aforesaid FIR was registered on 10th September, 2021, based on the complaint of the respondent no.2 (complainant) that the petitioner had

Signature Not Verified
 Digitally Signed By: DINESH KUMAR
 Signing Date: 18/09/2023 12:36:16



physically abused/molested her and the respondent no.3 on 13th July, 2021. Subsequently, the charge sheet was filed against the petitioner on 2nd December, 2021, under Sections 354/509 of the IPC.

3. Notice in the present petition was issued by the predecessor bench on 11th April, 2023. *Vide* order dated 21st August, 2023, passed by this Court, an early hearing application filed on behalf of the petitioner was allowed and the Trial Court was requested to pass an order on charge.

4. On 4th September, 2023, an order on charge was passed by the learned Trial Court wherein it was stated that on a *prima facie* view, the offences under Sections 354/509 of the IPC are made out against the petitioner and therefore, a trial was necessitated. However, noting that no investigation has been done qua the allegations of forgery, cheating and criminal breach of trust, the police was asked to explain the investigation done and the delay in filing of the charge sheet. Consequently, the matter was posted for framing of charge on 24th November, 2023.

5. It is the case of the petitioner that the petitioner is an Afghan refugee and was working as a receptionist in the clinic of the respondent no.2, who is a gastroenterologist. The petitioner's role was to get Afghan nationals as patients for the doctor, as he was an Afghan refugee himself.

6. A written complaint was given by the respondent no.2 to the police on 13th July, 2021, in which the respondent no.2 accused the petitioner of theft, forgery and misbehaviour.

7. Thereafter, the petitioner left the employment of the respondent no.2 and joined another gastroenterologist at his clinic in Panchseel Park.

8. When the respondent no.2 came to know about the petitioner joining a competitor, she made another complaint dated 10th September, 2021, where



she made allegations of the petitioner having molested her and the dietician working with her, the respondent no.3.

9. Senior Counsel appearing on behalf of the petitioner has made the following submissions:

- I. The present petition is frivolous and vexatious and has been filed by the respondent no.2 in order to harass the petitioner for joining a competitor and has been given colour of a sexual offence.
- II. A perusal of the complaint filed by the respondent no.2 on 13th July, 2021 and the subsequent complaint filed on 10th September, 2021, would show that the respondent no.2 has materially changed the nature of the allegations against the petitioner. While the earlier complaint was filed alleging forgery and theft, the subsequent complaint was filed alleging molestation.
- III. The clinic of the respondent no.2, where the petitioner was employed, had comprehensive CCTV coverage, with 14 cameras deployed to cover every part of the clinic. If the petitioner had indeed molested the respondent no.2 or the respondent no.3, it would have been captured by the CCTV coverage. Despite the CCTV footage being in the possession of the respondent no.2, she did not make any attempt to share the same with the police and neither has the police sought the same.
- IV. This Court has the power under section 482 of the Code of Criminal Procedure, 1973 (CrPC) to quash the present proceedings for being false and an abuse of the process of law. In this regard, reliance has been placed on the judgments of the Supreme Court in *Iqbal v. State*



of U.P., 2023 SCC OnLine SC 949 and *Prashant Bharti v. State (NCT Of Delhi)*, (2013) 9 SCC 293.

10. *Per contra*, the learned APP appearing on behalf of the State submits that pursuant to the order passed by this Court on 21st August, 2023, the order on charge dated 4th September, 2023, has been passed by the Trial Court, which has not been challenged by the petitioner. It is submitted that at the present stage, a mini trial cannot be conducted to test the veracity of the allegations of the respondent no.2 and neither the defence of the accused can be looked into. He further submits that the judgments cited by the petitioner are distinguishable and places reliance on the judgments of the Supreme Court in *State of Maharashtra v. Som Nath Thapa*, (1996) 4 SCC 659 and *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568.

11. Counsel appearing on behalf of the respondents no.2 and 3 submits as under:

- I. The delay of two months in filing the second complaint was on account of the fact that the police did not take any action on the first complaint dated 13th July, 2021, of the respondent no.2. Hence, she was constrained to file the second complaint on 10th September, 2021.
- II. The respondent no.2 has mentioned the allegations of misbehaviour and abuse of female doctors and staff in the first complaint dated 13th July, 2021. Further, the reason that no allegations of forgery or theft have been made by the respondent no.2 in her second complaint dated 10th September, 2021, is because the second complaint is in continuation of the first complaint and both the complaints should be read together. He states that the respondent no.2 had also provided

Signature Not Verified
Digitally Signed By: DINESH
KUMAR
Signing Date: 18.09.2023
12:36:16



documentary evidence with her complaint, in support of her allegations with regard to forgery and theft.

III. The incident could not be captured on CCTV as the CCTV camera in her chamber was not working on the said date.

12. I have heard the counsels for the parties and perused the material on record.

13. Before advertng to the merits of the case, with regard to the submission of the learned APP that the petitioner has not challenged the aforesaid order on charge, suffice it is to note that the charges are yet to be framed by the Trial Court and therefore, the right of revision can only be exercised after the framing of charges.

14. The Supreme Court in *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, has laid down the following category of cases wherein the inherent powers of the High Court under Section 482 of the CrPC can be exercised to quash the proceedings to prevent abuse of process of law or secure the ends of justice:

“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 extraordinary 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:



xxx

xxx

xxx

(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.”

15. Similar views have been expressed by the Supreme Court in a recent judgment in ***Iqbal alias Bala*** (supra). The relevant observations are reproduced hereunder:

“10. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into

Signature Not Verified
Digitally Signed By: DINESH
KUMAR
Signing Date: 18.09.2023
12:36:16



account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

16. In ***Prashant Bharti*** (supra), the Supreme Court took note of the inconsistencies and material contradictions in the statements of the prosecutrix while quashing the charge sheet under Sections 328/354/376 of the IPC. The relevant observations are set out below:

“23.5. Fifthly, even though the complainant/prosecutrix had merely alleged in her complaint dated 16-2-2007 that the accused had outraged her modesty by touching her breasts, she had subsequently through a supplementary statement (made on 21-2-2007), levelled allegations against the accused for the offence of rape.

xxx

xxx

xxx

23.10. Tenthly, the factual position indicated in the charge-sheet dated 28-6-2007, that despite best efforts made by the investigating officer, the police could not recover the container of the cold drink (Pepsi) or the glass from which the complainant had consumed the same. **The allegations made by the complainant could not be verified even by the police from any direct or scientific evidence, is apparent from a perusal of the charge-sheet dated 28-6-2007.**

xxx

xxx

xxx

25. *Based on the holistic consideration of the facts and circumstances summarised in the foregoing two paragraphs; we are satisfied, that all the steps delineated by this Court in **Rajiv Thapar case [Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158]** stand satisfied. All the steps can only be answered in the affirmative. We therefore have no hesitation whatsoever in concluding, that judicial conscience of the High Court ought to have persuaded it, on*

Signature Not Verified
Digitally Signed By: DINESH
KUMAR
Signing Date: 18/09/2023
12:36:16



the basis of the material available before it, while passing the impugned order, to quash the criminal proceedings initiated against the appellant-accused, in exercise of the inherent powers vested with it under Section 482 CrPC. Accordingly, based on the conclusions drawn hereinabove, we are satisfied that the first information report registered under Sections 328, 354 and 376 of the Penal Code against the appellant-accused, and the consequential charge-sheet dated 28-6-2007, as also the framing of charges by the Additional Sessions Judge, New Delhi on 1-12-2008, deserves to be quashed. The same are accordingly quashed.”

17. A reading of the aforesaid judgments of the Supreme Court makes it amply clear that in exercise of the inherent powers under Section 482 of the CrPC, the High Court has the power to quash an FIR and/or criminal proceedings on the ground that the said proceedings are manifestly frivolous or vexatious or instituted with ulterior motive. The High Court can go beyond the averments made in the FIR/complaint and ‘*read between the lines*’ to examine if the ingredients to constitute the alleged offence are made out or not. In order to achieve this, the High Court can take into account the overall facts and circumstances of the case. Of course, while exercising the aforesaid powers, the High Court must exercise due caution, care and circumspection.

18. Now, I proceed to apply the principles laid down in the aforesaid cases to the facts and circumstances of the present case.

19. At the outset, reference may be made to the first complaint filed by the respondent no.2 on 13th July, 2021, which is set out below:

“13.07.2021

To
The SHO PS : G.K. 1
Respected Sir

Signature Not Verified
Digitally Signed By: DINESH
KUMAR
Signing Date: 18.09.2023
12:36:16



Subject: Complaint against employee at my Clinic @ E-20, G.K. I, RAMEZ FAQIRI R/o. Afghanistan, a refugee working as Translator & receptionist at my Clinic.

- *FORGING MY SIGNATURES AT OFFICIAL DOCUMENTS Dated 03.06.2021 (Certificate for VISA Invitation to Mr. Ahmad Jawed Askna)*
- *TAKING MONEY FROM UNKNOWN SUBJECTS & ISSUING FORGED DOCUMENTS TO HIM (His accounts details attached herewith)*
- *STEALING MONEY (Nearly 1 Lakhs rupees & stealing medicines without information)*
- *MISBEHAVING / ABUSING TO FEMALE DOCTORS & STAFF (Nurse : Priyanka; Dietician : Purnima)”*

20. A plain reading of the aforesaid complaint shows that the main allegations made by the respondent no.2 herein are with regard to forgery, taking money from unknown subjects and theft, though it has also been alleged that the petitioner misbehaved with and abused the female doctors and staff working in the clinic.

21. Now, reference may be made to the subsequent complaint dated 10th September, 2021, which is set out below:-

“Dated : 10.09.2021

*To
The S.H.O.
Police Station: Greater Kailash – I
Delhi*

Subject: Regarding Molestation with me, Dr. Ankita Gupta & my staff Dietician Purnima (in contn. with Complaint given on 13.07.2021)

Sir,

Signature Not Verified
Digitally Signed By: DINESH
KUMAR
Signing Date: 18.09.2023
12:36:16



I, Dr. Ankita Gupta, a MBBS, MD, DM (Gastro), running my own Clinic at E-20, G.K – 1, hereby testify on Police Enquiry that

- *Mr. Ramez Faqiri [my employee (Courier/Receptionist)]*
 - *Physically abused/ molested me on 13.07.2021 afternoon in my Clinic by pushing me by my breasts & chin.*
 - *Also my Dietician, Purnima was molested at the same time when she came to my rescue. She was touched at her private parts & abused too.*
 - *He ran off after that & we immediately informed the police & registered the Complaint.”*

22. In the aforesaid complaint, for the first time allegations have been made against the petitioner of having physically abused/molested the respondents no.2 and 3.

23. A perusal of the two complaints clearly demonstrates that the respondent no.2 has substantially improved the allegations made in her first complaint while filing the second one. In fact, an entirely new case has been set-up in the second complaint, inasmuch as there are no allegations with regard to forgery and stealing of money and allegations have been made regarding physical abuse and molestation.

24. The explanation offered by the respondent no.2 that the aforesaid allegation of forgery and theft were not made in the second complaint as it was in continuation of the first complaint does not inspire confidence. Further, no satisfactory explanation has been provided as to why the respondent no.2 waited for two months to make a fresh complaint in respect of the same incident which occurred on 13th July, 2021. This is not one of the cases where the complainant was hesitant to go before the police and make a complaint regarding a sexual offence. The respondents no.2 and 3

Signature Not Verified
Digitally Signed By: DINESH
KUMAR
Signing Date: 18.09.2023
12:36:16



are educated doctors and filed a complaint immediately after the alleged incident

25. It is pertinent to note that the FIR was registered by the police based on the complaint of 10th September, 2021 and offences of forgery and theft which were alleged in the complaint of 13th July, 2021, were not made part of the aforesaid FIR. Apparently, no grievance was raised by the respondents no.2 and 3 with regard to the aforesaid offences not being made part of the subject FIR.

26. The charge sheet was filed on 2nd December, 2021, only in respect of the offences under Sections 354/506 of the IPC. Once again, the respondents no.2 and 3 did not file any application with regard to offences of forgery and theft not being made part of the charge sheet.

27. There is no explanation provided as to why the respondent no.2 has not shared the CCTV coverage of the alleged incident with the police. Only an oral submission has been made in the course of the hearing by the counsel for the respondent no.2 and 3 that the CCTV camera in respect of the place where the incident took place was not working. Pertinently, this submission was not made before the Trial Court and hence, is not noted in the order on charge passed by the Trial Court.

28. The police also never bothered to get the CCTV coverage from the respondent no.2, which would have conclusively shown whether the alleged incident took place or not. It appears that the police have not done any investigation and simply filed the charge sheet on the basis of the statements given by the respondents no. 2 and 3 under Section 164 of the CrPC.

29. Now, I shall refer to the judgments relied on by the learned APP in support of his submissions. In *Som Nath Thapa* (supra), the Supreme Court

Signature Not Verified
Digitally Signed By: DINESH
KUMAR
Signing Date: 18.09.2023
12:36:16



was seized with the appeals seeking discharge of the accused persons in offences under the Terrorist And Disruptive Activities (Prevention) Act, 1987 (TADA) and there were no findings with regard to quashing of an FIR by the High Court under Section 482 of the CrPC. In ***Debendra Nath Padhi*** (supra), the power of a High Court to quash an FIR under Section 482 of the CrPC was not in dispute and the limited issue for determination was whether the Trial Court can consider material filed by an accused at the time of framing of charge, which is not an issue in the present case. In fact, ***Debendra Nath Padhi*** (supra), by referring to ***Bhajan Lal*** (supra), recognises the powers of a High Court under Section 482 of the CrPC to pass such orders as may be necessary to prevent abuse of process of law or secure the ends of justice [*Reference in this regard may be made to paragraph 29 of the aforesaid judgment*]. Therefore, the aforesaid judgments are of no help to the respondents.

30. In light of the discussion above, I am satisfied that the present FIR has been filed in a *mala fide* manner and falls under the category of being manifestly frivolous and vexatious. In the present case, criminal proceedings have been instituted with an ulterior motive and given colour of a sexual offence.

31. Based on a holistic consideration of the abovementioned facts and circumstances, the judicial conscience of this Court is satisfied that the criminal proceedings initiated against the petitioner are a misuse of the process of the Court and an unnecessary burden on the State exchequer and ought to be quashed in exercise of the inherent powers vested under Section 482 of the CrPC.



32. Accordingly, the FIR No.261/2021 registered at Police Station Greater Kailash and the consequential charge sheet dated 2nd December, 2021 and the proceedings pursuant thereto are hereby quashed.

33. The present petition, along with the pending application, stands disposed of. The date fixed for 4th October, 2023, stands cancelled.

AMIT BANSAL, J.

SEPTEMBER 18, 2023

at/sr