



CRM-M-21603-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21603-2023 (O&M)

DATE OF DECISION: 22.10.2024

ABHISHEK KUMAR MISHRA

.....PETITIONER

Vs.

CENTRAL BUREAU OF INVESTIGATION AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Keshavam Chaudhari, Advocate, and
Mr. Rishab Tewari, Advocate,
for the petitioner.

Mr. Ravi Kamal Gupta, Advocate,
for respondent No. 1-CBI.

Mr. Amrik Singh Narwal, D.A.G., Haryana,
for respondents No. 2 to 5.

HARPREET KAUR JEEWAN, J. (ORAL)

1. Prayer in the present petition under Section 482 read with Section 483 of the Code of Criminal Procedure, 1973, (for short '*the Cr.P.C.*') is for quashing of FIR No.194 dated 03.07.2022 registered under Sections 186, 354, 506 and 509 read with Section 34 of the Indian Penal Code, 1860 (for short '*the IPC*') at Police Station Sector-40, Gurugram (Annexure P-2) with the consequential proceedings including the report dated 14.08.2022 submitted under Section 173 Cr.P.C. (Annexure P-4) and order dated 31.08.2022 (Annexure P-5), passed by the trial Court taking

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cognizance against the petitioner.

1.1 Another prayer has been made for entrusting the investigation arising out of the said FIR to some independent agency, i.e. Central Bureau of Investigation.

1.2 A prayer has also been made to monitor the investigation and to quash the order dated 04.01.2023 (Annexure P-9) passed by the Judicial Magistrate 1st Class, Gurugram.

2. Reply by way of an affidavit of Sh. Jitender, HPS, Assistant Commissioner of Police, East, Gurugram filed on behalf of respondents No.2 to 5, is taken on record.

3. At the outset, learned counsel for the petitioner submits that he does not press the relief sought for quashing the order dated 04.01.2023 (Annexure P-9) passed by the Judicial Magistrate 1st Class, Gurugram, whereby the application filed by the petitioner under Section 156 (3) CrPC was dismissed in default.

3.1 Counsel for the petitioner further submits that the registration of FIR No. 0194, dated 03.07.2022 at the instance of Head Constable Pinki (hereinafter referred to as '*the complainant*') against the petitioner is mis-use of process of law. In fact on 03.07.2022, 6-7 E-bikes were stolen from the shop of the petitioner, situated in Sector 32, Gurugram, as such he alongwith his business partner informed the police by dialing the number "112" through his mobile phone. The petitioner was even able to catch one thief namely Juel Rana. Two police officers came in PCR and apprehended the said thief-Juel Rana, took him to Police Station Sector 40, Gurugram

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and handed over the same to the Incharge Ms. Pinky (Head Constable). When the petitioner along with his business partner reached the police station, Ms. Pinky refused to lodge an FIR. The petitioner tried to approach the SHO, however, she did not pay any heed to the complaint. Thereafter, the petitioner was informed that the thief had run away from the police custody but no entry was made in the police diary. The petitioner even saw that Ms. Pinky was shouting at the top of her voice to suppress the incident and this fact can be corroborated by the CCTV footage of the police station. The petitioner again approached the SHO, however, the petitioner and his partner were illegally detained in police station for more than 7 hours. Their mobile phones were taken and they were not permitted to contact anyone.

3.2 It has been contended on behalf of the petitioner that FIR No.194 was registered against the petitioner and his partner with false allegations under Sections 186, 506, 509 and 354 IPC read with Section 34 thereof (Annexure P-2). It is alleged that the SHO, as well as Ms. Pinky demanded a sum of ₹15,00,000/- from the petitioner in order to drop the charges. The petitioner was made to sign the blank papers. On 04.07.2023, the petitioner was forcefully taken to the Court, wherein he was shown to be arrested. The petitioner was released on bail as per the order dated 16.07.2022 passed by the Additional Sessions Judge, Gurugram (Annexure P-3). On 14.08.2022, final report ('*challan*') was presented against the petitioner and his partner in which offence under Section 353 IPC was added and offence under Section 186 IPC was dropped. Even the

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Magistrate had wrongly taken cognizance of the charge sheet filed against the petitioner and his partner, vide order dated 31.08.2022 (Annexure P-5). A detailed representation dated 24.08.2022 (Annexure P-6) sent by the petitioner has not been considered by the police authorities.

3.3 Learned counsel for the petitioner also contends that instead of taking action against the thief, the Lady Head Constable Ms. Pinki falsely implicated the petitioner in the present FIR. It is further contended that even the senior officers have not taken any action since the said Head Constable for demand of illegal gratification of ₹15,00,000/- from the petitioner to drop the charges. Since the petitioner has been falsely implicated in the present FIR, as such, a request has been made to entrust the investigation to an independent agency, i.e. the Central Bureau of Investigation.

4. I have considered the aforesaid contentions and perused the paper-book.

5. As per the version in the FIR, the petitioner-Abhishek Kumar Mishra along with Shubham and two other persons came to the police station at 02:30 p.m. The petitioner-Abhishek asked the complainant to register an FIR regarding theft and further said that he had caught a person. The complainant told the petitioner to give a complaint in writing so that she can take action. The person brought by the petitioner informed the complainant that he had taken a vehicle from the petitioner for which he has paid the rent for some time. The rent is due for some period and he assured that he would return the vehicle (Make Activa) to the petitioner.



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6. As per the FIR, it is further alleged that the petitioners sat on the table in front of the complainant and by using filthy language, started behaving badly. He started staring at the complainant and by pushing her went outside the room. The petitioner again, by coming to the room of the complainant started mis-behaving with the complainant. The complainant is alleged to have threatened while she was on duty.

7. The petitioner has not placed on record any material to show the details of the vehicle which were stolen and did not give any details about the manner in which the alleged theft took place. The petitioner has not given any written complaint to the police disclosing the manner in which theft took place, i.e. as to whether it was by way of house tress pass or by breaking the lock of the store of the petitioner. Without any such details being part of the paper-book, the version of the petitioner cannot be believed, at this stage. As such, there is nothing on record to suggest at this stage that the complainant did not register the FIR despite there being a disclosure of the facts by the petitioner regarding the cognizable offence. On the other hand, there are allegations against the petitioner in the FIR at the instance of the complainant that she was being obstructed in performance of her official duties when she was present in the police station at the relevant time.

8. The Hon'ble Apex Court in "State of Haryana and others vs. Ch. Bhajan Lal and Others"; 1992 AIR SC 604, laid down the broader guidelines and principles to exercise the extraordinary powers under Article 226 of the Constitution of India or inherent powers under Section

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482 of the Code for quashing of the proceedings in criminal cases. The said principles read as under:-

“(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 FIR 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



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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. In view of the facts and circumstances on record and in view of the ratio of the decision by the Hon’ble Apex Court in **Bhajan Lal’s** case (*supra*), there are no grounds to quash the present FIR (Annexure P-2), including the report submitted on 14.08.2022 under Section 173 Cr.P.C (Annexure P-4) and order dated 31.08.2022 (Annexure P-5), passed by the trial Court taking a cognizance against the petitioner.

10. Consequently, the present petition stands dismissed.

11. However, it is made clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

12. Pending miscellaneous application (s), if any, shall also stand disposed of.

OCTOBER 22, 2024
P.Bhatt/nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether Reportable	No