



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

% ***Judgment Reserved On: 14th September, 2023***

Judgment Delivered On: 8th November, 2023

+ **W.P.(CRL) 712/2022 & CRL.M.A. 5985/2022 (stay)**

RASHMEE KANSAL

..... Petitioner

Through: Mr.Sunil K.Mittal, Advocate,
Mr.Kshitij Mittal, Mr.Anshul Mittal,
Mr.Harshit Vashisht and Mr.Sarthak
Sharma, Advocates

versus

THE STATE AND ANR.

..... Respondents

Through: Mr.Yasir Rauf Ansari, ASC (Crl.)
with Mr.Alok Sharma, Advocate.
Mr.S.K. Sharma and Mr.Rohan
Kumar, Advocates

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

W.P.(CRL) 712/2022

1. The present petition has been filed seeking quashing of FIR No.264/2017 dated 4th July, 2017 under Sections 326-B/506 of the Indian Penal Code, 1860 (IPC) registered at Police Station Shalimar Bagh.

2. Brief facts of the case are as follows:-

2.1. The petitioner is the sister-in-law of the respondent no.2 and both reside in a common property. The petitioner and her husband reside on the ground floor, while the respondent no.2 and her family resides on the second

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floor of the said property.

2.2. On 16th March, 2017, a PCR call was received by the police from the son of the respondent no.2 stating that someone had thrown acid on his mother.

2.3. Upon reaching the spot, the police found that the respondent no.2 was taken to the BSA Hospital, Rohini for treatment. The police also found an unknown liquid substance on the floor.

2.4. In the MLC it is stated that an unknown substance was thrown on the body of the respondent no.2 and she was having an itching sensation. The doctor preparing the MLC recorded that nature of injuries on the respondent no.2 were simple in nature and there were no external injuries at the time of admission. However, she was rendered unfit for statement.

2.5. The respondent no.2 was declared fit for statement on 17th March, 2017 and her statement under Section 161 of the Code of Criminal Procedure, 1973 (CrPC) was recorded by the police. In her statement, the respondent no.2 stated that her sister-in-law/the petitioner had thrown a hot liquid that fell on her right shoulder and her clothes. After the said incident, the respondent no.2 rushed outside and fell down, thereby becoming unconscious.

2.6. Samples of the liquid collected from the spot of incidence were sent to the Forensic Science Laboratory (FSL) for examination. As per the FSL report, the liquid substance collected from the tiles and the floor was found to be Hydrochloric Acid.

2.7. Based on the FSL report, and lack of any burn injuries on the person of the respondent no.2, FIR No.264/2017 under Sections 326-B/506 of the IPC was registered at Police Station Shalimar Bagh.

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3. As per the Status Report, chargesheet was filed before the Trial Court on 11th January, 2018. Thereafter, an application seeking further investigation was filed by the respondent no.2, which was allowed by the Trial Court on 25th January, 2019.

4. During further investigation, statement of the husband of the respondent no.2 was recorded wherein, he had stated that he had handed over the saree and blouse of the respondent no.2 to the police without any seizure memo. However, these facts could not be confirmed as the Investigating Officer (IO) had since expired.

5. CCTV footage of the incident could not be procured as CCTV footage beyond 2 years was not stored in the system. The report qua further investigation was filed before the Trial Court on 13th April, 2022.

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

i. The present FIR is frivolous and vexatious and has been filed by the respondent no.2 in order to harass the petitioner due to ongoing property dispute between the parties.

ii. The respondent no.2 and her family have been attempting to grab the terrace of the house and are interfering in the peaceful occupation of the petitioner.

iii. Apprehending unauthorised construction in the disputed property, the petitioner, along with her husband had filed a police complaint dated 8th June, 2016.

iv. Another complaint was filed on 20th July, 2016 before the Municipal Corporation of Delhi (MCD) by one Mr. Binod Kumar Padia, who was residing on the first floor of the property, stating that the husband of the

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respondent no.2 had started raising unauthorised construction in the said property.

v. This Court has the power under Section 482 of the 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 judgment of the Supreme Court in *State of Haryana & Ors. v. Bhajan Lal & Ors.*, AIR 1992 SC 604.

7. Counter affidavit has been filed on behalf of the respondent no.2. Counsel for the respondent no.2 has made the following submissions:

- i. The present petition seeking quashing of FIR has been filed in a belated manner. It is denied that there was no property dispute between the parties which resulted in filing of the present FIR. There is no civil case pending with regard to the property.
- ii. As per the FSL report, Hydrochloric Acid was found on the floor. Further as per the MLC, the petitioner was unfit to give statement on 16th March, 2017, the date of incident. The police were deficient in their investigation in as much as clothes of the respondent no.2 were not sent for examination to FSL in collusion with the accused persons.

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

9. As per the allegations made in the FIR, the petitioner threw a liquid on the respondent no.2 which fell on her right shoulder and on her blouse and saree. Immediately the respondent no.2 was taken to the hospital. However, as per the discharge summary prepared by the hospital, there was no external injury found on the respondent no.2 at the time of admission.

10. In the Form-1 of the Delhi Police Control Room (PCR Form), it has specifically been recorded that as per the doctor who attended to the

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respondent no.2, there is no sign of acid and it is a case of old illness. The relevant extracts from the said form are set out below: -

“Dr ne btaya ki tejab wali koi baat nhi hai pehli koi bemari hai.”

11. Even though as per the FSL report traces of acid were found on the tiles, there is nothing to show that this was allegedly thrown on the body of the respondent no. 2.

12. The statements given by the two maids to the police on 16th March, 2017 also do not support the case of the prosecution. Statement of Ms.Pushpa Goel, the alleged eye witness, was recorded under Section 161 of the CrPC on 4th July, 2017, wherein, she had stated that she saw the petitioner throw something from a white container on the respondent no.2. However, there is nothing to suggest that the liquid thrown was actually acid.

13. The petitioner has placed on record a previous complaint dated 8th June 2016 made by the husband of the petitioner, written to the SHO, Shalimar Bagh regarding unauthorized construction in their residential property. Another complaint dated 20th July, 2016 was also made to the MCD by one Mr.Binod Kumar Padia, another resident residing in the property, regarding the said unauthorized construction being carried out by the husband of the respondent no.2.

14. A perusal of the aforesaid complaints reveal that there was an ongoing dispute between the petitioner and her husband on one hand and the respondent no.2 and her husband on the other, with regard to the rights over the terrace of the property. I had queried the husband of the respondent no.2, who was present in Court, whether there was any property dispute between

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them. The husband of the respondent no.2 replied that there is no property dispute, as the entire property belonged to him, which is contrary to the claim of the petitioner and her husband. This clearly suggests that there was a property dispute between the parties.

15. Under Section 326-B of the IPC, an offence is made out only if a person throws or attempts to throw 'acid' on another person, and not any other liquid or substance. If indeed the liquid that was thrown on the respondent no.2 by the petitioner was 'acid', then the respondent no.2 would have suffered external injuries and traces of the acid would have been found on her body.

16. Even if it is assumed that what was thrown on the respondent no.2 was a diluted Hydrochloric Acid, it would surely leave marks and inflammation on the skin. It is pertinent to note that as per the MLC there were no external injuries or any scar on the body of the respondent no.2. Further, the statement of the doctor recorded in the PCR Form confirms that there was no acid found on the body of the respondent no.2. Rather, it stated that the respondent no.2 had been suffering from old ailments.

17. There are no allegations in the FIR to substantiate any offence under Section 506 of the IPC with regard to criminal intimidation.

18. The Supreme Court in **Bhajan Lal** (supra), 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:

“108. 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

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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

(5) Where the allegations made in the F.I.R. 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.

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.

109. 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 F.I.R 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.”

19. Similar views have been expressed by the Supreme Court in a recent judgment in ***Iqbal v. State of U.P.***, 2023 SCC OnLine SC 949. The relevant observations are reproduced hereunder:

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“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 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.”

20. A reading of the aforesaid judgments of the Supreme Court makes it

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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 and the material collected in the course of investigation. Of course, while exercising the aforesaid powers, the High Court must exercise due caution, care and circumspection.

21. Applying the aforesaid legal principles to the facts and circumstances of the present case, I am satisfied that the present FIR has been filed in a *mala fide* manner on account of the dispute between the parties relating to the property where they reside. The allegations made in the FIR are inherently improbable and no material has been collected in the course of investigation in support of the allegations against the petitioner. 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.

22. I do not find merit in the submission of the respondent no.2 that once a chargesheet has been filed, a petition for quashing of FIR cannot be filed.

23. It is a settled principle of law that an FIR can be quashed even after the filing of the chargesheet. Powers of the High Court under Section 482 of the CrPC are wide and can be exercised at any stage to prevent abuse of process of Court or to secure needs of justice. Reference in this regard may

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be made to the judgment of the Supreme Court in *Anand Kumar Mohatta v. State (Govt. of NCT of Delhi)*, 2019 11 SCC 706.

24. Accordingly, the present petition is allowed and the FIR No.264/2017 registered at Police Station Shalimar Bagh and the consequential charge sheet dated 11th January, 2018 and the proceedings pursuant thereto are hereby quashed.

AMIT BANSAL, J.

NOVEMBER 8, 2023

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