

2024:PHHC:146794



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M No.28544 of 2018 (O&M)
Date of Decision: 07.11.2024**

Vyom Dinesh Sharma

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Amarjit Singh Virk, Advocate,
for the petitioner.

Mr. Amandeep Singh Samra, AAG, Punjab,
for the respondent-State.

Mr. Akshay Jindal, Advocate and
Mr. Vrishank Suri, Advocate,
for respondent No.3.

MANISHA BATRA, J.

1. The instant petition has been filed under Section 482 of Code of Criminal Procedure (For short "Cr.P.C.") by the petitioner seeking quashing of FIR No.135 dated 10.08.2016 registered under Sections 419, 420, 465, 467, 468 and 471 of IPC and Section 66-D of Information Technology Act, 2000 at Police Station Phase-I, District SAS Nagar, Mohali, challan report filed under Section 173 Cr.P.C. in the abovesaid FIR and the proceedings having subsequently emanated therefrom.

2. Adumbrated facts as emanating from the record are that a written complaint was filed by the complainant Rajender Saxena, Head of

2024:PHHC:146794



Semi Conductor Laboratory (SCL), Department of Space, Government of India, SAS Nagar, Punjab alleging therein that an application dated 28.07.2015 shown to have been sent by one Anil Kumar son of Suraj Bhan resident of Village Basunda Post Office Khedwala District Gurgaon, Haryana had been received in his office whereby personal information relating to one Ms. Divya Bhasin, who was an employee of the organization, with regard to her attendance, leave record, salary details and grounds of transfer etc. had been sought. Since this information was personal in nature and the disclosure thereof amounted to invasion of privacy of an individual having no public interest at large and such information was exempted from disclosure under the provisions of Right to Information Act, 2005 (For short "Act, 2005"), therefore, the complainant had sent reply to the abovesaid Anil Kumar accordingly.

3. As further alleged in the complaint, as on 22.09.2015, an email was received from Id anilkumarbhasunda@gmail.com thereby asking for responding to the information sought by the same Anil Kumar. He even asked for grant of compensation as the information had not been received by him even after expiry of period of two months. Reply was sent on the abovesaid email ID by the office of the complainant but he again sent another mail on 23.09.2015 to the effect that he was denied disclosure of the information sought by him in violation of provisions of the Act, 2005 and again compensation was demanded. Then another application dated 30.09.2015 seeking same information had been received which too was denied by the complainant by letter dated 13.10.2015. The complainant then

2024:PHHC:146794



received a telephonic call from cell phone bearing No.8800736079 and the caller while introducing him as Anil Kumar son of Suraj Bhan, resident of Village Basunda disclosed that he was a sweeper working in Gurugram and had never sought any information by moving any application under the Act, 2005 and had no concern with Ms. Divya Bhasin. Since in the meanwhile, an appeal had been filed and the appellate authority vide order dated 10.11.2015, had decided to provide the information sought earlier, therefore, suspecting that someone else by using the name of Anil Kumar had been seeking information in a fraudulent manner qua Ms. Divya Bhasin, the complainant prayed for taking action in the matter. After registration of FIR, investigation proceedings were initiated. During the course of investigation, record from the State Cyber Cell and the details of the phone number from the offices of BSNL and Haryana Roadways by using which, the aforementioned e-mail had been sent, was collected and it was revealed that the petitioner by using the name and address/e-mail of the above named Anil Kumar had filed applications under Act, 2005 with an intention to harass Ms. Divya Bhasin. The petitioner joined into the investigation as he was given benefit of anticipatory bail. Investigation has since been completed and challan stands presented.

4. The petitioner has sought quashing of the FIR as registered against him on the grounds that he has been falsely implicated in this case. The ingredients for commission of the offences for which he has been booked and challaned have not been made out against him at all. The investigating agency has not been able to collect any evidence against him to

2024:PHHC:146794



prove that it was he who had generated some fake ID and had used the IP in question for that purpose and had sent email to the office of the complainant. It is submitted that infact the petitioner was engaged with Ms. Divya Bhasin and their marriage was to be performed on 21.04.2015. Since his family had made request to the family of Ms. Divya Bhasin to postpone the date of wedding, as his father had been diagnosed to be suffering from cancer and instead thereof case bearing FIR No.122 dated 01.05.2015 was lodged against his family members and himself at Police Station, Baldev Nagar, Ambala, by her family, therefore, the marriage was called off. The said FIR was found to be registered on false allegations and had been cancelled subsequently. It is submitted that another FIR bearing No.111 dated 09.07.2016 was got registered by Ms. Divya Bhasin against him at Police Station Phase-1, SAS Nagar, Mohali which too had been cancelled and feeling offended due to that fact, Ms. Divya Bhasin had dragged him into this case and by filing some other cases. It is submitted that the continuation of proceedings of this FIR would be sheer abuse of process of the Court and there are no chances of conviction of the petitioner. With these broad submissions, it is urged that the petition deserves to be accepted and the impugned FIR and the proceedings having emanated therefrom are liable to be quashed.

5. The respondent No.1-State has filed reply submitting therein that on conducting a preliminary inquiry into the complaint filed by the complainant, it was revealed that by using fake name, address and email ID by moving RTI application before SCL, the petitioner tried to harass Ms.

2024:PHHC:146794



Divya Bhasin. Sufficient material had been collected during the course of investigation to prove that the applications/letters had been sent by the petitioner by using the name of Anil Kumar, resident of Village Basunda and email had also been sent in his name by creating false IDs from the IP address on the phone which was being used by the petitioner who was posted as Traffic Manager at the relevant time from his office. Learned State counsel assisted by learned counsel for respondent No.3 has argued that the complicity of the petitioner in the commission of aforementioned offences has been established during investigation and, therefore, it is urged that no ground has been made out for allowing the petition.

6. I have heard learned counsel for the parties at considerable length and have gone through the record.

7. The Hon'ble Apex Court has culled out the following principles governing the law on quashing of an FIR under Section 482 of the Cr.P.C. after analyzing and examining several judicial precedents, in the case reported as **M/s Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and others**, 2021 SCC OnLine SC 315:-

“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

2024:PHHC:146794



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

2024:PHHC:146794



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 v. State of Punjab**, AIR 1960 Supreme Court 866 and **State of Haryana vs. Bhajan Lal**, 1992 SUPP (1) SCC 335, 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

2024:PHHC:146794



offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

8. In **CBI v. Aryan Singh**, 2023 SCC OnLine SC 379, the Hon'ble Apex Court observed that while exercising powers under Section 482 of Cr.P.C., the Courts have a very limited jurisdiction and are only required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not". In **Kaptan Singh vs. State of U.P. and others**, 2021 SCC Online SC 580 and **Dhruvaram Murlidhar Sonar vs. State of Maharashtra**, (2020) 3 SCC (Criminal) 672, it was observed that the appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 of Cr.P.C. as this power is an exception and not a rule. Inherent jurisdiction under Section 482 of Cr.P.C. though wide is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is also well settled proposition of law that the Court is not required to go into the merits of the allegations and/or entering into the merits of the case as if it is exercising the appellate jurisdiction and/or conducting the trial, at the stage of exercising powers under Section 482 of Cr.P.C. In order to examine as to whether the factual contents of the FIR disclose any cognizable offence or not, the High Court cannot act like investigating agency nor can exercise the powers like an appellate court. The said question is required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring any proof. In view of the established position of law as discussed

2024:PHHC:146794



above, the instant case has been considered and this Court has observed that the allegations against the petitioner are that with a view to harass the respondent No.3-Ms. Divya Bhasin who was posted in the office of SCL, the petitioner had sent letters in the name of one Anil Kumar son of Suraj Bhan resident of Village Basunda and then after creating fake email IDs in the name of the same Anil Kumar, with a dishonest intention to obtain the information as to the service record of Ms. Divya Bhasin, had used the same without the consent of the said Anil Kumar. The use of the email ID in the name of Anil Kumar was prima facie fraudulent and dishonest, obviously with an intention to harass Ms. Divya Bhasin. The inquiry/investigation conducted by the police authorities has revealed that the petitioner who was posted as Traffic Manager in the office of Haryana Roadways at Chandigarh had created fake email ID by using the official mobile phone and had used the same. It is for the trial Court to analyze the case after taking cognizance of the matter to find out whether the case would end in conviction or acquittal. This Court has to consider whether the allegations in the FIR disclose any prima facie offence as alleged against the petitioner. Correctness or otherwise of these allegations has to be decided only during trial. In my considered opinion at this stage, it is not open to this Court to stifle proceedings by entering into the merits of the contentions raised on behalf of the petitioner. The High Court in exercise of its inherent power is expected to quash the proceedings in criminal cases in rarest of rare cases with extreme caution. The instant one is not such a case. There are specific allegations against the petitioner. The defence as taken by him is triable

2024:PHHC:146794



issue. The petitioner is before the trial Court and it is for the said Court to consider the same. As such, this Court is not inclined to quash the proceedings. However, since the charges have not yet been framed in this case, the petitioner shall be at liberty to raise all the contentions which have been raised before this Court, at the time of addressing arguments on the point of charge before the learned trial Court. In view thereof, the petition stands dismissed along with pending application, if any.

9. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

07.11.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No