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

% *Reserved on: 30.05.2023*
Pronounced on: 04.07.2023

+ **CRL.M.C. 2059/2021 & CRL.M.A. 13859/2021**

VIKAS LAKRA Petitioner

Through: Mr. Pradeep Kumar, Advocate

versus

THE STATE Respondent

Through: Mr. Satish Kumar, APP for the
State with SI Manoj, P.S.
Mundka.

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 ('Cr.P.C') read with Article 227 of Constitution of India by the petitioner seeking quashing of FIR bearing No. 286/2020, registered at Police Station Mundka (Outer District), New Delhi, for offences punishable under Sections 379 of the Indian Penal Code, 1860 ('IPC').

2. Brief facts of the present case are that on 28.10.2020, the complainant namely Mr. Umesh Kumar had lodged an online complaint regarding the theft of his mobile phone and documents. The investigation was carried out and the case was closed as



untraced. On 22.12.2020, ASI Phool Kanwar informed that he had arrested the present petitioner in case FIR bearing no. 586/2020 for the offences punishable under Section 392/34 of IPC and a mobile had been recovered from the possession of petitioner which belonged to the complainant in present FIR. It is alleged that the petitioner had disclosed that he wanted to sell the mobile phone with the help of co-accused namely Amish. During the course of investigation, co-accused Amish was searched but he could not be traced. Accordingly, the petitioner was arrested and after completion of investigation, charge-sheet was filed.

3. Learned counsel for the petitioner states that at the time of commission of alleged offence as mentioned in the complaint, the petitioner was present in his office and, thus, he could not have committed the offence in question. In this regard, reliance is placed on the attendance register of the petitioner in the record of MCD, Keshav Puram Zone, showing his attendance on the day of incident. It is also stated by learned counsel for petitioner that the petitioner has been acquitted in case FIR bearing no. 0059/2020. It is also stated that the allegations levelled are baseless and motivated and there is no likelihood or probability that the offence could have been committed by the petitioner. It is, therefore, stated that FIR be quashed since the local police, in connivance with the complainant, has registered a false FIR against the present petitioner and no recovery was effected from him.

4. Learned APP for the State, on the other hand, argues that there are serious and specific allegations against the petitioner in the



FIR in question and that two mobile phones, including that of present complainant, were recovered from the possession of petitioner. It is further stated that the petitioner was not acquitted in the case FIR no. 59/2020 due to his innocent/false implication, but on account of the fact that the complainant therein was not intending to pursue the matter as his mobile phone had been recovered and the same was recorded in the order dated 02.12.2021 passed by learned Metropolitan Magistrate. It is also stated that the grounds raised in the present petition are a matter of trial and the FIR cannot be quashed at this stage.

5. This Court has heard arguments on behalf of both the parties and has perused the material on record.

6. Since the petitioner has approached this Court seeking quashing of the FIR registered against him, it is pertinent to refer to the principles that govern quashing of FIRs.

7. In *State of Haryana and Ors. v. Ch. Bhajan Lal and Ors.* 1992 SCC (Cri) 426, the Hon'ble Apex Court had laid down the principles to be considered while quashing FIRs. The same are reproduced as 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



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."



8. The Hon'ble Supreme Court in *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 FIRs 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 above 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."

9. In the present case, the complainant had lodged e-FIR on 28.10.2020 alleging thereby that when he was sleeping in truck, someone had taken away his belongings including his identity cards and mobile phone. However, the case was closed as unsolved/untraced. Thereafter, the present petitioner was arrested in case FIR no. 586/2020, registered at P.S. Mundka, under Sections 392/34 of IPC with allegations of robbing the complainant therein. The petitioner was arrested on 21.12.2020 by police patrolling team within the jurisdiction of P.S. Mundka and recovery of robbed amount of Rs. 600/- in FIR no. 586/2020 was effected from him. Two mobile phones were also recovered from his possession, which were reported to have been stolen earlier for which separate complaints had been lodged with P.S. Mundka, which had culminated into the present FIR and FIR no. 59/2020 dated 24.02.2020, both under Section 379 of IPC. Accordingly, the petitioner was also arrested in these two FIRs under Section 411 of IPC. Therefore, as far as the contentions regarding petitioner's attendance in his office on the day of incident i.e. 21.12.2020 in FIR no. 586/2020 are concerned, the records reveal that the petitioner was arrested from the spot by the police and stolen properties including stolen mobile phone of present complainant was recovered from him.
10. The present case is at the initial stage of trial and since the evidence which has emerged on record during investigation puts the



petitioner's defence of *alibi* under suspicion, the same has to be tested during the trial upon leading evidence and on the touchstone of cross-examination.

11. Further, as regards the contention that the petitioner has already been acquitted in case arising out of FIR no. 59/2020, this Court notes that in the said FIR, the matter had not been decided on merits, rather it was compounded since the complainant had appeared before the learned Magistrate and had stated that because he had got the possession of his stolen mobile phone, he did not want to pursue the case against the petitioner. Therefore, the recovery of mobile phone from the petitioner was not disputed and the matter was compounded between the complainant and petitioner. It is to be noted that compounding of offence can take place between two parties, and in a case under Section 411 IPC, it can be done by the complainant who is the owner of the property in question. Therefore, it was the petitioner also who had compounded the offence as the mobile had been recovered from him, thereby making it clear that the recovery was made from his possession.

12. When the present case is tested on the anvil of the principles laid down by the Hon'ble Apex Court in *Bhajan Lal (supra)* and *Neeharika Infrastructure (supra)*, this Court cannot come to a conclusion that the allegations against the petitioner are absurd in nature or improbable or that the offence as alleged could not have taken place. On the basis of the facts & circumstances of the case and the material available on record, this Court does not find it a fit case for quashing of FIR.



13. In view thereof, the present petition along with pending application stands dismissed.

14. However, it is clarified that all the contentions and defence raised before this Court as well as the plea of alibi can be raised by the petitioner before the Trial Court concerned, which will be dealt with appropriately at the appropriate stage of trial by the learned Trial Court.

15. Nothing expressed hereinabove will tantamount to an expression of opinion on merits of the case.

16. The judgment be uploaded on website forthwith.

SWARANA KANTA SHARMA, J

JULY 4, 2023/kss