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

% ***Reserved on: 01.04.2024***
Pronounced on: 25.04.2024

\+ **CRL.M.C. 177/2020**

NAVEEN CHANDER SINGH & ORS. ..... Petitioners

Through: Mr. Ashish Sharma, Mr. Praveen Kumar Bhati, Ms. Samanta Rao, Mr. Rajeshwari Chowdhary, Mr. Akash Bhatia, Advocates.

versus

STATE & ANR. ..... Respondents

Through: Mr. Satish Kumar, APP for the State with SI M.L. Meena, P.S.: Sagarpur.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (‘*Cr.P.C.*’) has been filed by the petitioner seeking quashing of the FIR bearing no. 129/2019, registered at Police Station Sagar Pur, Delhi for offences punishable under Sections 420/468/471/120B of the Indian Penal Code, 1860 (‘*IPC*’), on the basis of settlement arrived between the petitioner and respondent no.2.

2. Briefly stated, the facts of the present case are that the present FIR was registered on the complaint of respondent no. 2, alleging a fraud committed by unknown persons. The complainant had received a phone call from a mobile number, ***516, claiming to be a person from City Solution, offering a loan at a rate of 5 percent per annum. The complainant had provided documents for verification and deposited a sum of Rs. 14,214 as processing fee into an account which was in the name of one Yogesh bearing Account No.: ***688 at State Bank of India, New Delhi. Thereafter, the complainant was asked to deposit a sum of Rs. 38,912 for loan insurance, which was transferred to an account under the name of City Finance bearing Account No.: ***688 at ICICI Bank, Delhi. Upon attempting to contact Yogesh, the complainant's calls went unanswered. Suspecting fraud, the complainant had reported the incident to the police, and had further informed them of further contact from the same individuals near Gandhi Market, Sagarapur. During the course of Investigation, it was revealed that the present applicant/accused Naveen, in association with co-accused Volish and Rekha had orchestrated the scam through a call center in Uttam Nagar, Delhi. The modus operandi involved enticing individuals with low-interest loan offers, obtaining their documents, and then extracting money under the guise of processing fees and insurance policies. It was also revealed that co-accused Rekha used to send fictitious company letters via email to lend legitimacy to the operation. After the completion of the fraud, the accused persons used to dispose of the

SIM cards used for communication, and bank accounts were closed. The chargesheet in the present case was filed on 09.03.2019.

3. Learned counsel for the petitioner submits that the parties have entered into a compromise, and the petitioner has already paid an amount of Rs. 54,000 to the complainant. It is argued that since a settlement has been arrived at between the parties, no useful purpose will be served by proceeding further with the trial of the case, and therefore the FIR in question be quashed.

4. Learned APP appearing on behalf of the State, on the other hand, argues that the allegations against the present applicant/accused are grave and serious in nature. It is argued that the petitioner is engaged in commission of an offence where he along with his associates defraud general public of their hard earn money to enticement of loan on low interest rates. The present applicant/accused is the main conspirator behind the whole nexus which is engaged in defrauding general public. The present applicant/accused used to operate a call centre based in Uttam Nagar, Delhi wherein he along with his associates used to orchestrate the scam that began with enticing individual with low interest loan offers. Therefore, the petition should not be allowed.

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

6. This Court after hearing the argument had expressed its opinion that it was not a fit case for quashing on the basis of compromise which has been arrived at between the parties. Learned

counsel for the petitioner, however, insisted that the Court may pass an appropriate order based on the present petition.

7. The petitioner by way of present petition, seeks quashing of FIR under Section 482 Cr.P.C. The scope of inherent powers of High Courts under Section 482 of Cr.P.C. has been elaborated in a catena of judgments by the Ho'ble Apex Court. The guidelines for quashing of criminal proceedings have been laid down by the Hon'ble Supreme Court in ***State of Haryana v. Bhajan Lal*** *1992 SCC (Crl) 426*, which are extracted herein-under 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 channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
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> 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.
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> 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.
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> 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.
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> 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.
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> 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.
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> 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.
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> 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."
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> 103. 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 FIR 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."

8. Recently, the Ho'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 an FIR under Section 482 of the Cr.P.C. It has been 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 above 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..."

(Emphasis Supplied)

9. This Court thus has to examine the facts of the present case in the light of principles of quashing of FIR which has been laid down by the Hon'ble Supreme Court, to reach a conclusion as to whether

the present case is fit for quashing of FIR, without a trial or not. The fact that the present applicant/accused and respondent no. 2/complainant have reached a compromise by paying the cheated amount cannot be the sole ground for quashing in the present case as the investigation has revealed that the commission of offence of cheating and fraud on part of the present applicant/accused along with his associates. This Court thus has to apply its mind as to whether the present FIR could be quashed in view of the principles laid down by the Hon'ble Supreme Court.

10. A perusal of charge-sheet filed on record reveals that the present applicant/accused Naveen in association with co-accused persons Volish and Rekha used to operate a call centre in Uttam Nagar, Delhi where they used to call individuals and entice them with low interest loan offers. After the individuals used to believe them, the accused persons used to obtain their documents and then used to extract money from them under the guise of processing fees and insurance policies. It was also revealed during the course of investigation that the accused persons used to send fictitious company letters *via* e-mail to lend legitimacy to the whole transaction, and then used to dispose of sim cards and bank accounts used for the commission of offence.

11. It is noted that while a compromise is reached between the accused and the complainant, involving the repayment of cheated amount, it's essential to recognize that the allegations leveled against the present applicant/accused reveal that a more profound issue. The accused individuals used to operate a call centre where victims were

lured with promises of low interest loans, only to defraud them of their hard earned money.

12. The traditional notion of borrowers actively seeking out lenders has been gradually evolving, especially with the rise of the electronic sector. Nowadays, it's not uncommon for lenders to proactively approach individuals who may be in need of financial assistance. However, this shift has opened the door to potential exploitation by unscrupulous actors. In many cases, like the present one, individuals posing as lenders take advantage of people's financial vulnerabilities by offering enticing loan deals with seemingly low interest rates. These fake lenders operate under the guise of legitimacy, exploiting the trust individuals place in the lending process. Instances where accused persons engage in such fraudulent activities not only harm the victims financially but also tarnish the reputation of genuine lenders. The trust that is fundamental to the borrower-lender relationship is shattered, making individuals hesitant to engage in legitimate borrowing transactions in the future. Moreover, these deceptive practices undermine the integrity of the financial system as a whole. They create barriers to access for those genuinely in need of financial assistance and disrupt the smooth functioning of lending institutions. Additionally, they may deter individuals from seeking out legitimate lending options, further exacerbating financial challenges.

13. The rise of electronic finance has simplified lending processes, sometimes sidelining documentation requirements, which has also paved the way for scammers who pose as lenders, targeting

vulnerable individuals in need of quick loans. Such exploitation, especially of the financially weaker sections, bring to the fore the misuse of technology in the financial sector. It's crucial to address these scams promptly, ensuring restitution for victims and implementing stricter regulations to prevent future occurrences. Regardless of scale, scams inflict real harm, highlighting the need to safeguard the integrity of financial transactions and the well-being of society as a whole.

14. These scams specifically target the most vulnerable individuals, often the poorest of the poor, who may lack literacy in both financial matters and documentation procedures. Exploiting their desperation, imposters and scammers offer false promises of quick and easy loans, bypassing the need for proper documentation. This deceitful tactic preys on their hopes, trapping them in fraudulent schemes with no regard for their financial well-being.

15. It is noted that it remains uncertain as to whether the accused persons had defrauded other victims or not. Moreover, the recovery of certain evidences such as wireless Motorola phone, registers containing data and cash belonging to the victims further, highlights the seriousness of the alleged offence. The nature of offence at hand suggests that there may be countless others who may have fallen prey to similar fraudulent schemes and got their trust shattered and their financial security compromised. The Court also notes the psychological toll on victims which is profound as they are duped of their hard earned money which not only causes them financial strain

but also leads to a feeling of betrayal and erosion of trust in electronic online transactions.

16. Thus, considering overall facts and circumstances of the case and the seriousness of the allegations and that the trial is yet to commence and material witnesses are yet to be examined, this Court is not inclined to quash the present FIR.

17. Accordingly, the present petition stands dismissed.

18. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

19. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 25, 2024/*at*