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

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Reserved on: 14.03.2024***Decided on: 22.03.2024***+ **CRL.M.C. 2085/2024, CRL.M.A. 8058/2024 & CRL.M.A. 8059/2024**

NANDINI RAI

..... Petitioner

Through: Ms. Mamta Sharma & Mr.
Rahul Chaudhary, Advocates

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for the
State with Inspector Birender
Singh, P.S.: Cyber Dwarka**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The present petition has been filed under Section 482 of Code of Criminal Procedure, 1973 ('Cr.P.C.') on behalf of the petitioner seeking quashing of FIR bearing No.102/2022, registered at Police Station Cyber Police Station Dwarka, Delhi for offences punishable under Section 66D of the Information Technology Act, 2000 ('IT Act') and all subsequent criminal proceedings emanating thereof.

2. Briefly stated, the facts of the case are that on 05.09.2022, a complaint was lodged by the complainant wherein she had alleged



that she had been subjected to harassment for last four weeks through Instagram App. It was alleged that the accused had made fifth account on Instagram for the sole purpose of bullying and harassing the complainant. It was further alleged that the accused persons had been publishing photographs, abusive content and rumours about the complainant on Instagram which is a public platform. As alleged, the said rumours had been spread after the engagement of the complainant and messages had also been sent to her friends wherein abusive content had been shared with them. On these allegations, the present FIR was registered on 05.09.2022. During Investigation, chargesheet was filed on 13.12.2023 for offences punishable under Sections 419/500/34 of the Indian Penal Code, 1860 ('IPC') and Sections 66C and 66D of the IT Act, and the learned Trial Court was pleased to take cognizance of the said offences.

3. Learned counsel appearing on behalf of the petitioner argues that the petitioner has been falsely implicated in the present case and there is no incriminating evidence against him. It is submitted that the allegations in the FIR do not constitute a cognizable offence, but constitute only a non-cognizable offence, and that no investigation is permitted by a police officer without an order of a magistrate as per Section 155(2) of Cr.P.C. It is further stated that the present accused/petitioner has been charge-sheeted under Section 419/500/34 IPC and Sections 66C/66D of the IT Act without any iota of evidence, and a bare reading of the above sections shows that the offence of cheating by impersonation has been invoked against the petitioner. However, it is argued that in the present case, among the



Instagram IDs which had been given by the complainant, not a single ID was created using the name of the complainant and neither her credentials were hacked nor any person had committed any act of cheating using the identity of the complainant. It is further submitted that the evidence i.e., screenshots given by the complainant show private conversations on Instagram between the complainant and other persons, and the other screenshots shared by her appear to be fabricated by the complainant herself. It is also argued by the learned counsel that neither any Instagram ID was found registered on the mobile number or email id of the petitioner, nor the login details reveal that the Instagram IDs in question were logged in on the devices of the petitioner. It is further submitted that the statement of one Anurag Malyala has been recorded, who knew the complainant since childhood, but Mr. Anurag Malyala was in United Kingdom in the year 2023 and it is not possible for the I.O. to record his statement on 13.10.2023. It is further submitted that the entire story of the prosecution is concocted and contradicts from the documents and screenshots provided in the chargesheet. Therefore, it is prayed that the present FIR and all consequent proceedings be quashed.

4. *Per contra*, learned APP for the State opposes the present petition and submits that chargesheet in this case has been filed under Section 419/500/34 of IPC and Sections 66C/66D of the IT Act and learned Trial Court has taken cognizance of the same. It is argued that there are serious allegations of impersonation and creation of fake social media accounts with the intent of harassing and bullying the complainant. It is further submitted that charges have not been



framed yet and that the petitioner can address these arguments before the learned Trial Court at the stage of arguments on point of charge. It is, thus, prayed that the present petition be dismissed.

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

6. Since the present petition has been filed seeking quashing of the FIR registered against the petitioner alongwith all consequent proceedings, it shall be pertinent to take an overview of the principles that govern quashing of FIRs.

7. The Hon'ble Apex Court in case of *Neeharika Infrastructure v. State of Maharashtra 2021 SCC OnLine 315*, after analysing and examining several judicial precedents, had culled out the following principles governing the law on quashing of an FIR:

"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."

8. The Hon'ble Apex Court in ***CBI v. Aryan Singh*** 2023 SCC OnLine SC 379 held that while exercising the powers under Section 482 of Cr.P.C., the Courts have a very limited jurisdiction and are only required to consider "*whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not*".

9. This Court notes that as per the story of prosecution, on 05.09.2022, a complaint was filed by the complainant/victim, alleging harassment through Instagram, and allegedly, the accused persons had created five Instagram accounts specifically for the purpose of bullying and harassing the complainant. It was also alleged that the accused persons had shared abusive content and rumours about the complainant on Instagram, and these rumours alongwith messages containing abusive content had been sent to the complainant's friends, after the complainant's engagement.



10. During investigation, it was revealed that the petitioner had created fraudulent Instagram accounts, i.e., YRSYASHMITTAL and PREETI PATIL, with the intention of engaging in trolling, bullying, and defaming the complainant. As per the prosecution, the dispute had arisen from a conflict between the petitioner and the complainant, precipitated by comments regarding body shaming. Furthermore, the petitioner's fiancé had consistently praised the complainant for her dedication to health consciousness, which had further exacerbated the situation. It was also revealed that co-accused Ms. 'Y', who was a close friend of the petitioner, had provided her mobile phone i.e. a Realme phone with sim card (number: 8*****000), to help the petitioner create fake Instagram account i.e., YRSYASHMITTAL. Moreover, the co-accused had also provided internet access through another mobile device i.e., a OnePlus phone with Airtel sim card (number: 7*****6), to operate the another fake Instagram account i.e., PREETI PATIL. Furthermore, the petitioner had also acquired the mobile phone OTP from one Anurag Malyala to create the following email-id on Gmail: preetipatil0091@gmail.com. This Gmail account was subsequently used to set up the Instagram account i.e., preetip567347 to troll, bully, and defame the complainant.

11. Considering the aforementioned facts and circumstances of the case, coupled with the fact that the FSL results of the seized mobile phones are still awaited, which shall be filed by way of supplementary chargesheet before the learned Trial Court, this Court



is of the opinion that the present case is not a fit case for quashing the FIR in question at this stage.

12. However, since the charges have yet not been framed in this case, the petitioner shall be at liberty to raise all the contentions which have been raised before this Court, at the time of addressing arguments on point of charge before the learned Trial Court.

13. In view thereof, the present petition stands dismissed, alongwith pending application if any.

14. It is also clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

15. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 22, 2024/hs