



\$~43

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

% **Date of Decision: 29.01.2024**

+ **CRL.M.C. 681/2024**

DEEPAK AHIRWAR DEEPAK

.... Petitioner

Through: Mr. Amarjeet Singh Sahni, Ms.
Vanshita, Advocates

versus

STATE GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through: with SI Divya, P.S. Sonia Vihar and
SI Archana, P.S. Delhi Cantt.
Mr. Buvneshwani Priya Sharma,
Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

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. 146/2022, registered at Police Station Delhi Cantt, New Delhi for the offences punishable under Section 376 of the Indian Penal Code, 1860 ('IPC') and Section 6 of POCSO Act and all consequential proceedings emanating therefrom.

2. Briefly stated, facts of the present case are that the present FIR was registered at the instance of the prosecutrix wherein she had alleged that her maternal uncle i.e., the present petitioner had tried to commit rape upon her



near the Dhaula Kuan Bus Stand, where they were spotted by two women who made a PCR Call. It is further alleged that one of the said women had also tried to hold the petitioner back but he had absconded from the place of incident. Thereafter, MLC of the prosecutrix had been conducted and her statement under Section 164 of Cr.P.C. had been recorded on 11.05.2022. During further course of the investigation, it had been revealed that the prosecutrix/victim is was 8 years old on the date of incident. Thereafter, the present petitioner had been arrested in the present FIR.

3. Learned counsel for the petitioner vehemently argues that the present petitioner has been falsely implicated in the present case whereas he has nothing to do with the alleged offence. It is argued that on 04.03.2023, during the examination of the victim before the learned Trial Court, the victim/prosecutrix has not supported the case of the prosecution as there are material discrepancies in the statements of the prosecutrix and the case of the prosecution. It is further submitted that the petitioner was released on bail vide order dated 17.08.2023 by this Court wherein it has been specifically stated that the case of the prosecution has not been supported by the prosecutrix. It is also stated that the proceedings with the trial would result in abuse of process of court, and would not serve the ends of justice and therefore, it is prayed that the present FIR be quashed.

4. Per contra, learned APP for the State opposes the present petition and argues that there are serious allegations against the petitioner, in view of which the FIR in question should not be quashed.

5. This Court has heard arguments addressed by learned counsel for the petitioner as well as learned APP for the State and has perused the material on record.



6. The Hon'ble Supreme Court has laid the guidelines for quashing the FIR in *State of Haryana and Ors. v. Ch. Bhajan Lal and Ors. 1992 SCC (Cri) 426*, which reads as under:

"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."

(Emphasis supplied)

7. It is to be noted that in case of ***Bhajan Lal (Supra)***, the Hon'ble Supreme Court has cautioned that High Court, in exercise of powers under Article 226 of Constitution of India or Section 482 Cr.P.C may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any court or otherwise to secure the ends of justice, but such power should be exercised sparingly and that too in the rarest of rare cases.

8. The Hon'ble Supreme Court in the case of ***Rakhi Mishra V. State of Bihar and Others (2017) 16 SCC 772*** has held that the High Courts can use its power under Section 482 of Cr.P.C. only in exceptional circumstances when a prima facie case is not made out against the accused.

9. In the case of ***Sanapareddy Maheedhar Seshagiri v. State of A.P. (2007) 13 SCC 165***, it has been observed by the Apex Court as under:

"31. A careful reading of the above noted judgments makes it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the Court. In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the



larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished.

Therefore, while deciding a petition filed for quashing FIR or complaint or restraining the competent authority from investigating the allegations contained in FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in FIR or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Section 482 CrPC.

(Emphasis Supplied)

10. The Hon'ble Supreme Court in its recent decision of *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 a First Information Report under Section 482 of the Cr.P.C. The Court has held 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, recognized 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 encyclopedia 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."

(Emphasis Supplied)

11. The main contention of the learned counsel seeking quashing in the present case is that the victim has not fully supported the prosecution case before the learned Trial Court and that there are material discrepancies in the statements of prosecutrix given to the police, the Magistrate and before the Court. It is thus stated that it will result in wastage of judicial time in case the trial will continue and other witnesses will be examined. This Court, however, does not agree with the contention of the learned counsel since the evidentiary value of the statement of the witnesses including the prosecutrix will be evaluated and adjudicated only during trial. It cannot be a ground for quashing of the proceedings and not permitting the trial to continue in a case of rape. This Court notes that the victim in this case is of only eight years of age and there is other material on record which will be evaluated by the learned Trial Court during trial.

12. In view of the aforesaid discussion, this Court is of the opinion that the arguments raised on behalf of petitioner or material placed on record are



not sufficient to disclose any abuse of process of law or otherwise for this Court to exercise its jurisdiction under Section 482 of Cr.P.C. There are no reasons to quash the FIR in question.

13. Even considering the relevant principles governing quashing of FIR laid down in *Neeharika Infrastructure (supra)* and *Bhajan Lal (Supra)*, the present case is not a fit case for quashing as the allegations in the FIR are serious in nature and the prosecutrix at the time of the alleged incident was minor and there are specific allegations against the petitioner herein as well as in the MLC recorded by the concerned doctor.

14. Accordingly, the present petition is dismissed, being devoid of merit.

15. It is, however, clarified that the observations made hereinabove are prima facie in nature, solely for the purpose of deciding present petition, and the same shall not tantamount to an expression of opinion on the merits of the case.

16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 29, 2024/zp

[Click here to check corrigendum, if any](#)