

CRM-M-65352-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

218-2

CRM-M-65352-2023

Date of decision: 28.05.2024

Satbir Singh and others

....Petitioners

V/s

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sandeep Sharma, Advocate for the petitioners.

Ms. Mahima Yashpal, DAG Haryana.

Mr. Vinod Kumar, Advocate for respondent No.4-complainant.

SUMEET GOEL, J. (Oral)

1. By way of present petition, the petitioners are seeking quashing of FIR No.733 dated 28.11.2023 under Sections 323, 34, 376, 379-A, 506 of IPC, registered at Police Station, Sadar Bhiwani, District Bhiwani, and all consequent proceedings arising therefrom.

2. The FIR, as spelt out in the present petition, is as follows:

“Statement of Sonam D/o Vijay Kumar R/o Village Manheru and age 22 years Mobile No. 9416211508 stated that I am a resident of the above mentioned address and I am studying B.Tech. from Jhajjar. We are 2 sisters and my father is a private taxi driver. I live with my sister, mother and grandmother at my house. On dated 26.11.2023, I was going to Gourav for getting my phone. Gourav was sitting at the Chowk, then I asked him to give me my phone and then Gourav gave my phone to Nikhil. Then Gourav's mother Anita and Gourav's sister Deepika also came and then Gourav's mother Anita snatched Original Documents like Marksheet (Class 10th), Polytechnique Diploma and Computer Diploma, Aadhar Card, PAN Card, Bank's Passbook from me and when I started shouting my sister Solan and my mother Meena reached at the site. Then all of them started beating me, my sister and my mother also broke my phone and in between Anil and Gourav's father Satbir also came there who also injured my mother. Me and Gourav always talked about the rivalry between our families over telephonic calls and eventually we became friends. Around 2 years back, Gourav called me at



Huda Park Bhiwani and after clicking my photographs, Gourav started blackmailing me and asked me to build physical relationship with him and if you did not do so, I would show these photographs to your family. Because of the photographs, for the first time, Gourav raped me at a cafe in front of Thana Sadar Bhiwani and continued black mailing me and forcefully made physical relations with me. He also had forceful sex with me at a café near Hansi Gate Bhiwani Then, he asked me to buy him a phone and then I brought an Apple I Phone-11 out of fear for him and I made a down payment from my account and the monthly installments are also deducted from my account. Even then, Gourav did not desist from his actions and continued blackmailing me and I got fed up from his actions and I told him to show the photographs to whoever you want to and return me my phone and then he said you come to the Chowk and take your phone. When I reached there to get my phone, he started beating me and, in this quarrel, my mother and sister got injured and I have come here with my family to give statement and strict legal actions must be taken against all of them. Statement is written, heard and is correct. SD-Sonam”

3. Learned counsel for the petitioners has argued that there was a consensual relationship between respondent No.4 and Gourav, who is son of petitioner Nos.1 and 2 & the instant FIR has been lodged in order to harass and extort money from the petitioners. Learned counsel has further argued that the said relationship came to the knowledge of the family of the complainant who were unhappy with the said relationship and hence the petitioners have been falsely implicated into the FIR in question. Learned counsel has further argued that a bogus and fabricated story has been concocted in order to harass and humiliate the petitioners. It has been further argued that from the evidence available on record, no element of criminality has been made out against the petitioners. Moreover, the FIR is absolutely mala fide and is lodged with mala fide intention and ulterior motive. In addition, the present case is of private vendetta against the petitioners. Thus, the quashing of the instant FIR has been prayed for.



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4. Reply dated 22/23.04.2024 has been filed by the State of Haryana; relevant whereof reads as under:-

“3. That after registration of the case, the investigation swung into motion and initially, the investigation was carried out by SI Virender 1007/Bhiwani. During investigation the IO reached at G.H Bhiwani and received the MLR of injured persons and statement of the victim was recorded and the statements of Solan & Meena were also recorded. Further investigation was conducted by L/ASI Raj Kala 455/BWN P.S Sadar, Bhiwani. During investigation, spot of occurrence was inspected and on dated 01.12.2023 the victim had demarcated the place of occurrence and the rough site plan was prepared and after that the statement of witnesses were recorded and during investigation on dated 01.12.2023 section 376 IPC was deleted and section 376(2)(n)IPC was added.

4. That on dated 02.12.2023 the verification of the facts was conducted by Sh. Logesh Kumar IPS then ASP, Tosham.

5. That the victim was medico-legally examined on dated 05.12.2023. Sample was not taken by the Doctor as the sexual assault history was old and as per MLR Hymen ruptured, no bleeding and sign of old sexual intercourse was found. Copy of MLR is annexed as Annexure R-1. During investigation, on dated 05.12.2023 the victim produced 44 pages of WhatsApp screen shot and the same was taken in police possession. On dated 06.12.2023 the victim was produced before the Ld. Court and her statement under section 164 Cr.P.C. was recorded and the complainant has mentioned all the version of her complaint in her 164 Cr.P.C statement. Copy of statement U/s 164 Cr.P.C is annexed as Annexure R-2.

6. During investigation on dated 05.01.2024 the bed head ticket of the victim and her sister and mother was received from the Doctor of G.H Bhiwani and advice was taken from the Doctor. As per advice given by the Doctor, after X-ray report there was no fracture seen. All the injuries were simple in nature. During investigation on dated 05.01.2024 the victim produced her mobile and the same was taken in police possession vide memo and statement of the victim and the witnesses were also recorded and the victim and the witness put their signatures on it and after that on dated 05.01.2024 the victim demarcated the place where sexual assault was done by the accused Gourav i.e Hotel Blue Star and the record was taken in police possession vide recovery memo and the witnesses put their signature on it. That after getting anticipatory bail from Ld. Session Court present petitioners were joined the investigation on dated 27.01.2024 and



all the petitioners suffered their disclosure statements and admitted the guilt of the commission of the offence. The investigation of the case is pending.

7. *That the accused Gaurav approached before Ld. Session Court for anticipatory bail and the same was dismissed by the Ld. Session Court vide order dated 24.01.2024.*

8. *That after that the accused Gaurav approached the Hon'ble High Court for granting anticipatory bail and after getting interim relief from Hon'ble High Court on dated 14.02.2024, the accused has joined the investigation on dated 20.02.2024 and during investigation the accused did not cooperate with the investigation officer, and he had only produced a mobile phone and same was in bad condition and the same was taken in police possession vide recovery memo and the accused and the witnesses put their signature on it. After that section 427 IPC was added later on. That the investigation of the case is pending and the recovery of PAN Card and mobile Sim card no 8607136573 are also pending from the accused Gourav.*

9. *That on dated 20.02.2024 present petitioner Satbir produced a Pen drive on giving notice U/s 91 Cr.P.C in which CCTV recording was captured with regard to the incident and the same was given along with 65-B certificate and the same was taken in police possession vide recovery memo and the accused put their signature on it.*

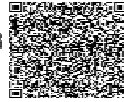
10. *During investigation on dated 01.03.2024 the facts of the case was verified by Sh Rakesh SHO, P.S Sadar, Bhiwani and all the allegations against the present petitioners and accused Gourav were found correct.*

11. *That however as per record of concerned Police Station, one other case FIR no 711 dated 20.11.2023 U/s 323,34,427,452,506 IPC is registered at P.S Sadar, Bhiwani against the petitioner Satbir and the present petitioner Satbir is on bail in this above mentioned case by the Ld. Session Court vide order dated 22.02.2024 and the final report U/s 173 Cr.P.C has been submitted in the Ld. Court on dated 06.03.2024."*

Learned State counsel has raised submissions in tandem with the above-said reply.

5. Learned counsel for the complainant has also raised submission in consonance with the submissions raised by learned State counsel.

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



7. It would be apposite to refer herein to a judgment of the Hon'ble Supreme Court titled as ***State of Haryana and others vs. Ch. Bhajan Lal and others, 1992 AIR (Supreme Court), 604***, relevant whereof reads as under:

“107. 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 extraordinary 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 channelised 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.

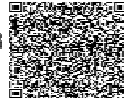
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) 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 F.I.R. 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.

108. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice”

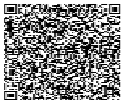
7.1. Still further, the Hon’ble Supreme Court in a judgment titled as ***M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others AIR 2021 SC 1918***, has held as under:

“23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, 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. 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;*



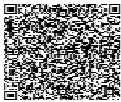
xiii) The power under Section 482 Cr.P.C., 1973 is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

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 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.

xxxx	xxxx	xxxx	xxxx
xxxx	xxxx	xxxx	xxxx
xxxx	xxxx	xxxx	xxxx”

8. All the issues raised by the petitioners cannot be decided at this stage as the case is still at the stage of investigation. The issues raised on behalf of the petitioners in the instant quashing petition are essentially questions of fact which can be adjudicated upon after due investigation and appraisal of evidence and, thus, the present petition is pre-mature. Moreover, it is trite law, that the investigation cannot be hindered with at such a rudimentary stage, otherwise it would amount to unduly transgressing the domain reserved for investigating agency. It is no more *res integra* that the exercise of inherent powers is hedged by certain self imposed restrictions and whether in the facts of a particular case such power is to be exercised or not is a discretion to be exercised by the Court. This Court, however, does not intend to express any opinion on the merits of case during the pendency of investigation. Moreover, the petition filed by co-accused Gaurav seeking



quashing of the FIR, was disposed of vide the following order passed on 21.03.2024:

*“Learned counsel for the petitioner seeks to withdraw the present petition at this stage with liberty to file afresh after laying challenge to the challan (report under Section 173 of Cr.P.C.), if the need so arise.
Dismissed as withdrawn with the liberty aforesaid. ”*

9. Keeping in view the entirety of the facts and circumstances of the present case, I am of the considered view that no case for quashing of instant FIR is made out. No interference is, thus, called for to invoke inherent jurisdiction of this Court. The petitioners shall, however, be at liberty to raise all their pleas before the investigating agency/trial court at an appropriate stage, if so advised.
10. Nothing said hereinabove shall be deemed to be an expression of opinion upon merits of the case/investigation.
11. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

May 28, 2024
Ajay

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