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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 12.12.2023
Pronounced on: 03.01.2024*

+ **CRL.M.C. 3310/2023 & CRL.M.A. 12416/2023**

DHANESH IESHDHAN

..... Petitioner

Through: Petitioner-in-person.

versus

STATE (GOVT. OF NCT OF DELHI)
&ANR.

..... Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner seeking quashing of FIR bearing no. 421/2018, registered at Police Station Shakarpur, Delhi for the offence punishable under Sections 354/354D/506/509 of the Indian Penal Code, 1860 ('IPC') and all consequential proceedings emanating therefrom.

2. Briefly stated, the present FIR was registered on the basis of complaint lodged by the complainant/respondent no. 2 on 04.09.2018, whereby she had disclosed that she was a teacher by profession and



on 17.08.2018, at about 9 PM, when she had reached her home, one of her neighbours who lived opposite her house had informed her that the old lady who lived on the ground floor of the complainant's building had told her that a lot of garbage was being thrown from the complainant's house on the ground. The old lady had told the complainant's neighbour her that even condoms were being thrown from the house of complainant. As mentioned in the FIR, the complainant had felt bad after hearing such things from her neighbour, that without knowing the true facts, the lady living on the ground floor had levelled such allegations against the complainant since two other families also used to live on the same side of the building. Thereafter, the complainant had gone downstairs to confront the lady as to why she had spoken such things about her. Upon being confronted by the complainant, the lady had allegedly started abusing the complainant, and in the meanwhile her son i.e. the present petitioner had come outside from the house and he had also started abusing the complainant. After seeing the behaviour of petitioner, when the complainant had started to run towards her apartment, the petitioner had grabbed the complainant from behind on the stairs. The petitioner had also allegedly pressed the chest of the complainant, and had also snatched the *dupatta* worn by her. Thereafter, the complainant had managed to get herself free from his clutches and rush back to her apartment on the fourth floor. It is stated that on that day, she had called the PCR but had not lodged any complaint with the police due to shame. However, the petitioner had thereafter started taunting and threatening the complainant that he



was a big lawyer and he could get her and her family killed. On these allegations, the present FIR was registered. Chargesheet in the present case was filed against the petitioner Dhanesh Ieshdhan under Sections 509/506/354/354A/354B/354D/34 of IPC and his mother Kamla Devi under Sections 509/506/34 of IPC.

3. Petitioner is present in person, who states that he is a lawyer by profession and has been falsely implicated in the present case. It is contended by the petitioner that he has already got an FIR registered under Sections 506/509/34 of IPC against the complainant, her husband, her mother in law, brother of her husband and one another neighbour, and the present FIR is glaring specimen of an 'after-thought formula' to harass and defame the petitioner. It is submitted that in fact on 17.08.2018, at about 10 PM, the aforesaid persons had created a ruckus outside the house of petitioner and had insulted and abused him. It is argued that there is no incriminating material on record to connect him with the alleged offence. It is also argued that the incident in question had never taken place, and it is him who is the victim of abuses hurled at him by the complainant and her husband. Therefore, it is prayed that the present FIR be quashed.

4. *Per contra*, learned APP for the State argues that, at this stage, there are sufficient allegations against the petitioner for commission of alleged offence, for which the charge-sheet stands filed against him and his mother, and as per the judicial precedents, the FIR and other proceedings ought not to be quashed. It is also stated that the contentions raised before this Court are matter of trial and should be raised before the learned Trial Court.



5. This Court has heard arguments addressed of behalf of both the parties and has perused the material available on record.

6. Since the relief sought by way of present petition is quashing of FIR registered against the petitioner, it will be appropriate to refer to the principles that govern quashing of FIRs.

7. In *State of Haryana v. Ch. Bhajan Lal* 1992 SCC (Cri) 426, the Hon'ble Apex Court had laid down the principles to be considered while quashing FIRs. The same are reproduced hereunder for reference:

"102. 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 extra-ordinary 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 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 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."

8. The Hon'ble Apex Court in *Neeharika Infrastructure v. State of Maharashtra* 2021 SCC OnLine 315, has analysed the precedents and culled out the relevant principles that govern the law on quashing of FIRs under Section 482 of Cr.P.C. The relevant observations read as under:

"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 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 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 (supra) and Bhajan Lal (supra), 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 offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

9. In the present case, a perusal of FIR and statements of the complainant under Section 161 and 164 of Cr.P.C. reveals that there are specific allegations against the present petitioner that on 17.08.2018, at about 9 PM, when the complainant had gone downstairs to confront the petitioner's mother as to why she had been maligning her image and telling other neighbours that complainant had thrown garbage on the ground, the petitioner had come outside his house and had abused the complainant. It is also alleged that the petitioner had grabbed the complainant from behind, pressed her chest and thrown away her *dupatta*. Statements of some other witnesses recorded under Section 161 of Cr.P.C. also support the case



of prosecution. One neighbour Smt. 'NS', who had initially informed the complainant that petitioner's mother was telling that complainant had thrown garbage from her apartment, has also disclosed in her statement under Section 161 of Cr.P.C. that on the day of incident, she had heard the screams of the complainant, and on her asking, the complainant had told her that the petitioner had committed aforesaid acts with her.

10. As regards the argument of petitioner that a cross-FIR already stood registered on his complaint against the complainant/respondent no. 2 and her family members regarding an incident of same day i.e. 17.08.2018, this Court notes that the petitioner has himself pointed out in the petition that the incident mentioned in the present FIR had allegedly occurred at 9 PM and the incident as mentioned in another FIR lodged on his complaint i.e. FIR no. 409/2018, P.S. Shakarpur, had occurred between 10 PM to 11:30 PM. Even otherwise, existence of a cross-FIR cannot be the sole ground to quash the present FIR. It was held by Hon'ble Apex Court in case of *A.T. Mydeen v. The Assistant Commissioner 2021 SCC OnLine SC 1017* that each case has to be decided on its own merit and the evidence recorded in one case cannot be used in its cross case, and only the evidence which is available on the record of the case has to be considered.

11. Therefore, contrary to the arguments of the petitioner, this Court is of the opinion that this case is not covered by the decisions of Hon'ble Apex Court which govern quashing of FIRs, since this is not a case where the allegations made in the FIR or the complaint, even if taken at a face value and accepted in their entirety, do not



prima facie constitute any offence, or where the allegations are absurd and inherently improbable.

12. In the present case, the chargesheet already stands filed and the arguments on charge are yet to be heard. Needless to say, the petitioner will be at liberty to raise all these contentions before the learned Trial Court, which shall be dealt with as per law.

13. In view thereof, considering the facts and circumstances of the case and the material available on record, this Court does not find it a fit case for quashing of FIR.

14. Accordingly, the present petition along with pending application stands dismissed.

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 3, 2024/zp