



\$~22

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

+ **CRL.M.C. 1920/2019 & CRL.M.A. 7612/2019**

NITYANAND KHATUA Petitioner
Through: Mr. Ashok Kr. Arya,
Adv. with Ms. Shivam
Sharma, Adv.

versus

STATE AND ANR. Respondents
Through: Mr. Utkarsh, APP for the
State with W/SI
Sumedha, PS Sh. Bagh.
Mr. S. S. Mahaur, Adv.
for R-2.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
15.03.2024

%

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (**CrPC**), seeking quashing of FIR No. 159/2014 dated 20.02.2014 registered at Police Station Shalimar Bagh, for offences under Sections 354/509/506 of the Indian Penal Code, 1860 (**IPC**), including all the consequential proceedings therefrom.

2. The FIR in the present case was lodged at the behest of one, Sushma Jindal/complainant alleging that on 20.02.2014 at around 08:40am, when she left from her house to buy groceries, the accused/petitioner whom she knew from before, held the open end of her saree and started abusing her in filthy language. The complainant further alleged that the accused threatened her that he would not let them run their shop and would send her

CRL.M.C. 1920/2019

Page 1 of 8



husband to jail.

3. The investigation in the present case is complete, the charge sheet has been filed and cognizance has been taken by learned Metropolitan Magistrate, Rohini Courts, Delhi.

4. After hearing arguments on charge, the learned Trial Court by order dated 27.02.2018, held that a *prima facie* case was made out against the accused/petitioner for offence under Sections 354/506(i)/509 of the IPC.

5. The petitioner had challenged the order on charge dated 27.08.2018 before the learned District and Sessions Judge, Rohini Courts, Delhi, by way of a revision petition, which was dismissed by order dated 03.11.2018. It was observed as under :

*“18. In the present case no doubt there is some improvement in the statement of the complainant recorded U/s 164 Cr.P.C. over her initial complaint dated 20-02-2024 on the basis of which the present FIR is registered but it is to be kept in mind that the FIR is not an encyclopedia but it is a document which sets the criminal law into motion. There are eye witnesses of the incident which allegedly took place on 20-02-2024 and at this stage their statements cannot be evaluated minutely so as to find out the discrepancies. At the time of framing of the charge only a *prima facie* view is to be taken and if from the material available on record a grave suspicion arises against the accused, the charge can be framed.*

*19. In the present case, from the perusal of charge sheet, statement of the witnesses recorded and the other material available on record it cannot be said that no charge U/s 354/506(i)/509 IPC is made out against the revisionist / accused. I have also perused the judgment titled as **Smt. Kavita Vs. State (Govt. of NCT of Delhi & Ors.) Crl. Revision Petition 574/2016 (supra)** relied upon by the Ld. Counsel for the accused but with due regards, the same is not applicable to the facts of the present case as in that case there are impeccable evidence in the form of CCTV footage which clearly belies the testimony of the prosecutrix.”*

6. The present case, was thereafter, referred for mediation by order dated 17.11.2023 passed by the learned Principal



District & Sessions Judge, Tis Hazari Courts, Delhi however, the same did not succeed.

7. The petitioner, thus, essentially challenges the charges framed against him.

8. The learned counsel for the petitioner submits that the present FIR is nothing but a counter blast to the FIR lodged by the wife of the petitioner and complaints made to the police. He submits that the FIR has been registered only with the intention to harass and humiliate the petitioner and, therefore, the present FIR deserves to be quashed.

9. The learned Additional Public Prosecutor for the State submits that the case is at the stage of prosecution evidence and the contentions raised on behalf of the petitioner can be raised and dealt with after the trial.

10. I have heard the learned counsel for the parties.

11. In order to ascertain the veracity of contentions made by the learned counsel for the petitioner, it is imperative to firstly examine whether the relevant ingredients of the alleged offences, are *prima facie* made out. The relevant sections read as follows:

“354. Assault or criminal force to woman with intent to outrage her modesty

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

XXXX

XXXX

XXXX

506. Punishment for criminal intimidation

Whoever, commits the offence or criminal intimidation shall be punished with imprisonment of



either description for a term which may extend to two years, or with fine, or with both.

If threat be to cause death or grievous hurt, etc. :
And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

XXXX

XXXX

XXXX

509. Word, gesture or act intended to insult the modesty of a woman

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object, shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.”

12. The main ground taken by the petitioner is that the complaint/ FIR does not disclose any criminal offence at all and the same is filed with *malafide* intention.

13. It is trite law that the inherent powers under Section 482 of the CrPC are to be exercised sparingly and only where the allegations made in the complaint/FIR, even if taken at the face value, do not *prima facie* disclose the commission of offence that the FIR can be quashed at the threshold.

14. Section 482 of the CrPC confers the High Court with an inherent power to quash an FIR or a complaint, upon satisfaction of well-established parameters. While considering a petition seeking quashing of an FIR or complaint, the Court must take into consideration – if the allegations made in the



FIR/complaint taken at face value *prima facie* do not constitute any offence or make out any case against the accused ; if the allegations made in the FIR do not disclose any cognisable offence, which justifies a police investigation under Section 156(1) of the CrPC ; if the allegations made in the FIR/complaint and the evidence collected in support of the same do not disclose the commission of any offence, and do not build any case against the accused ; if a criminal proceeding is based on *mala fides*, or the proceeding is maliciously instituted with an ulterior motive. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. [Ref: ***State of Haryana v. Bhajan Lal : 1992 Supp (1) SCC 335; Neeharika Infrastructure v state of Maharashtra : 2021 SCC OnLine 315***]

15. It is also pertinent to note that the charges in the present case have been framed by the learned Trial Court by the order dated 27.02.2018, which has not been challenged by the petitioner. At the present stage, a mini trial cannot be conducted by this court to test the veracity of the allegations made by Respondent No.2 against the petitioner and neither the defence of the petitioner can be looked into. A plain reading of the complaint made by Respondent No.2 shows that the allegations against the petitioner are in regard to outraging her modesty with the intent to harass her. It is alleged that when the complainant left from her house to buy groceries, the petitioner held the open end of her saree and started abusing her in filthy language. The allegations disclose commission of cognizable offence. The same at this stage, point towards the gesture and act intended to insult the modesty of Respondent No.2.

16. It is trite law that the Trial Court, while framing charges under Section 228 of the CrPC, is not required to conduct a mini



trial and has to merely weigh the material on record to ascertain whether the ingredients constituting the alleged offence are *prima facie* made out against the accused person.

17. In ***Manendra Prasad Tiwari v. Amit Kumar Tiwari*** : 2022 SCC OnLine SC 1057 the Hon'ble Apex Court, while explaining the well-settled law on exercise of powers under Section 228 of the CrPC, had observed as under:

“21. ...The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person...”

22. ...At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure...”

(Emphasis supplied)

18. The learned Sessions Court while dismissing the revision petition preferred by the petitioner against the order on charge had noted that there is some improvement in the statement of the complainant under Section 164 of the CrPC. However, it was rightly observed by the learned Trial Court that the FIR is not an encyclopedia.

19. It is trite law that minor discrepancies in the statement of the complainant are not sufficient to discredit the entire case of the prosecution. Any allegations or defences in regard to the discrepancies in the statement made by the complainant are a



matter of trial.

20. The petition filed by the petitioner challenging the order on charge has already been dismissed and the present petition is in the nature of second appeal. The Hon'ble Supreme Court in the case of **Krishnan v. Krishnaveni : (1997) 4 SCC 241** has clearly laid down that though the power of the High Court under Section 482 of the CrPC is very wide, yet the same must be exercised sparingly and cautiously particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under Section 397 of the CrPC.

21. Adverting back to the facts of the present case, this Court does not find any material on record which can be stated to be of sterling and impeccable quality warranting invocation of the jurisdiction of this Court under Section 482 of the CrPC at this stage.

22. The argument of the petitioner that the present FIR is a counter blast to the FIR registered by the wife of the petitioner against the complainant's husband, or that it is registered with the intention to harass the petitioner will be tested during the course of the trial.

23. Considering the facts, it cannot be said that there is absolute absence of strong suspicion that the petitioner has committed the offence.

24. This court is of the opinion that the learned Trial Court has evidently applied its judicial mind and considered the totality of the facts before framing the charges in the present case.

25. In the present case, the allegations made by the complainant against the petitioner do not indicate, at this stage, that continuation of proceedings would cause grave miscarriage



of justice.

26. In view of the above, this Court does not find it a fit case for quashing of the FIR No. 159/2014 and the consequential proceedings arising therefrom.

27. Needless to say, the petitioner will be at liberty to raise all these contentions as raised before this Court, before the learned Trial Court at an appropriate stage, which shall be dealt with as per law.

28. The present petition is dismissed along with pending application.

AMIT MAHAJAN, J

MARCH 15, 2024

KDK