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

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Reserved on: 10.07.2023
Pronounced on: 12.07.2023

+ **CRL.M.C. 3427/2019 & CRL.M.A. 31301/2019**

ISH BHATNAGAR

..... Petitioner

Through: Dr. Adish C. Aggarwala, Senior Advocate with Mr. Kuldeep Jauhari, Ms. Nandini Aggarwal, Ms. Ekta Mudgil, Mr. Gaurav, Advocates.

versus

STATE & ANR.

..... Respondents

Through: Mr. Manoj Pant, APP for the State with SI Nagendra Kumar, P.S. H. Nizamuddin. Mr. Vignaraj Pasayat, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner seeking quashing of FIR bearing No. 141/2014, registered at Police Station Hazrat Nizamuddin, Delhi for the offences punishable under Section 420 of the Indian Penal Code, 1860 ('IPC') and all consequent



proceedings emanating therefrom including three charge-sheets dated 06.06.2015, 23.02.2016 and 03.09.2016.

2. Brief facts of the present case are that the complainant, Mr. Rajiv Bhatnagar had alleged that his late father, J.P Bhatnagar, was the rightful proprietor of "Mastana Jogi" magazine, but his younger brother, Sh. Ish Bhatnagar (the accused/petitioner), had falsely claimed proprietorship and started operating the magazine with forged documents. It was further alleged that this act was unlawful as his father had died without leaving a will, and thus, the complainant, being the legal heir, had an equal right to the proprietorship. The complainant presented evidence of his father's illness and treatment, asserting that he was incapable of signing or executing any documents at the time. Subsequently, the present FIR was registered, and during the investigation, witnesses were examined, relevant documents were seized, and the accused was interrogated. Charge sheets were filed against the accused under Sections 420/468/471 IPC, with the Forensic Science Laboratory ("FSL") result and further investigation details were submitted separately.

3. Learned senior counsel for the petitioner states that the FSL report is inconclusive, and lacks the backing of authentic documents. It is further stated that the FSL report is premised upon xerox copies, and not the original documents. It is stated that the FSL report in this case does not support the prosecution story. It is, therefore, stated that the petitioner should not undergo trial in absence of any incrimination evidence against him. Further, while drawing attention of this court towards 'Annexure-G', learned senior counsel states that the petitioner



had lodged a complaint against the respondent no. 2 prior to him filing the present FIR.

4. Learned APP for the state, on the other hand, states that there are other materials on record, including statements of the witnesses, apart from the FSL report, which prove that accused is *prima facie* guilty of the offence mentioned in the chargesheet.

5. Learned counsel for respondent no.2, in relation to complaint filed by petitioner, i.e. 'Annexure-G', states that the said complaint had culminated into a closure report, against which the protest petition filed by the petitioner had also been dismissed and against the said order of dismissal, a revision petition is pending before the concerned court.

6. I have heard arguments on behalf of both the parties and have perused the material on record.

7. After hearing arguments and considering material on record, this court is of view that in the present case, the petitioners have been alleged to have engaged in deceptive practices wherein they had assumed the roles of Proprietor and Managing Editor of "Mastana Jogi" magazine following the demise of the complainant's father. These allegations suggest that the petitioners had falsely declared themselves as the sole proprietors, editors, printers, and publishers, disregarding the rightful claim of the complainant as the legal heir. Furthermore, the petitioners have been accused of making false representations and forging documents. During the course of the investigation, the complainant and other witnesses were examined, and the accused was interrogated. Some relevant original documents and photocopies of documents were seized. As per prosecution, the letters placed on record,



which are purported to be in the name of Sh. J.P. Bhatnagar, are not authentic. It is further claimed, relying on evidence, that the father of the complainant was suffering from such illness, that he was incapable of signing or executing any documents at that time. Further, one Sh. Raheesh Ahmed had testified that he had previously supplied the petitioner with blank signed bills amounting to Rs. 17,000/- and Rs. 20,000/- which according to prosecution is false and fabricated.

8. In the present case, it is the case of the petitioner that since FSL report does not support the case of prosecution and is inconclusive, the petitioner should not undergo trial as there is no incriminating evidence against him. In this regard, it is noted that FSL report is corroborative evidence, and proceedings cannot be quashed solely on the ground that FSL report does not support the prosecution case.

9. Thus, as observed in the preceding paras, that there is material on record, apart from the FSL report, that'll have to be considered by the learned Trial Court to reach a conclusion as to whether a *prima- facie* case against the petitioners is made or not.

10. Recently, the Hon'ble Apex 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 an FIR under Section 482 of the Cr.P.C. It has been 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..."

11. 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..."



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 the present case, the arguments on charge are yet to be heard and charges are yet to be framed. Needless to say, the petitioner will be at liberty to raise all these contentions as raised before this court, before the learned Trial Court which shall be dealt with as per law.

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

15. Nothing expressed herein will tantamount to any expression on merit of the case during trial.

16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 12, 2023/ns