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

Date of Decision: 27.02.2023

+ CRL.M.C. 2200/2020 & CRL.M.A. 15646/2020

AJAY SINGH

..... Petitioner

Through: Mr. Abhay Gupta and Ms. Priya
Gupta, Advocates

versus

STATE GOVT. OF NCT OF DELHI & ANR. Respondents

Through: Mr. Manoj Pant, APP for the
State with SI Nitin Yadav, P.S.
Bindapur.
Mr. Partap Singh, Advocate for
R-2 with husband of R-2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed by petitioner seeking quashing of FIR bearing no. 0954/2020, registered at Police Station Bindapur, Delhi for the offence punishable under Sections 506/509 of the Indian Penal Code, 1860 ('IPC').

2. Issue notice. Mr. Manoj Pant, learned APP accepts notice on behalf of State.

3. Brief facts of the present case are that on 26.09.2020, a complaint was lodged by the complainant 'N' whereby it was stated by her that on 07.03.2020, first birthday party of her son had been organized at their home and in that party, one Ajay Singh (petitioner), owner of the company in which her husband was working, had also been invited. It was alleged that during the said party, the petitioner was observing her and had even commented on her eyes. It is stated that on 06.08.2020 at around 8:20 PM, the complainant had received a call from the petitioner and upon questioning the petitioner as to how did he get her contact number, no response was received from the side of petitioner. It was alleged that thereafter, the petitioner had been continuously calling the complainant on her mobile phone, and that further on 21.08.2020, the petitioner had again called the complainant and had informed her that her husband had met with an accident and she should come to the spot as soon as possible. However, on inquiring from her husband, the complainant came to know that no such incident had taken place. It is further alleged that petitioner had called the complainant on her mobile and had asked her that if she was not satisfied with her husband in physical relationship, she should come to him and that he would satisfy her completely. It is also stated that when the husband of complainant confronted the petitioner, the petitioner threatened them with dire consequences. Accordingly, the present FIR was registered. During the course of investigation, statement of complainant was recorded under Section 164 Cr.P.C wherein she reiterated the allegations leveled in her original complaint to the police.

4. Learned counsel for petitioner has drawn attention of this Court to various documents, including the complaint lodged by the petitioner herein against the husband of complainant. It is stated that the allegations in the FIR are absurd and improbable and petitioner has been falsely implicated in the present case. It is also stated that since the petitioner had lodged a complaint against the complainant's husband prior to the complaint filed by the complainant, therefore, present false complaint is liable to be quashed.

5. *Per contra*, learned APP for the State submits that the Call Detail Records reflect that phone calls were made from petitioner to respondent no. 2. It is stated that charge-sheet has been filed and learned Trial Court has taken cognizance, and the contentions raised by learned counsel for petitioner before this Court can be raised before learned Trial Court at the time of hearing arguments on charge. It is further stated that the powers of quashing of FIR are very limited and are to be used cautiously and rarely.

6. I have heard learned counsel for petitioner as well as learned APP for the State, and have also gone through the material available on record.

7. Since the petitioner herein has approached this Court seeking quashing of FIR which stands registered against him, it will be appropriate to first refer to and consider the principles governing quashing of FIRs.

8. The Hon'ble Apex Court in *Neeharika Infrastructure v. State of Maharashtra* 2021 SCC OnLine 315, has enlisted and summarized certain principles that govern the law on quashing of an FIR

under Section 482 of the Cr.P.C. The relevant observations are 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."

9. Earlier in *State of Haryana and Ors. v. Ch. Bhajan Lal and Ors.* 1992 SCC (Crl) 426, the Hon'ble Supreme Court had laid down the guidelines for quashing of FIR, which are extracted herein-under:

"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.”
10. The allegations as emerging from the record against the present petitioner are that the petitioner had been continuously observing the

complainant in the birthday party of her son on 07.03.2020 and had also passed comments on her eyes. It is further the case of complainant that petitioner had been repeatedly contacting the complainant on her mobile phone and had passed comments such as asking her to make physical relations with him if she was not satisfied with her husband, and thus, outraging her modesty. Further, upon being confronted by the husband of complainant, the petitioner is alleged to have criminally intimidated and threatened the complainant and her husband with dire consequences.

11. During the course of investigation, call records of the mobile phones of the complainant as well as petitioner were sought by the investigating agency from the service providers. The Call Detail Records confirm that on 06.08.2020, a call was made from the mobile phone of petitioner on the complainant's mobile number, and that on 21.08.2020, a text message was received on complainant's mobile phone from petitioner's mobile phone followed by one incoming call and one outgoing call. The Call Detail Records have been filed along with the charge-sheet before the learned Trial Court, however, the charges are yet to be framed.

12. Having given thoughtful consideration to the material on record, and considering the relevant principles governing quashing of FIR laid down by the Hon'ble Apex Court in *Neeharika Infrastructure (supra)* as well as in *Bhajan Lal (supra)*, this Court is of the view that it would be premature to quash the FIR at this stage. This Court is not persuaded to reach a conclusion that the allegations leveled in the FIR

are absurd, highly improbable and that such incident could not have happened so as to direct quashing of the FIR.

13. Learned counsel for petitioner had drawn the attention of this Court to an e-mail dated 02.09.2020 containing show cause notice issued by the petitioner's company to the husband of complainant and had argued that present FIR is a counterblast to these proceedings. However, the veracity of the allegations leveled against the petitioner by the complainant and the same being concocted, afterthought and counterblast to any proceedings initiated by the petitioner herein against the husband of complainant cannot be tested at this stage by this Court.

14. The contentions raised before this Court on behalf of petitioner can be raised before the learned Trial Court at the time of arguments on charge, which will be dealt with by the learned Trial Court as per law.

15. Accordingly, the present petition stands dismissed.

16. It is clarified that the observations made by this Court hereinabove will have no bearing on the merits of the case during the trial.

17. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 27, 2023/kss