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

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Reserved on: 04.01.2023
Pronounced on: 02.02.2023

+ **CRL.M.C. 7156/2022**

AKASH VERMA

..... Petitioner

Through: Mr. B.S. Rajesh and Mr.
Siddharth Goswami,
Advocates

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Naresh Kumar Chahar,
APP for State.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") seeking quashing of FIR bearing no. 108/2021, registered at Police Station Lodhi Colony, South District, New Delhi, for the offences punishable under Sections 420/188/120B/34 of the Indian Penal Code, 1860 ("IPC") read with Section 3 of Epidemic Diseases Act, 1897 ("E.D. Act") and read with Sections 3(7) of the Essential Commodities Act, 1955 ("E.C. Act").

2. The brief facts of the present case, as per prosecution, are that

on 25.04.2021 at around 7:30 p.m., ASI Prakash had received secret information through one source that two persons, namely Akash Verma, i.e., the petitioner and co-accused Likhith Gupta will be present at India Habitat Center, Lodhi Colony, New Delhi, at around 8:30 p.m. in a Honda City Car, Golden Brown in colour, bearing number DL 4 CAZ 8788, and if a raid is conducted, the said accused persons can be caught possessing Remdesivir Injections. Upon receiving the information, a raiding team was formed and was deployed at the spot. The aforesaid car was stopped, in which the petitioner was found driving the vehicle, and the co-accused was sitting adjacent to him. After conducting the search, two (02) Remdesivir injections were found in the trousers of co-accused Likhith Gupta, which were packed in two separate boxes. On both boxes, it was written, "Remdesivir for injection 100mg/vial Cipremi Lyophilized for Single user only for IV use only for use in India; not for export, Cipla". On further searching the vehicle, two more Remdesivir Injections were found in the car's dashboard. Upon inquiring, the accused persons failed to produce doctor's prescriptions and stated that they would sell these injections for Rs. 70,000/- each. During detailed interrogation, both the accused admitted that one Anuj Jain had supplied them with the said injections at higher rates, and after purchasing the same from Anuj, they were supposed to sell the injections at higher rates to those in dire need. After receiving the said information, a raid was conducted on the address of Anuj Jain as provided by the accused persons and during the raid, three Remdesivir Injections were recovered from the possession of Anuj Jain. The packaging of these injections was

identical to the ones found in the car, as recovered from the petitioner herein and co-accused Likhith Gupta.

3. Learned counsel for the petitioner states that a case under Section 420 IPC is not made out since the petitioner did not induce anyone nor any ingredients of Section 420 is made out from the FIR filed in the present case. Learned counsel for the petitioner also states that an offence under Section 188 IPC is also not made out since for committing an offence under Section 188, there has to be essentially a complaint under Section 195(1) (a) of Cr.P.C. It is further stated by learned counsel for the petitioner that an offence under Section 3(7) of the E. C. Act is also not made out since the petitioner was not dealing with production, supply and distribution etc., of essential commodities i.e. Remdesivir injection. Furthermore, learned counsel for the petitioner submits that there is no case made out under Section 3 of the E. D. Act against the petitioner since the essential ingredients of the section were not made out. Reliance has been placed on the following decisions on behalf of petitioner: *Murari Lal Gupta v. Goti Singh*, (2005) 13 SCC 699; *Anil Mahajan v. Bhor Industries Limited*, (2005) 10 SCC 228; *Ajay Mitra v. State of M.P.*, (2003) 3 SCC 11; *ALPIC Finance Limited v. Sadasivan & Another*, (2001) 3 SCC 513; *Hridaya Ranjan P.D. Verma & Ors. v. State of Bihar*, (2004) 4 SCC 168 and *Kailash Kumar Agarwalla v. State of Assam*, 2004(2) GLT 347.

4. *Per contra*, learned APP for the State submits that present offence is a serious one, that too, committed during the most testing time for the country. Learned APP for the State also states that the

charge sheet has been filed, and no valid grounds have been made out for quashing FIR by petitioner. It is further stated that a similar petition for quashing of the same FIR no. 108/2021 was filed by the co-accused, i.e. Anuj Jain, before this Court which was dismissed as withdrawn vide order dated 17.12.2021.

5. Learned APP for the State argues that vide Circular File No. ED/Misc-273/2020-3 dated 10.04.2021 a notification was issued by the Directorate of Health Services, Central Drugs Standard Control Organization, Government of India, considering the prevailing conditions (hereinafter “Notification No.1”). The notification specifically dealt with taking stringent actions against the hoarding and black-marketing of the Remdesivir injection. The present petitioner/accused was found in possession of four (04) Remdesivir injections, which violated the aforesaid notification of the Government of India. It is further submitted that the present petitioner/accused was also unable to provide any details or inform the Investigating Officer as to for whom he was carrying these injections and neither did they possess any doctor’s prescription nor had the bills for the injections. In any case, the possession of the same was in apparent contravention of Notification No. 1.

6. Learned APP for the State also submits that not only did the petitioner violate Notification No.1, but the petitioner and the co-accused also violated Notification Order No. 2134-2183/SO-ACP/Defence Colony, New Delhi, dated 19.04.2021 (hereinafter “Notification No. 2”), in pursuance to Circular Order No. F.2/07/2020/ pt. file III/381 dated 19.04.2021 passed by the Delhi

Disaster Management Authority (hereinafter “Notification No. 3”) and Circular Order No. 40-3/2020-DM-I(A) dated 23.03.2021 passed by the Ministry of Home Affairs, Government of India (hereinafter “Notification No. 4”), wherein, a curfew was imposed on the movement of individuals in the territory of NCT of Delhi.

7. Learned APP for the State submitted that there was a written complaint filed under Section 195 Cr.P.C. by Sh. Arun Chauhan, Assistant Commissioner of Police, Defence Colony, South District against the Petitioner and the co-accused wherein it is stated that both the petitioner and the co-accused violated the instructions of Notification no. 2.

8. Heard the rival submissions on behalf of both the parties as well as perused the material on record.

9. 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.

10. The Hon’ble Supreme Court has laid down the guidelines for quashing of FIR in *State of Haryana and Ors. v. Ch. Bhajan Lal and Ors., 1992 SCC (Crl) 426*, 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.”

(Emphasis supplied)

11. A three-judge Bench of 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. 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 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."

(Emphasis Supplied)

12. The Hon'ble Supreme Court in the case of ***Rakhi Mishra v. State of Bihar and Others, (2017) 16 SCC 772*** has held that the High Court can use its power under Section 482 of 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 482 CrPC 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 482 CrPC 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.”

13. In the present case, the allegations are that two persons including the present petitioner were caught red-handed in possession of four Remdesivir Injections, which they were going to sell at higher rates. Two injections were recovered from the pants/trousers of co-accused Likhith Gupta and other two injections from the dashboard of the car which was being driven by petitioner herein. During interrogation, the accused persons mentioned that one Anuj Jain had provided the said injections to them. A perusal of the charge sheet discloses that the accused persons had admitted that they were going to sell these injections at higher rate, i.e. for approximately Rs. 70,000/- each. It is not disputed that the accused persons were neither able to produce any document regarding the

prescription of Remdesivir injections, nor could they produce any bills regarding purchase of the injections. They were also unable to disclose as to for whom they were taking these injections. This Court notes that no document regarding the injections, such as bills of purchase or doctor's prescription, has been produced by the petitioner before the Investigating Officer or this Court. Upon the disclosure of these accused persons, a raid was conducted at the premises of another co-accused Anuj Jain and three similar injections were recovered from his possession as well.

14. This Court further takes note that Notification No. 1 dated 10.04.2021 was in force on the date of the alleged commission of the offence, which reads as under:

“...It has been brought to the notice of this office that many family members of COVID-19 patients have raised concerns highlighting that Remdesivir is once again being sold above MRP and in some cases as high as over 10 times

In light of reports of shortages of Remdesivir Ministry of Health and Family Welfare, Government of India have also communicated to the State/UT Governments regarding various steps initiated including direction already given to enforcement staff/Drugs Inspectors to verify stocks and check other malpractices and also take other effective action to curb hoarding and black marketing with request to review this with the Drugs Inspectors in the States/UTs

In view of above, you are requested to instruct your enforcement staff immediately to keep strict vigil especially at sensitive places and to take stringent action against hoarding/black marketing/overcharging for Remdesivir, by conducting the special drive of monitoring

and investigation, so that any such incidence for the drug is prevented

Action taken in the matter may please be intimated to this office at the earliest...”

15. The aforesaid notification provided for taking stringent actions against hoarding and black-marketing of Remdesivir injections and by conducting special drive of monitoring and investigation so that any such incidence in respect of said drug could be prevented. Pursuant to these very notifications, the raiding team had conducted a search in the car of the petitioner where the recovery of Remdesivir injections was affected. Thus, prima facie, the accused persons appear to have violated the instructions of the said notification. A written complaint too was filed under Section 195 Cr.P.C against the petitioner and the co-accused wherein it was stated that these persons had violated the instructions of Notification No. 2, thereby committing an offence under Section 188 of IPC.

16. 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)*, especially the guidelines as stated in Para 57 (iv, v, vi, vii) of the said decision, this Court is of the view that it would be premature to quash the FIR at this stage. Similarly, the judgment of Hon'ble Apex Court in *Bhajan Lal (Supra)* is to be applied in the rarest of the rare cases, and the instant case cannot be held to fall within its ambit. This Court is not persuaded to reach a conclusion that the allegations leveled are absurd, highly improbable

and that such incident could not have happened so as to direct quashing of the FIR.

17. The cognizance of the offence is yet to be taken by the Trial Court. All the contentions and arguments raised before this Court including those regarding non-fulfillment of ingredients of Sections 420/188/120-B/34 of IPC and Section 3 of E.D. Act and Sections 3 and 7 of E.C. Act can be raised on behalf of the petitioner before the concerned Court at the time of addressing arguments on charge.

18. With the allegations as leveled in the present FIR, the investigating agency has already filed a charge sheet, has collected all the documents in support of their case and has also taken special note of the fact that these Remdesivir injections were being sold to people who were forced to buy the same to save their life and lives of their precious ones, despite having government notifications in place which strictly restricted the hoarding and black marketing of the injection.

19. In view thereof, this Court does not deem it a fit case to exercise the discretion of quashing the FIR.

20. Accordingly, the present petition stands dismissed.

SWARANA KANTA SHARMA, J

FEBRUARY 2, 2023/kss