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

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*Reserved on: 06.03.2024**Pronounced on: 01.04.2024*+ **W.P. (CRL.) 1192/2023 & CRL.M.A. 11231/2023****KAMAL**

..... Petitioner

Through: Mr. Abhishek Gupta,
Advocate (through VC).

versus

STATE NCT OF DELHI & ANR. & ORS.RespondentsThrough: Mr. Amol Sinha, ASC for the
State with Mr. Kshitiz Garg
and Mr. Ashvini Kumar,
Advocates and with SI Jatin
Kaushik and Inspector
Parshuram.
Mr. Mayank Tanwar,
Advocate for complainant
(through VC).**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The present writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of the petitioner seeking quashing of FIR No. 626/2022, registered at Police Station Raj Park, Delhi for offences punishable under Sections 376/506 of the Indian



Penal Code, 1860 (*IPC*) and Section 67A of the Information and Technology Act, 2000 (*IT Act*) and all consequential proceedings emanating therefrom.

2. Briefly stated, it is the case of the prosecution that on 22.09.2022 at about 8:30 PM, a complaint was lodged by the complainant alleging that a few years back from filing of the present complaint, she had found the petitioner/accused i.e., Kamal on Instagram and had made her friend. It is alleged that after connecting on Instagram, the complainant and the petitioner had exchanged phone numbers and had begun chatting regularly, eventually meeting up with each other. It is also alleged that on 03.01.2020, when the complainant was alone at her house, the petitioner/accused had come over and had allegedly forcefully engaged in physical intimacy with her, on the false pretext of marriage. It is alleged that this repeated on multiple occasions (i.e., on April 10, August 28-30, September 1, in December, 2020, as well as on June 15, 2022) and whenever the complainant brought up the issue of marriage, the petitioner/accused would dodge the topic. It is alleged that the complainant had thereafter, discovered that the petitioner/accused herein was already married and had a son, yet he continued to exploit the complainant, on false pretext of marriage. It is also alleged that when the complainant had threatened to report him to the police, the petitioner/accused had confessed to having recorded the complainant's intimate pictures and videos, and had blackmailed the complainant with the threat of sharing those pictures/videos. It is further alleged that the petitioner/accused had created fake Instagram



accounts with photos of the complainant, posting lewd comments and sharing her phone number. It is alleged that the petitioner/accused had also physically assaulted the complainant and had threatened her with dire consequences. Furthermore, he had constantly started messaging and harassing the complainant, blackmailing her with video calls and threatening to make her life miserable. Despite the complainant's protests, the petitioner had insisted on further physical intimacy with him and his friends. It is further alleged that the petitioner had made derogatory remarks about the complainant's parents and boasted about possessing multiple mobile phones and gadgets, claiming he had saved incriminating photographs and videos to use against the complainant. On these allegations, the present FIR was registered on 22.09.2022.

3. Learned counsel appearing on behalf of the petitioner argues that the petitioner has been falsely implicated in the present case and he had, from the very beginning, told the complainant/respondent no. 2 about his marriage and his having a child. However, the complainant did not have any objection to carrying on a relationship with the petitioner and the same is apparent from the WhatsApp chats wherein it can be seen that the complainant had wished wife of the petitioner on the occasion of their marriage anniversary. It is further argued that the petitioner herein was in a consensual relationship with the complainant and had no intention either to betray her or to have sexual intercourse with her on false promise of marriage. It is stated that from a bare perusal of the allegations in the FIR and Chargesheet, it is clear that the complainant had called the petitioner



at her residence, and thus, her allegations that she had been forced to have sexual intercourse with the petitioner in her house cannot be sustained. It is also stated that no Call Detail Record ('CDR') has been produced by the complainant to support her allegations that the petitioner had visited her house on the dates alleged in the FIR and chargesheet. Furthermore, the petitioner has also placed on record WhatsApp chats between the sister of the petitioner and the complainant wherein it can be seen that the complainant had known all the family members of the petitioner herein and shared cordial relationships with them even before or post-registration of the present FIR. Learned counsel for the petitioner further submits that *vide* order dated 24.11.2022, learned Metropolitan Magistrate-03, North-West, Rohini Courts Delhi, had taken cognizance mechanically in the above-said case, without recording the reasons and without application of mind. It is further submitted that thereafter, the matter was committed to the Court of Sessions and is pending trial before learned ASJ/FTC, Rohini Courts, Delhi ('*Trial Court*'). It is also argued that the complainant is aged about 21 years and is a graduate preparing for competitive examinations, meaning thereby that she was well aware of the nitty gritty of their relationship. which further establishes that the complainant is mature enough to know such things and had this been a forceful relationship, the complainant could have reported it on 03.01.2020 itself, as alleged. Therefore, it is prayed that the present FIR and all proceedings emanating therefrom be quashed.

4. On the other hand, learned ASC for the State, draws this



Court's attention to the contents of chargesheet and the statement of the complainant and witnesses recorded under Section 161 and 164 of Cr.P.C and argues that the same corroborates with the case of the prosecution. It is submitted that the grounds raised in the present petition are all matter of trial, and the present case is at an initial stage, and thus, the petitioner can raise all these grounds and contentions either at the stage of framing of charge or during the course of trial. Therefore, it is prayed that the present case be dismissed.

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

6. As the petitioner has approached this Court seeking quashing of the FIR registered against him alongwith all emanating proceedings therefrom, 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. After going through the case file, the statements of the witnesses, the statements of the victim/complainant under Sections 161 and 164 of Cr.P.C., and the contents of the chargesheet filed in



the present case, this Court is of the opinion that there are clear allegations levelled by the victim/complainant in her statement recorded under Section 164 of Cr.P.C. as well as her complaint which culminated in the present FIR, which at this stage, *prima facie*, appears to substantiate her claims. Moreover, the alleged conversations between the complainant and the accused, which have been produced before this Court by the petitioner, are yet to be ascertained as authentic, since the mobile phones of both the victim/complainant and the petitioner/accused have been seized and sent to FSL and the report is still awaited.

10. Learned ASC for the state has also pointed out that during the investigation, it was found that the petitioner herein had in fact posted inappropriate and sexually explicit videos of the complainant by creating fake IDs on Instagram, on which some friends of his had posted dirty comments. It is further noted that there are allegations that the petitioner/accused herein had sent the complainant's videos and dirty comments to her parents and to her. The said facts can only be clarified after the FSL report is received and placed before the learned Trial Court.

11. Therefore, at this stage, this Court is of the opinion that no ground for quashing of FIR is made out. The contentions raised by the petitioner herein are a matter of trial, however, since the FSL reports are awaited and charges are yet to be framed in this case, the counsel for the petitioner will be at liberty to raise all these arguments at the stage of framing of charge before the learned Trial Court.



12. In view thereof, the present petition alongwith pending application stands dismissed.

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

14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 1, 2024/zp