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

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Reserved on: 18.07.2023
Pronounced on: 31.07.2023

+ CRL.M.C. 1532/2020

ADITYA SHARMA

..... Petitioner

Through: Mr. Amarjeet Singh Sahni and
Ms. Shreya Gupta, Advocates

versus

STATE (GOVT. OF NCT OF DELHI)
& ANR.

..... Respondents

Through: Mr. Manoj Pant, APP for the
State with SI Kriti Sikarwar,
PS Amar Colony

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. 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 FIR bearing no. 71/2020 registered at Police Station Amar Colony, New Delhi, for offences punishable under Sections 342/376/506 of the Indian Penal Code, 1860 ('IPC') and consequential proceedings emanating therefrom.

2. Briefly stated, the present FIR was registered on the basis of complaint lodged by the complainant 'D' who had stated that she and



the petitioner had come into contact through a dating site on 31.01.2020 and on 02.02.2020, the petitioner had requested her to meet him and upon his repeated requests, she had met him at a restaurant and on the same day the petitioner had also proposed her. It was alleged that on 05.02.2020, the petitioner had again called the complainant to his office and had started to kiss her on the pretext of marriage. On 07.02.2020, the petitioner had called her to his office and had made physical relations with her on pretext of marriage and thereafter, had repeatedly made relations with her several times. It was stated by the complainant that on 26.02.2020, when the petitioner had again called her in his office for making physical relations, she had denied the same, however, the petitioner thereafter, had ordered a cold drink from a shop after consuming which the complainant had become semi-unconscious and the petitioner had forcefully made physical relations with her and had also beaten and threatened her to not reveal the incident to anyone. It was stated that after this incident, the petitioner had also denied to marry the complainant and on 04.03.2020, the petitioner and his family members had threatened the complainant with dire consequences to not get any case registered against the petitioner. On these allegations, the present FIR was lodged on 11.03.2020 against the petitioner who was arrested on the same day. The complainant was got medically examined from AIIMS Hospital, the statement under section 164 Cr.P.C. of the complainant was recorded on 13.03.2020 and on 17.03.2020, the petitioner was enlarged on bail by the learned Trial Court.

3. Learned counsel for the petitioner argues that the petitioner has



been falsely implicated in the present case by the complainant and there are several contradictions in the story narrated by the complainant. It is stated that the complainant had been blackmailing the petitioner and demanding money, for which the petitioner had also lodged a complaint with the same police station on 05.03.2020 and as a counterblast to the said complaint, the complainant had lodged the present FIR on 11.03.2020. It is also argued that the complainant had described an alleged incident of 26.02.2020 when the petitioner had brutally assaulted the complainant, however, she had not lodged any complaint after the said incident with the police, which shows that all the allegations levelled by the complainant are concocted and are afterthought. In support of these contentions, the petitioner has placed on record certain WhatsApp chats to show that the complainant had sent messages to the petitioner on 03.03.2020 threatening to implicate him in a false case and demanding payment of Rs.5-10 lakhs. In this background, it is prayed by learned counsel for the petitioner that the FIR be quashed.

4. Learned APP for the State, on the other hand, argues that the allegations against the petitioner are serious in nature and the complainant has supported her version in her statement under Section 164 Cr.P.C. As regards the defense of the petitioner qua lodging a complaint with the police on 05.03.2020 with respect to extortion by the complainant, it is stated that the same is a matter of trial and cannot be looked into at this stage in view of the specific allegations made by the complainant in her statement. Learned counsel for the complainant/respondent no. 2 also argues that a prima facie case of



committing rape upon false pretext of marriage is made out against the petitioner, and the present petition is pre-mature as even charge sheet has not been submitted before the learning Trial Court. As regard the WhatsApp messages, it is stated that as per Status Report filed by police after obtaining FSL report, in the conversation between the complainant and the petitioner the complainant had not made any demand of any sort or of money from the petitioner.

5. The arguments addressed by both sides have been heard at length and material on record has been perused.

6. After hearing arguments and going through the case file, this Court is of the opinion that the complainant in her complaint as well as statement under Section 164 Cr.P.C. has levelled specific allegations against the petitioner that he had forcibly established physical relations with the complainant on repeated occasions, on pretext of marriage, and had later refused to marry the complainant and had also threatened her with dire consequences.

7. It was contended on behalf of petitioner that the complainant had allegedly blackmailed him for money, leading the petitioner to file a complaint against the complainant earlier and it was only in retaliation that the complainant had got the present FIR registered. However, as per the Status Report filed on record, no such complaint had been received by the police officials at the concerned police station. Be that as it may, as regards such contentions raised on behalf of the petitioner, this Court is of the opinion that the question with regard to existence of such a complaint is a matter of trial and the same cannot be a ground for quashing of present FIR.



8. While observing so, this Court is guided by the settled principles in relation to quashing of FIRs under Section 482 of Cr.P.C. The guidelines for quashing of criminal proceedings have been laid down by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal* 1992 SCC (Crl) 426, which are extracted herein-under for reference:

“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.”

9. In *Neeharika Infrastructure v. State of Maharashtra* 2021 SCC OnLine 315, the Hon’ble Apex Court after analysing the judicial precedents, had laid down the following principles of law with respect to quashing of criminal proceedings:

“...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. When the present case is tested on the touchstone of aforesaid judicial precedents, this Court cannot come to a conclusion that the allegations levelled against the petitioner are absurd in nature or improbable or that the offence as alleged could not have taken place.

11. Keeping in view the contents of the FIR and the statement of the complainant under Section 164 Cr.P.C., and the fact that investigation has not yet concluded and the chargesheet has not yet been filed, the contentions raised on behalf of the petitioner that the allegations are baseless and false so as to quash the FIR at the outset, seem to be premature. In the case of *Jitul Jentilal Kotecha v. State of Gujarat* 2021 SCC OnLine 1045, the Hon'ble Apex Court had expressed that an FIR should not be quashed when even the draft chargesheet has not been submitted before the Court.

12. Thus, in the given facts and circumstances of the case, this Court does not deem it fit to quash the present FIR when even the investigation is not yet complete and the bare perusal of records reveal



specific allegations against the petitioner for commission of offences as alleged.

13. In view of the foregoing discussion, the present petition stands dismissed along with pending application.

14. Needless to say, the petitioner shall be at liberty to raise all the contentions raised herein before the learned Trial Court at appropriate stage, which shall be dealt with as per law.

15. Nothing expressed hereinabove shall tantamount to an expression of opinion on merit of the case.

16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 31, 2023/zp

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