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

Reserved on: 06.02.2023

Pronounced on: 04.07.2023

+ **W.P.(CRL) 1844/2021 & CRL.M.A. 15271/2021, CRL.M.A. 20019/2021**

GUNEET SINGH DHINGRA & ORS.

..... Petitioner

Through: Mr. Rajat Wadhwa, Mr. Vasu Kalra, Mr. Dhreti Bhatia, Advs.

versus

STATE OF NCT DELHI & ANR.

..... Respondent

Through: Mr. Amol Sinha, ASC with Mr. Ashvini Kumar, Mr. Kshitiz Garg, Ms. Chavi Lazarus, Advs.

Ms. Roohe Bansal, Adv. for R-2

SI Durga Prasad, PS Rajouri Garden

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

JASMEET SINGH, J

1. This is a petition seeking quashing of FIR No. 685/2021 under section 498A/406/323/506/34 Indian Penal Code, 1860 ("IPC") dated 06.08.2021 registered at Police Station – Rajouri Garden.

2. As per the petitioners, the facts giving rise to the filing of the present petition are:

3. The petitioner No. 1 (husband) and the complainant i.e. Respondent No.2 were married on 29.06.2003 as per Hindu rites and customs at Greater



Kailash Gurudwara, New Delhi. The marriage was consummated and parties were blessed with a daughter on 22.11.2004 and another daughter on 31.01.2006.

4. The parties first stayed at D-1041, First Floor, New Friends Colony i.e. house belonging to petitioner No. 2 (father of petitioner No. 1).

5. In 2004, petitioner No. 2 sold his house at New Friends Colony and purchased property E-7, Second Floor, Front Side, Rajouri Garden, New Delhi and all the parties resided there.

6. It is stated that in July 2015, petitioner No. 1 was diagnosed with multiple fibrous dysplasia and that thereafter the Respondent No.2 started treating the petitioners with cruelty, harsh and unsupportive behaviour.

7. From 22.08.2015, respondent no. 2 started living in a separate room in the same house with her two minor daughters.

8. It is further stated that after making several attempts for reconciliation, the Petitioner No. 1 filed a petition under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights in July 2016.

9. In the meanwhile, Petitioners received a summon from Magistrate, West District, Tis Hazari Court whereby they were informed that the Respondent No. 2 had filed a case under section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter "DV Act") in June 2016.

10. It is stated that in the said case, no allegations were made for commission of offences under section 406 IPC and Respondent No. 2 had primarily sought protection order that she should not be dispossessed from her matrimonial house at Rajouri Garden.

11. Petitioner No. 2 filed a suit in August 2016 seeking possession of the



premises with Respondent No. 2. The suit filed by Petitioner No. 2 was decreed on 10.07.2018 and Respondent No. 2 was directed to vacate the house at Rajouri Garden. In an appeal filed by Respondent No.2, the said order has been stayed.

12. On 28.12.2016, Respondent No. 2 filed a written complaint before Police Station – Rajouri Garden for commission of offence under section 406 IPC. The said complaint was closed after inquiry as the allegations were unsubstantiated.

13. Respondent No. 2 thereafter filed Complaint Case No. 8314/2019 under section 200 of The Code of Criminal Procedure, 1973 (“CrPC”) for offences under section 406 and 34 IPC. During the pendency of the aforesaid complaint, Respondent No. 2 filed another complaint before CAW Cell on 11.01.2021 which culminated into registration of the impugned FIR 685/2021 dated 06.08.2021 under section 498A/406/323/506/34 IPC. The petitioners were granted anticipatory bail in the said FIR.

14. The petitioners have sought quashing of FIR 685/2021 on the following grounds:

- A. FIR 685/2021 being registered on a second complaint is an abuse of process of law. It is based on the same allegations, facts as well as the same causes of action, upon which complaint case no. 8314/2019 was registered.
- B. Investigation in the FIR 685/2021 is barred by limitation in view of section 468 CrPC and thus, is an abuse of the process of law.
- C. The FIR is an afterthought to harass the petitioners as Respondent No.2 had not made any allegations for commission of offences *inter-alia* punishable under section 406 IPC in her previous complaint



under the provisions of DV Act.

D. The petitioner relied on the Hon'ble Supreme Court's judgment in ***Samta Naidu v. State of M.P.*** (2020) 5 SCC 378 wherein it was held as under:

“16. As against the facts in Shivshankar [Shivshankar Singh v. State of Bihar, (2012) 1 SCC 130 : (2012) 1 SCC (Cri) 513] , the present case stands on a different footing. There was no legal infirmity in the first complaint filed in the present matter. The complaint was filed more than a year after the sale of the vehicle which meant the complainant had reasonable time at his disposal. The earlier complaint was dismissed after the Judicial Magistrate found that no prima facie case was made out; the earlier complaint was not disposed of on any technical ground; the material adverted to in the second complaint was only in the nature of supporting material; and the material relied upon in the second complaint was not such which could not have been procured earlier. Pertinently, the core allegations in both the complaints were identical. In the circumstances, the instant matter is completely covered by the decision of this Court in Talukdar [Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, AIR 1962 SC 876 : (1962) 1 Cri LJ 770 : 1962 Supp (2) SCR 297] as explained in Jatinder Singh [Jatinder Singh v. Ranjit Kaur, (2001) 2 SCC 570 : 2001 SCC (Cri) 354] and Poonam Chand Jain [Poonam Chand Jain v. Fazru, (2010) 2 SCC 631 : (2010) 2 SCC (Cri) 1085] . The High Court was thus not



justified in holding the second complaint to be maintainable.

17. In the aforesaid premises, we allow these appeals, set aside the decision of the High Court and dismiss Complaint Case No. 9226 of 2014 as not being maintainable. The amount deposited by the appellants shall now be returned to them along with any interest accrued thereon.”

E. Reliance was also placed on ***Hira Lal v. State of U.P.*** (2009) 11 SCC 89 wherein the Apex Court held as under:

“13. The dispute between the parties is essentially civil in nature. The will in question is a registered will. Whether it is surrounded by suspicious circumstances or not is a matter which may appropriately fall for determination in a testamentary proceeding. Prima facie, a civil court has found the said will to be genuine. A complaint petition filed by the third respondent has been rejected. A revision application filed thereagainst has also been dismissed.

.....

18. The order of the learned ACJM in his order dated 2-4-2003 is not a cryptic one. Reasons have been assigned in support thereof. In a situation of this nature, in our opinion, a second complaint petition could not have been filed. Strong reliance has been placed by Mr Singh on a decision of this Court in Mahesh Chand v. B. Janardhan Reddy [(2003) 1 SCC 734 : 2003 SCC



(Cri) 425] wherein it was opined that the second complaint was not completely barred in law. This Court, however, in that decision itself held that the second complaint can lie only on fresh facts and/or if a special case is made out therefor, stating:

“19. Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the second complaint was completely barred. It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate under Section 204 CrPC may take cognizance of an offence and issue process if there is sufficient ground for proceeding. As held in Pramatha Nath Talukdar case [Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, AIR 1962 SC 876] second complaint could be dismissed after a decision has been given against the Respondent No.2 in previous matter upon a full consideration of his case. Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. In the facts and circumstances of this case, the matter,



therefore, should have been remitted back to the learned Magistrate for the purpose of arriving at a finding as to whether any case for cognizance of the alleged offence had been made out or not.”

19. The second complaint petition filed by the third respondent does not disclose any such exceptional case. It reiterated the same allegations as were made in the first complaint petition. No fresh fact was brought to the notice of the court. The core contention raised in both the complaint petitions was alleged execution of a forged will by Tika Ram Tyagi.

20. For the reasons aforementioned, we are of the opinion that it was not a fit case where cognizance of the offence could have been taken or any summons could have been issued. The impugned judgment, thus, cannot be upheld. It is set aside accordingly. The appeal is, therefore, allowed.”

15. Mr. Wadhwa, learned counsel for the petitioner states that the present FIR is an abuse of the process of law. He states that the Respondent No.2 first made a complaint on 28.12.2016 before the Police. The said complaint after investigation was closed. Then another complaint under Section 200 CrPC was filed on 01.11.2019 which is registered as Case No. 8314/2019. Thereafter, another complaint dated 11.01.2021 was made before the DCP, SHO as well as the CAW Cell (resulting in registration of FIR 685/2021) which is identical to the complaint dated 01.11.2019.

16. He contends that since the FIR is an abuse of the process of law, notwithstanding section 210 of CrPC, the FIR needs to be quashed. In this



regard, he places reliance on the judgment of **Kapil Agarwal vs. Sanjay Sharma** (2021) 5 SCC 524 which reads as under :

“14. It is the case on behalf of the appellants that as on the same allegations, the private respondent-Respondent No.2 has filed an application under Section 156(3) CrPC, which is pending before the learned Magistrate, the impugned FIR with the same allegations and averments would not be maintainable, and therefore, the FIR lodged with Police Station Loni Border, District Ghaziabad deserves to be quashed and set aside. The aforesaid cannot be accepted for the simple reason that the Code of Criminal Procedure permits such an eventuality of a complaint case and enquiry or trial by the Magistrate in a complaint case and an investigation by the police pursuant to the FIR.

...

17. Thus, merely because on the same set of facts with the same allegations and averments earlier the complaint is filed, there is no bar to lodge the FIR with the police station with the same allegations and averments.

18. However, at the same time, if it is found that the subsequent FIR is an abuse of process of law and/or the same has been lodged only to harass the accused, the same can be quashed in exercise of powers under Article 226 of the Constitution or in exercise of powers under Section 482 CrPC. In that case, the



complaint case will proceed further in accordance with the provisions of the CrPC.”

17. He has also relied on the judgment of Hon’ble Supreme Court in **Vijay Kumar Ghai v. State of W.B.** (2022) 7 SCC 124 wherein it was observed as under:

“14. Forum shopping has been termed as disreputable practice by the courts and has no sanction and paramountcy in law. In spite of this Court condemning the practice of forum shopping, Respondent 2 filed two complaints i.e. a complaint under Section 156(3)CrPC before the Tis Hazari Court, New Delhi on 6-6-2012 and a complaint which was eventually registered as FIR No. 168 under Sections 406, 420, 120-B IPC before PS Bowbazar, Calcutta on 28-3-2013 i.e. one in Delhi and one complaint in Kolkata. The complaint filed in Kolkata was a reproduction of the complaint filed in Delhi except with the change of place of occurrence in order to create a jurisdiction.”

18. Learned counsel for the respondent No.1 submits that there is no statutory bar on registration of FIR when a complaint under section 200 CrPC is already pending.

19. It is submitted that the judgments relied upon by the Petitioners viz., **Hira Lal** (*supra*) and **Samta Naidu** (*supra*) is not applicable as in the aforementioned cases, the application filed under 156(3) of CrPC was rejected by the Court and thereafter another application was filed on the



same facts, whereas in the present case, the complaint filed under section 200 CrPC was never rejected and the impugned FIR was registered during the pendency of the complaint under section 200 CrPC. Moreover, another fact is that the Complaint case filed under section 200 CrPC and the subsequent complaint filed by the Respondent No.2 which ultimately led to the registration of the FIR were not identical. Additionally, the nature of offence detailed in the complaints filed by the Respondent No.2 was continuing in nature.

20. It is also submitted that the complaint in the present case was filed first and as a counterblast, the Petitioner No.2 filed the eviction suit for evicting the Respondent No.2 and hence, the argument with regard to the impugned FIR being a counterblast as submitted by the Petitioner is not applicable to the facts and circumstances of the present case.

21. Respondent No. 2 has also filed a reply wherein while denying the averments of the petitioners on merits, she has stated that since all her dowry articles were with the petitioners, she had no choice but to file a complaint.

22. Respondent No. 2 has also filed a civil suit being CS DJ/21/2019 for return of her articles of jewellery which is pending in Tis Hazari Court.

23. Respondent No.2 has also stated that the Learned MM had not taken cognizance of her complaint and after registration of the FIR, she has already withdrawn her complaint case under section 200 CrPC.

24. Learned counsel for the Respondent No.2 also states that the Respondent No.2 was under continuous mental harassment, domestic violence regarding which Respondent No. 2 filed various complaints to the Police for registration of FIR and every Police complaint is distinctive and based upon separate cause of action. The offences committed by the



petitioners were continuous in nature.

25. It is submitted that the petitioners are now misleading the Hon'ble Court in order to get the FIR quashed by stating that only 3 complaints were made by the Respondent No.2. However, true fact is that 8 complaints were made by the Respondent No.2 against the Petitioners as the Respondent No. 2 was harassed on a daily basis.

ANALYSIS

26. I have heard learned counsel for the parties.

27. Section 210 CrPC reads as under:

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.—

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police



report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”

28. Assuming the best case of the petitioners that the complaint as well as the FIR are based on identical facts and circumstances, even then as per Section 210 CrPC there is no legal bar to register a subsequent FIR on identical allegations and averments.

29. It is only in case the Court comes to a finding that the FIR is an abuse of the process of law or has been lodged to harass the accused, the same can be quashed in exercise of powers under Article 226 of the Constitution. Hence, the petitioners are required to show that the subsequent FIR is an abuse of process of law and has been lodged to harass the accused persons/petitioners.

30. The complaint being 8314/2019 dated 01.11.2019 under section 200 CrPC was predicated on the fact that the petitioners refused to return Respondent No.2's articles of Stridhan/jewellery and had misappropriated the same. The complaint was filed under section 406 and 34 IPC alleging that the petitioners cheated the Respondent No.2 as they never intended to return the Stridhan/jewellery and articles of dowry to Respondent No.2 and have caused wrongful gain to themselves and wrongful loss to the Respondent No.2. The value of the misappropriated items was estimated to be Rs. 30-35 lakhs.



31. The subsequent complaint dated 11.01.2021 resulting in FIR 685/2021 is registered under sections 498-A/323/406/506/34 IPC and is predicated on the fact that the petitioners have misappropriated the Stridhan, dowry articles and jewellery of Respondent No.2. In addition, it is also stated that the petitioners were wrongfully evicting and dispossessing Respondent No.2 and her two minor daughters from the shared household at E-7, Second Floor, Front Side, Rajouri Garden, New Delhi. The FIR is also predicated on the assault that took place on 30.12.2020 when the petitioners threatened and intimidated the Respondent No.2 and her two minor daughters.

32. A perusal of the above shows that the complaint dated 01.11.2019 under 200 CrPC and the complaint dated 11.01.2021 resulting in FIR 685/2021 do have an overlap of misappropriation of Stridhan/jewellery and dowry articles of Respondent No.2 but they are not identical. FIR 685/2021, in addition, has separate incidents.

33. I am of the view that the FIR No. 685/2021 is not an abuse of the process of law. According to me, the said FIR is not a frivolous or vexatious grievance of the Respondent No.2. The said FIR records incidents of assault inflicted upon the Respondent No.2 post 2019 which are not mentioned in the complaint dated 01.11.2019. Moreover, the FIR is predicated on the continuous mistreatment, harassment, cruelty and attempts of forceful eviction from the shared household faced by the Respondent No.2 and her minor daughters at the hands of the petitioners.

34. Even otherwise section 210 CrPC permits filing of a complaint and FIR on the same cause of action and in such a scenario, the complaint case is liable to be stayed till finalization of the investigation. However, in the



present case, the Respondent No.2 has on 24.05.2022 already withdrawn her complaint case dated 01.11.2019 under section 200 CrPC.

35. As regards the argument of the impugned FIR being barred by limitation is concerned, the nature of allegations described in the FIR filed by the Respondent No.2 are continuing in nature. Reliance is placed on **Arun Vyas v. Anita Vyas** (1999) 4 SCC 690 wherein the Hon'ble Supreme Court has observed as under:

“13. The essence of the offence in Section 498-A is cruelty as defined in the explanation appended to that section. It is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation....”

36. In the present case, the Respondent No.2 has continuously been subjected to cruelty and harassment on account of non-return of Stridhan/jewellery belonging to Respondent No.2 at the hands of the petitioners. In addition, the Respondent No.2 was physically assaulted by the petitioners on 30.12.2020 which would have a new starting point of limitation. Hence, the impugned FIR is not barred under section 468 CrPC.

37. In view of the above, the present petition is dismissed along with all pending applications.

JASMEET SINGH, J

JULY 04th, 2023 / (jv)

[Click here to check corrigendum, if any](#)