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230 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-38305-2021(O&M)

Date of decision: 28.11.2024

Suresh Kumar

...Petitioner

Versus

State of Haryana and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aditya Sanghi, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J.(Oral)

1. The present petition has been preferred under Section 482 Cr.P.C. seeking quashing of FIR No. 52 dated 18.09.2019 registered under Sections 376, 506 of the IPC at Police Station Women, District Rewari and all subsequent proceedings arising therefrom.

2. Briefly, the facts, as alleged by the prosecution, are that after the death of her husband, the complainant-respondent No. 2 started working with Radhey Shyam LIC agent. Petitioner was also working there. In the year 2015, respondent No. 2 left the job of Radhey Shyam and started working with Rakesh Kumar. Thereafter, the petitioner approached respondent No.2 in March, 2017 with a job opportunity at his school. Respondent No.2 joined the said school in April, 2017. In June, 2017, the petitioner took her to the room upstairs and raped her. He also threatened to



kidnap and kill her son. Under this threat, the petitioner repeatedly raped respondent No.2. The petitioner also offered to sell her a flat owned by him in Sadhushah Nagar, Rewari for a consideration of Rs. 12,60,000/-. Respondent No.2 paid the said amount but the petitioner neither registered the sale deed nor did he return the money. She submitted an application before the police authorities on 08.08.2019 and a settlement was arrived at. The petitioner gave her cheques covering the sum of Rs. 12,60,000/-.

3. Learned counsel for the petitioner *inter alia* submits that respondent No.2 is a 35 years old, mature married woman. The relationship between the parties, if any, was consensual in nature. Moreover, the genesis of the issue lies in a monetary dispute qua the sale of the flat, which, admittedly, stands settled. The factum of compromise was recorded by means of an affidavit (Annexure P-4) wherein respondent No.2 has categorically admitted that there is no ill will between the parties. No mention of the offence of rape was made in the complaint dated 08.08.2019. Moreover, there is a delay of one year in registration of the FIR(supra). Lastly, according to the report dated 23.06.2020 (Annexure P-13), the petitioner was unable to get a penile erection during the Papaverine Potency Test. As such, he is incapable of performing sexual intercourse which stifles the case of the prosecution.

4. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that respondent No.2-victim worked at the school owned by the petitioner. The petitioner also sold



her a flat for Rs. 12,60,000/- but did not get registered the sale deed in her favour. A complaint dated 08.08.2019 to this effect was made by respondent No.2 before the police and a compromise(Annexure P-4 colly) was arrived at as the petitioner returned the said amount by means of multiple cheques.

5. Being a married woman, the hesitance of respondent No.2 to report the matter is understandable. Respondent No.2 has also explained that she did not mention the factum of rape in complaint dated 08.08.2019 as she anticipated that the petitioner would not return her money otherwise. The hesitation shown by the victim to report an incident of sexual assault as the same might affect their social standing. Hence, the Courts must be cognizant of the same while handling the question of delay in lodging an FIR qua sexual assault as it cannot be equated with other offences. A two Judge bench of the Hon'ble Supreme Court in ***Satpal Singh vs. State of Haryana (2010) 8 SCC 714***, speaking through Justice Dr. B.S. Chauhan, the following was observed:

*“13. In a rape case the prosecutrix remains worried about her future. She remains in traumatic state of mind. **The family of the victim generally shows reluctance to go to the police station because of society's attitude towards such a woman. It casts doubts and shame upon her rather than comfort and sympathise with her. Family remains concern about its honour and reputation of the prosecutrix. After only having a cool thought it is possible for the family to lodge a complaint in sexual offences.** (Vide Karnel Singh v. State of M.P. 1995(3) RCR (Criminal) 526 ; and State of Punjab v. Gurmeet Singh & Ors. 1996(1) RCR (Criminal) 242).*

14. This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of



the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety. [vide State of Andhra Pradesh v. M. Madhusudhan Rao 2008(4) RCR (Criminal) 931 : 2008(6) R.A.J. 326 : (2008) 15 SCC 582].

15. However, no straight jacket formula can be laid down in this regard. In case of sexual offences, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to the court or not. In such a fact-situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. This Court has always taken judicial notice of the fact that "ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon" [vide Satyapal v. State of Haryana 2007(2) RCR (Criminal) 695]."

Furthermore, a two Judge bench of the Hon'ble Supreme Court in ***State of Himachal Pradesh vs. Shree Kant Shekari 2004 AIR SC 4404***, speaking through Justice Arijit Pasayat, opined as follows:

"9. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay . Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactory explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case. As the factual scenario shows, the victim was totally

unaware of the catastrophe which had befallen to her. That being so, the mere delay in lodging of first information report does not in any way render prosecution version brittle. These aspects were highlighted in Tulshidas Kanolkar v. State of Goa, 2003(4) RCR (Criminal) 964 (SC) : (2003(8) SCC 590).”

6. A perusal of the record indicates that the petitioner was formally arrested and released on bail in compliance of order dated 06.09.2021 passed by this Court (Annexure P-12). Thereafter, he was medico-legally examined and Papaverine Potency Test was conducted on him to rule out erectile dysfunction and impotency vide report dated 23.06.2020 (Annexure P-13). The medico-legal board opined that the petitioner was unable to get a penile erection. The said report has to be proved in Court, in accordance with law, to ascertain its relevance to the matter at hand.

7. Furthermore, the matter is still pending investigation. Recently, in ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra AIR 2021 SC 1918***, the Hon'ble Supreme Court reiterated the guiding principles to quash proceedings under Section 482 of Cr.P.C and held as follow-:

“80. In view of the above and for the reasons stated above, our final conclusions on the, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C , 1973 and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., 1973 while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C., 1973 and/or under Article 226 of the Constitution of India, our final conclusions are as under:

- 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 a cognizable offence;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the `rarest of rare cases (not to be confused with the formation in the context of death penalty).
- 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 rather 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 and one ought not to tread over the other sphere;
- 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. 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., 1973 is very wide, but conferment of wide power requires the court to be more 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;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., 1973 only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C., 1973 and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C., 1973 before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., 1973 while dismissing/disposing of the quashing petition under Section 482 Cr.P.C., 1973 and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is *prima facie* of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C., 1973 and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the

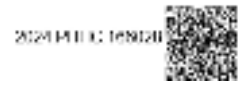


High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

The well settled legal position that the Court will not normally interfere with an investigation and permit it to be completed as doing so would encroach upon the lawful power of the police to investigate into cognizable offences was also reiterated by the Hon'ble Supreme Court in ***Satvinder Kaur vs. State (Govt. of NCT of Delhi) 1999(8) SCC 728.***

8. Further still, there was an evident power imbalance between the parties as the petitioner was the employer of respondent No.2. In fact, the petitioner has only presented settlement with respect to the monetary dispute qua sale of the flat. No averments have been made with respect to the allegations of repeated rape. The matter requires to be adjudicated by the learned trial Court on the basis of the evidence adduced by the parties and the probable defence as set up by the petitioner cannot be gone into at this stage.

9. A two Judge bench of the Hon'ble Supreme Court in ***HMT Watches Limited vs M.A. Abida (2015) 11 SCC 776*** has held that inherent powers under Section 482 of the Cr.P.C. cannot be extended to determining question of facts. It is only for the trial Court to determine the disputed questions of fact after examining the evidence on record and interference by this Court with regards to factual questions is impermissible in law. Reliance can also be placed on the judgments rendered by the Hon'ble Supreme Court



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in *Rathish Babu Unnikrishnan Vs. State (Govt. of NCT) 2022 SCC Online SC 513* and *Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458*.

10. In view of the discussion above, the present petition is dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.

11. Needless to say, nothing observed hereinabove above shall be construed to be expression of an opinion by this Court, lest it may prejudice the case of either party.

28.11.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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