

A, 354-B and 506 of Indian Penal Code, 1860 and Sections 376 and 511 of IPC (added later on) at Police Station Kheripul, District Faridabad, Haryana.

The said FIR, as spelt out in the present petition, reads as follows:

“To, Sh. SHO Sahab Police Station Kheripul Faridabad Sir, it is requested that I Urmila wife of Shiv Singh is resident of Gadda Colony Nehar Par Muwai Road Faridabad. Our one house is situated at Karuna Nagar also. That in the room of my share I have kept my articles which is of no use. Today on dated 8/10/2021 time 10:00 A.M morning I went to my house at Karuna Nagar for cleaning. When I opened the door of the room, than on opening the door by me, my brother-in-law (Devar) Mahender Singh who resides in that house, entered my room with wrongful intent, and started to outrage my modesty with wrongful intent, I objected to him, than my brother-in-law (Devar) torn my blouse, gave me slaps and fists blows. I raised commotion, on hearing commotion my sister-in-law Jyoti alias Urmila and Rajni came at the place of incident, that on seeing both of them my brother-in-law (Devar) Mahender Singh by giving threats to kill me ran away from the place of incident. Strict to strict legal action be initiated against my brother-in-law (Devar) Mahender Singh. SD:- Urmila.”

(ii) The challan (report under Section 173 of Cr.P.C. of 1973) was filed by the Police in which Sections 376 and 511 of IPC were added.

(iii) The petitioner had earlier preferred a quashing petition before this Court vide CRM-M-60640-2023 which came to be decided on 05.02.2024. The said order reads as under:

“Faced with the situation that the challan (report under Section 173 of Cr.P.C.) has not been impugned in the present petition, learned counsel for the petitioner seeks permission to withdraw the present petition with liberty to file afresh with complete particulars.

Permission is granted. The present petition is dismissed as withdrawn with liberty as aforesaid.”

(iv) Pursuant to above-said challan having been filed on 29.10.2021, the charges were framed against the petitioner on 31.01.2022.

(v). Thereafter, prosecution evidence was led wherein testimony of the complainant/victim was recorded on 17.10.2023 (copy whereof has been appended with the present petition as Annexure P-11).

(vi). It is in this factual backdrop that the instant petition has been preferred seeking quashing of the FIR in question.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the impugned FIR. According to learned counsel, there is improvement in the stand of the material prosecution witnesses. Moreover, there is no medical evidence on record to support the case of the prosecution. It has been further argued that the statement of the victim which has been recorded as PW-1 shows multiple instances of improvement and hence her testimony cannot be made basis for conviction of the present petitioner. Thus, quashing of the FIR in question is sought for.

4. Learned counsel appearing for the State has submitted that after completion of investigation, charges have been framed against the petitioner and the substantial evidence has already been led including the testimony of the complainant-victim. She has referred to para 8 of the status report filed by way of affidavit of Rajeev Kumar, Assistant Commissioner of Police, Central, Faridabad. The same reads as under:

“8. That after completion of the investigation, challan/final report under Section 173 Cr.P.C. against the petitioner/accused was prepared on 29.10.2021 (under Section 323, 354A, 354B, 376, 511, 506 of IPC) and submitted for trial on 07.01.2022. Charge against the petitioner/accused has been framed under Section 323, 354, 354A, 354B, 376/511 & 506 of IPC on 31.01.2022. There are total 13 prosecution witnesses in the present case and out of which 7 PWs including the prosecutrix have been examined so far and remaining 6 witnesses are yet to be examined. Now the present case is pending in the court of Ld. Additional Sessions Judge, Faridabad on 16.05.2024 for prosecution evidence.”

Learned State counsel has submitted that the remaining 06 prosecution witnesses, who are official witnesses, have been summoned before the trial Court for 06.06.2024 for recording of their testimonies as prosecution witnesses.

5. Learned counsel appearing for the complainant-respondent No.2 has argued that there are serious allegations against the petitioner. It has been further argued that the petitioner has sexually assaulted the complainant-victim, tried to commit rape and extending threats in case complainant disclosed the same to anyone. The allegations raised against the petitioner are extremely serious in nature, especially the fact that the petitioner is accused of having sexually assaulted his real sister-in-law. Furthermore, from the material collected during the course of investigation and submitted alongwith challan clearly proves the guilt of the petitioner. Thus, dismissal of the instant petition is prayed for.

6. I have heard learned counsel for the parties and have perused the record.

7. It would be apposite to refer herein to a judgment passed by this Court titled as ***Supinder Singh alias Soni vs. State of Punjab and another*** =***Neutral Citation No.2024:PHHC:079327***, relevant whereof reads as under:

“Analysis (re law)

8. *This Court has delved, in extenso, regarding the nature as also the scope and ambit of powers of High Court under Section 482 of Cr.P.C. The inherent powers of the High Court; statutorily recognized by way of Section 482 of the 1973 Code; are powers which are unbridled, unfettered and plenary in nature. It is unfathomable to even make a venture to exhaustively define the nature and extent of these powers, however alluring this idea may be. The powers under Section 482 of the Cr.P.C., 1973 are required to be*

exercised with the salutary purpose of giving effect to any order passed under the Code, to prevent abuse of process of any Court or to otherwise secure the ends of justice. The only restraint required to be exercised by the High Court while exercising such powers is that of self-restraint.

8.1. *The Hon'ble Supreme Court has held; as is clear from the dicta of judgments in the cases of **Akhil Sharda** case (supra) and **Chilakamarthi Venkateshwarlu** case (supra); that the High Court, while exercising its jurisdiction under Section 482 of the Cr.P.C., 1973, is not required to evaluate the sufficiency or reliability of the evidence. Therefore, the indubitable unequivocal conclusion is that evaluation of the prosecution evidence is in the domain of the trial Court and a High Court ought not to ordinarily dilate upon the nature, reliability and sufficiency of prosecution evidence brought on record, during the course of trial, while adjudicating a quashing petition. Such a venture by the High Court would tantamount to be a mini trial which is an avertible course. It cannot be said; as a matter of absolute principle; that once substantial/important prosecution witness(s) have been examined, the High Court loses its powers under Section 482 of the Cr.P.C., 1973 to even consider a plea for quashing of an FIR (as also the proceedings emanating therefrom). The Hon'ble Allahabad High Court in the case of **Shueb Mahmood Kidwai** case (supra); while answering a reference made by a Single Judge; has held that the powers of the High Court under Section 482 of the Cr.P.C., 1973 to entertain a plea for quashing of an FIR (as also the proceedings emanating therefrom) is not ipso facto ousted on account of prosecution witnesses having been examined. In the considered opinion of this Court, the "maintainability of the petition" vis-a-vis. "desirability to entertain a petition" are two distinct concepts wherein these differ totocaelo. In other words, the difference is as stark as between chalk and the cheese. Therefore, the unequivocal conclusion is that the High Court has powers under Section 482 of the Cr.P.C., 1973 to entertain a plea for quashing of an FIR (as also the proceedings emanating therefrom) even when substantial/material prosecution witnesses have been examined, during course of trial, but it would be desirable to entertain such a petition at such stage only if there are accentuating/exceptional facts warranting such intervention. This Court must hasten to add a word of caution herein viz.; such a plea is required to be considered by the High Court with utmost circumspection and caution since it would essentially involve ratiocinating upon the relevance, sufficiency and nature of prosecution evidence which has come on record during the trial proceedings. Ergo, the High Court ordinarily ought not to interfere in such a situation.*

8.2. *More often than not, this Court is called upon to deal with petition(s) filed under Section 482 of Cr.P.C., 1973 for quashing of an FIR wherein notice of petition had earlier been issued but no order for staying proceedings was granted and while the petition remained pending adjudication, the trial Court proceedings have continued in the interregnum resulting in the recording of substantial/material prosecution evidence. While the mere continuation of trial Court proceedings and recording of substantial/material prosecution evidence should not, by itself, be the lone score for dismissing such petition; it nonetheless constitutes significant and relevant development(s) which must be considered by the Court at the time of final adjudication. It is not unknown that, petition(s) pending adjudication before Courts become unentertainable, due to efflux of time, especially when subsequent developments become significant nay pivotal. The Hon'ble Supreme Court, in a three Judges Bench judgment, in case of **Pasupuleti Venkateswarlu** (supra) has enunciated that subsequent events of fact which have material bearing on the case ought to be taken into consideration at time of final adjudication of such case. Therefore, the inevitable conclusion that emerges is that, where substantial/material prosecution evidence has been led even during pendency of a quashing petition before the High Court, it would be bounden upon the High Court to consider the aspect of such a petition having become unentertainable in view of this aspect of the matter. This Court must hasten to add a word of caution herein viz.; a quashing petition already pending adjudication before High Court, ought not to become unentertainable nay non-maintainable only on account of charge-sheet/challan (report under Section 173 of Cr.P.C., 1973) or framing of charges by trial Court during pendency of such a petition.*

9. *As a result of above discussion, the following postulates emerge:*

I) The powers of the High Court under Section 482 of Cr.P.C., 1973 are unbridled, unfettered and plenary in nature. The only restriction upon exercise of such powers is self restraint.

II) i) A plea filed for quashing of an FIR (as also the proceedings emanating therefrom) filed before the High Court does not ipso facto become barred or non-maintainable in a case wherein substantial/material prosecution witnesses have already been examined.

ii) In such a scenario, the High Court ought to exercise a high degree of circumspection and caution while dealing with such a plea since it would essentially involve adjudication upon the relevance, veracity & sufficiency of prosecution evidence brought on record during trial proceedings which ordinarily ought to be best left to be considered by the trial Court. Ergo,

accentuating facts/circumstances ought to exist for exercise of such power by the High Court.

iii) It is neither conceivable nor desirable to even venture to lay-down any exhaustive set of guideline(s) in this regard, however alluring this aspect may be. Such exercise of inherent powers ought to be best left to the discretion of the Court which is in seisen of the matter, as every case is sui generis in nature.”

8. As per the allegations in the FIR as also the averments in the status report(s) filed by the State, it is indubitable that serious allegations have been made against the petitioner. The charges were framed against the petitioner on 31.01.2022 whereinafter testimony of the complainant/victim was recorded on 17.10.2023, whereinafter she was cross-examined at length on 17.10.2023 itself and 18.10.2023 whereas present petition was filed on or about 13.03.2024. The said witness has also been cross-examined at length on behalf of the petitioner (herein). Total 13 prosecution witnesses have been cited in the instant case out of which 07 prosecution witnesses including the victim already stand examined. The submissions advanced by the learned counsel for the petitioner in support of the quashing petition encompass issues of meticulous analysis of the prosecution evidence especially that of testimony of victim, that are best left open to be adjudicated in trial. These issues essentially involve a detailed critical appreciation of the evidentiary value and credibility of the testimony of the prime prosecution witness namely the victim. Engaging in such an analysis at this stage would amount to this Court undertaking a mini-trial, which is not appropriate especially at this juncture. Moreover, no compelling or accentuating facts have been brought forward that would persuade this Court to hold that continuation of trial proceedings are abuse of process of law or

Courts. This is especially at this stage, where the testimony of the key prosecution witness, namely the victim, has already been recorded.

Accordingly, the instant petition deserves dismissal.

Decision

9. Accordingly, the instant petition filed under Section 482 of the Cr.P.C., 1973 seeking quashing of the impugned FIR as also challan and all subsequent proceedings emanating therefrom, is dismissed. There is no gainsaying that petitioner shall be at liberty to raise all pleas, as available to him in law, during trial proceedings.
10. Needless to say that anything observed herein above shall not be construed to be an opinion on the merits of the case.
11. Pending application(s), if any, shall also stand disposed off.

June 05, 2024

Ajay

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned:	Yes
Whether reportable:	Yes