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

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Reserved on: 16.11.2023
Pronounced on: 01.12.2023

+ **W.P.(CRL) 2417/2023**

FAHAD RAHBER

..... Petitioner

Through: Mr. Saquib Arbab, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Yasir Rauf Ansari, ASC
with Mr.Alok Sharma and Mr.
Vasu Agarwal, for the State.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition has been filed under Article 226 and 277 of the Constitution of India read with Section 482 of Criminal Procedure Code, 1973 ('Cr.P.C.') praying for the issuance of a Writ of Certiorari/Mandamus and/or a Writ in the nature of Certiorari/Mandamus and/or any other appropriate Writ, Order/s and/or Direction/s for quashing of the FIR No. 70/2022, registered under Sections 419/420 of Indian Penal Code, 1860 ('IPC') at PS Special Cell, New Delhi and for quashing/setting-aside of all the subsequent



and consequent proceedings initiated and/or conducted with respect to the impugned FIR.

2. Briefly stated, the facts of the present case are that the above-mentioned case was registered on the complaint of Sh. Prashant Bisht who had alleged that some unknown miscreant had sent an e-mail from p.altofr@gmail.com requesting for providing Amazon gift cards to the officers of Security Minting and Printing Co-operation of India (SPMCIL), impersonating as Mrs. Tripti Patra Ghosh, Chairman & MD of that Institute. It is also alleged that one employee Debjyoti Banerjee was cheated via WhatsApp number 9542124914, which was having the display picture of Mrs. Tripti Patra Ghosh, and had lost Rs.60,000/- by providing Amazon and electronic gift card. During investigation, details of Amazon gift card of Rs.60,000/- were obtained from Amazon and it was found that Rs.20,000/- were paid for purchasing a mobile phone, which was found to have been purchased in the name of Fahad Rahber i.e. the present petitioner, and the phone was delivered at Hotel Mulberry, Ballygunge, Kolkata. Hotel register entry copies and other details from hotel were also obtained by the investigating officer regarding Fahad Rahber.

3. Learned counsel for the petitioner argues that the impugned FIR is contrary to the law for the time being in force applicable to the acts as alleged in the said FIR. It is stated that the relevant law and/or the statute applicable to the set of alleged acts in the present case is the Information Technology Act, 2000 (*IT Act*), and thus, the registration of the impugned FIR under the provisions of Indian Penal Code has vitiated the proceedings. Therefore, the FIR needs to be



quashed at the threshold. It is stated that the IT Act, by virtue of its preamble as well as its Section 81, commands overriding effect over any other law for the time being in force and must be given precedence over the more general law of IPC. It is argued that the impugned FIR being *void ab-initio*, has been registered under the wrong and incorrect provisions of law. It is also argued that the procedure adopted by the learned Trial Court for reaching the conclusion that the petitioner was deliberately avoiding service of the notice under Section 41A of Cr.P.C., and issuing Non-Bailable Warrants is erroneous and beyond the realms of known law and procedure. It is stated that the orders dated 12.05.2023 and 08.06.2023 passed by the learned Trial Court should be quashed since the same are cryptic qua the basis of issuing NBWs as well as issuance of process under Section 82 Cr.P.C.

4. Learned APP for the State argues that the allegations against the present accused are serious in nature, and the present petition is not maintainable since the petitioner is seeking quashing of FIR on the ground that the relevant provisions of the IT Act have not been added in the FIR, whereas the investigating agency is still conducting the investigation. Therefore, it is submitted that present petition be dismissed.

5. This Court has heard arguments addressed by learned counsel for the petitioner and learned APP for the State, and has perused material on record.

6. At the outset, this Court observes that since the present accused/petitioner had not joined investigation, a raiding team was



formed and the said team had conducted a raid at the house of the accused, where he was not found, after which Non-Bailable Warrants were issued against the accused. It is further noted that the investigating agency had again made efforts with the help of local police to arrest the present accused but the accused had fled from the spot. Proceedings under Section 82 of Cr.P.C were thereafter initiated against the present accused on 08.06.2023. Except making bald averments that the NBWs were obtained and proceedings were initiated under Section 82 of Cr.P.C. without any basis against the petitioner, no specific arguments were addressed to show any mala fide on the part of investigating agency against the petitioner or any errors of law in initiation of such proceedings.

7. As regards the main argument of the petitioner that the FIR in question deserves to be quashed since the provisions of IT Act have not been invoked in the FIR, this Court observes that the police as an investigating agency has the power to invoke relevant sections of law as it deems necessary and applicable to the facts of the case during the course of investigation and before the filing of the chargesheet. At the stage of registration of FIR, it cannot be expected that the investigating agency would decide conclusively as to which provisions of law will be applicable to the alleged offences in a case, and the same can only be done once the entire investigation is complete. At the stage of registering of FIR, the police or investigating agency has to register an FIR on the basis of the complaint and allegations therein. During the course of investigation, it may transpire that the accused has committed offence which



attracts penalty/punishment under other provisions of law or Acts such as IT Act, 2000, and the same can be added by the investigating agency in the chargesheet.

8. As regards the prayer of quashing of FIR, it will be relevant to consider the principles as laid in case of *Neeharika Infrastructure v. State of Maharashtra* 2021 SCC OnLine 315, which 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. This Court notes that the investigation in the present case is at initial stage and the chargesheet is yet to be filed. The present petition has been filed by the petitioner at a stage when the investigation is



underway and through the present petition, the petitioner is seeking quashing of FIR which cannot be allowed as per guiding principles of judicial precedents as laid down in the case of *State of Haryana v. Bhajan Lal* 1992 SCC (Cri) 426 and *Neeharika Infrastructure (supra)*.

10. Thus, in view of the aforesaid discussion, this Court finds no ground to quash the FIR in the present case.

11. Accordingly, the present petition is dismissed alongwith pending application if any.

12. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

DECEMBER 1, 2023/zp