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

% ***Decided on: 06.09.2023***

\+ CRL.M.C. 6460/2023

SHEETAL SHARMA & ANR. ..... Petitioner

Through: Mr. Anupam Kumar Mishra and Ms. Kaya Rawata, Advocates

versus

STATE NCT OF DELHI ..... Respondent

Through: Mr. Manoj Pant, APP for the State with Inspector Sanjeev Solanki, IFSO/CCU/Special Cell

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. *(ORAL)*

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of the petitioners seeking quashing of FIR bearing no. 275/2020, registered at Police Station Special Cell, Mandir Marg, New Delhi for offence punishable under Sections 419/420/468/471 of Indian Penal Code, 1860 ('IPC').

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

3. Briefly stated, the facts of the case as per the FIR dated 03.11.2020, registered on complaint of Indiamart Intermesh Ltd. ('complainant company') are that the petitioners herein along with several other unknown

accused persons had cheated and had duped general public by offering dealerships of complainant company and various other companies in lieu of depositing a security amount. The petitioners in collusion with other accused persons had impersonated themselves as agents of Complainant Company by using complainant company's logos and trademarks, false identity cards, fake e-mail addresses and had forged documents bearing trademarks and logos of Complainant Company in order to deceive innocent persons. The complainant company had received three public complaints stating that an offer for dealership by complainant company has been made to the complainants thereof and that accused persons had contacted them and had sent business proposals, fake identity cards and forged dealership agreements bearing logos of complainant company. Thereafter, upon registration of present FIR, on 18.11.2020, petitioner no. 1 was arrested, and petitioner no. 2 was arrested on 09.04.2021. The chargesheet was filed on 16.06.2022. The learned Trial Court had granted bail to petitioner no. 1 vide order dated 14.01.2021on the ground of her medical condition however, proceedings under Section 82 of Cr.P.C were initiated against petitioner no. 2, and he was apprehended in a separate FIR bearing no. 139/2019 registered under Sections 8/21 of NDPS Act.

4. Learned Counsel for the petitioners states that the petitioners were only employees of the company of which one Mr. Sunny Khatri is the owner. He also states that there is nothing on record to connect petitioners/accused persons with the offence and perusal of material on record reveal that the case is covered under State of Haryana & Ors vs. Ch. Bhajan Lal & Ors.1992 SCC (Cri) 426 wherein the Hon'ble Supreme Court has laid down guidelines for quashing of FIR and with Niranjan Kaur vs

New Delhi Hotels Ltd. And Ors. AIR 1988 Delhi 332 and State Bank of India (Successor To ... vs Shyama Devi AIR 1978 SC1263 wherein application of vicarious liability is dealt with.

5. Learned APP for the State, on the other hand, submits that the case is still pending against the petitioner/accused. It is stated that there are specific roles attributed to petitioners herein. He also draws attention of this Court to page no. 56, para no. 18-B and C of the chargesheet, which reads as under:

> "Mohit Sharma: - The accused is master mind of this crime. Mohit Soni is the person who dupes innocent people in the name of various companies including Indiamart Ltd., N. P Bazar (Naaptol Bazar), Naaptol India Shopping, Snap Deal, India Snapdeal, Herbal Health Care, Global Telemart etc. in the name of selling their franchise. He got issued 30 phone numbers from Vodafone in the name of M/s Fairdeals to call potential victims. Proprietor of M/s Fairdeals is Sunny Khatri. All these phones are to be recovered from him. From the data extracted from the mobile of accused, it has been revealed that accused cheated more than 100 of innocent persons from different parts of India.
> Sheetal Sharma: - Sheetal Sharma is the person who duping innocent people in the name various companies including lndiamart Ltd. N 1 Bazar (Naaptol Bazar), Naaptol India Shopping, Snap Deal. India Snapdeal, Herbal Health Care, Global Telemart etc. in the name of selling their franchise. That mobile number which were used to sending emails to victims from analysis of the IPDR email indiamart733@gmail.com, infoindiamart@gmail.com, supportindiamart@gmail.com and indiamart08@gmail.com, it was revealed that the said IP addresses were attributed to mobile No. 9340779146, 8319935650 and 7999577446. Mobile number 9340779146 was recovered from accused Sheetal Sharma. From the data extracted from the mobile or accused it has been revealed that accused cheated more than 100 of innocent persons from different parts of India."

6. I have heard arguments addressed on behalf of learned counsel for petitioners and learned counsel for respondents and have perused material on record.

7. Since the petitioners have approached this Court seeking quashing of the FIR registered against them, it is pertinent to refer to the principles that govern quashing of FIRs.

8. In ***Bhajan Lal*** *(supra)****,*** 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.
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> 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.
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> 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.
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> 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.
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> 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."

9. The Hon'ble Supreme Court in its recent decision of ***Neeharika Infrastructure v. State of Maharashtra*** *2021 SCC OnLine 315*, has scrutinised the precedents and has culled out the relevant principles that govern the law on quashing of a FIR 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."

10. It is to be noted that in ***Bhajan Lal*** *(Supra)* and ***Neeharika Infrastructure*** *(Supra)*, the Hon'ble Supreme Court has cautioned that High Court, in exercise of powers under Section 482 Cr.P.C may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any court or otherwise to secure the ends of justice, but such power should be exercised sparingly and that too in the rarest of rare cases.

11. In the present case, there are specific allegations in the FIR as well as in the statements of witnesses recorded under Section 161 Cr.P.C. that the petitioner no. 1 had cheated people in the name of Complainant Company as well as other companies such as Naaptol Bazar, Naaptol India Shopping, Snap Deal, etc in the name of selling their franchise. There are specific allegations against petitioner no. 2 that he had provided mobile phones to people in his team for tele-calling and that he had cheated more than hundred innocent persons. It is alleged by complainant on behalf of complainant company that accused persons including present petitioners had impersonated themselves as complainant company which provides internet based marketplace or platform with free and paid listings for several

industry/product/services and SME sector wherein buyers and sellers interact with each other for fulfilling their requirements and petitioners herein along with other accused persons had cheated general public by offering dealerships of complainant company. It is stated that the petitioners herein along with other accused persons had also induced persons to enter into dealership agreements, in lieu of deposit of security amount. One of the complainants namely, Ram Kishore, who had filed a public complaint to the complainant company had alleged that he was cheated for a sum of Rs. 25,000/- from accused persons who had impersonated themselves to be complainant company by providing fake identity cards and forged documents. As per disclosure statement recorded of petitioner no. 1, three mobile phones were recovered and seized from her possession, and she had stated that she used one of the mobile phones to make calls to people wherein she had impersonated to be an agent of Complainant Company. The recovered mobile phones were analyzed, and requests were made to various banks to block the bank accounts and set forth the bank statements of petitioner no. 1. One of the witnesses who was also an employee of one of the accused persons, namely, Amit Soni, and two mobile phones were recovered from her, and she had stated that those mobile phones were given to her by petitioner no. 2.

12. During the course of investigation, the statement of mother of petitioner no. 2 was recorded under Section 161 Cr.P.C. wherein it was revealed that petitioner no. 2 was absconding therefore, proceedings under Section 82 Cr.P.C. were initiated and NBWs were issued against petitioner no. 2 and other co-accused namely, Akshay Solanki. The petitioner no. 2 was apprehended in a separate case FIR bearing no. 139/2019 registered

under Sections 8/21 of NDPS Act from Indore, Madhya Pradesh. The co-accused, Akshay Soni had surrendered before the learned Trial Court and he had stated during interrogation that he was an employee of petitioner no. 2 and he used to call other people on instructions of petitioner no. 2. After learned Trial Court had dismissed anticipatory bail application moved by petitioner no. 2, he was arrested before the learned Trial Court.

13. The Hon'ble Supreme Court in the case of ***Rakhi Mishra vs State of Bihar and Others*** *(2017) 16 SCC 772* has held that the High Court can use its power under Section 482of Cr.P.C. only in exceptional circumstances when a prima facie case is not made out against the accused. Further, the Hon'ble Apex Court in the case of ***Tilly Gifford v. Michael Floyd Eshwar and Anr***.*(2018) 11 SCC 205*,has held as under:

> "3. A perusal of the order of the High Court released on 21-5-2015 would indicate that the High Court has gone far beyond the contours of its power and jurisdiction under Section 482CrPC to quash a criminal proceeding, the extent of such jurisdiction having been dealt with by this Court in numerous pronouncements over the last half century. Time and again, it has been emphasised by this Court that the power under Section 482CrPC would not permit the High Court to go into disputed questions of fact or to appreciate the defence of the accused. The power to interdict a criminal proceeding at the stage of investigation is even more rare. Broadly speaking, a criminal investigation, unless tainted by clear mala fides, should not be foreclosed by a court of law."

14. The petitioners in the present case have not raised any contention or any ground which would prime facie show that the FIR in the present case has resulted in any abuse of process of law or that the allegations levelled against the petitioners are inherently improbable or absurd or that they do not constitute commission of any offence.

15. This Court has gone through the record and after going through the same, this Court is of the opinion that investigation is still pending against the petitioners and specific roles have been attributed to them wherein they had cheated innocent persons in the name of Complainant Company and various other companies assuring dealerships of such companies by forging documents.

16. When the investigation has still not concluded, this case in this Court's opinion does not fall under the purview of ***Niranjan Kaur vs New Delhi Hotels Ltd. And Ors.*** *AIR 1988 Delhi 332* and ***State Bank of India(Successor To ...vs Shyama Devi*** *AIR 1978 SC1263*, relied upon by petitioners, as the contentions raised before this Court are the defenses which have been raised by learned counsel for petitioners at the appropriate stage of trial.

17. Even considering the relevant principles governing quashing of FIR laid down in ***Neeharika Infrastructure*** *(supra),* this Court is of the view that as per points (iv), (v), (vi), (vii) and (xii), as reproduced in para 9 hereinabove without getting into the merits of the allegations made in the FIR, police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on incomplete investigation and that the complaint/FIR does not deserve to be investigated further and that it amounts to abuse of process of law.

18. Moreover, neither the allegations leveled against petitioners by the complainant are entirely absurd or improbable, nor it is a case where no prima facie offence at all or no cognizable offence is made out, so as to quash the proceedings within the ambit of principles laid down by the Hon'ble Apex Court in ***Bhajan Lal*** *(supra)* and ***Neeharika Infrastructure***

(supra). No exceptional or rare circumstances have been shown by petitioners which require this Court to interfere with the investigation proceedings at this stage.

19. Considering the overall facts and circumstances of the case and the allegations and material available on record, this Court finds no reason to quash the present FIR at the present stage of investigation.

20. Accordingly, the present petition stands dismissed.

21. It is however, clarified that the observations made by this Court are only for the purpose of deciding the present petition and shall have no bearing on the merits of the case during the trial.

22. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 6, 2023/ns

Click here to check corrigendum, if any