



2024:DHC:6627



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

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Reserved on: 23rd July, 2024

Pronounced on: 28th August, 2024

+ **W.P.(CRL) 1462/2023 & CRL.M.A. 31683/2023 (for direction)**

1. **RITIKA RAJ**

W/o Sh. Rishu Raj

.....Petitioner No. 1

2. **HIRENDER KUMAR UNDWAR**

S/o Late Sh. Baleshwar Prasad

.....Petitioner No.2

3. **RISHU RAJ**

S/o Rajesh Kishor Narayan
All R/o H.No. C-101, Kanchanjunga
Apartment, Sector-53, Noida,
Tehsil Dadari, P.S. Sector-24,
Gautam Budh Nagar, Noida,
Uttar Pradesh

.....Petitioner No.3

Through: Mr. Shree Prakash Sinha and Ms.
Shwetam, Advocates.

versus

1. **THE STATE THROUGH S.H.O**

of P.S. Jamia Nagar Delhi

.....Respondent No. 1

2. **Shahnawaz Khan (Complainant)**

S/o Mohd Safir Khan
R/o H.No. R-5, Nafees Road
Jogabai, Jamia Nagar Okhla
New Delhi

.....Respondent No. 2

Through: Mr. Rahul Tyagi, ASC, Crl. with Mr.
Sarbhak Chaudhary, Mr. Himanshu,
Ms. Seerat Fatima, Mr. Muzaquir



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Hussain, Mr. Naseem Tabrez, Mr. Saleem Hussain and Mr. Vaibhav Kashyap, Advocates for State S.I. Pardeep Malik, PS Jamia Nagar, Delhi.
Mr. Kshitij Mathur, Advocate for R-2 (through VC).

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Criminal Writ Petition under Article 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (*hereinafter referred to as 'Cr.P.C, 1973'*) has been filed on behalf of the petitioners, seeking quashing of FIR No. 481/2022 dated 21.12.2022 for the offences under Section 379/406/420/467/468/471 of the Indian Penal Code (*hereinafter referred to as 'IPC, 1860'*) registered at Police Station Jamia Nagar.
2. **It is submitted in the Petition** that the complainant/respondent No. 2, namely, Shahnawaz Khan had made a complaint on 27.07.2022 at Police Station Jamia Nagar against the present petitioners but no action was taken by the Police. Thereafter, they preferred an Application under Section 156(3) of Cr.PC, 1973 whereby on the direction of the learned Metropolitan Magistrate, the FIR No. 481/2022 has been registered on 21.12.2022, at Police Station Jamia Nagar.
3. The allegations made in the complaint are that the respondent No. 2, Shahnawaz Khan met the petitioner No.1, Ms. Ritika Raj in the year 2015, in regard to opening of the Bank account in the Bank where she was



working as an Assistant Manager. According to the complainant/respondent No. 2, the petitioner No. 1 had introduced herself as a divorcee and a single mother of a 4-5 year old boy. She intentionally came close to the complainant and they both got into a relationship. The respondent No. 2 had alleged that the petitioner No. 1 introduced her husband as her brother and the petitioner No. 3, Rishu Raj as her father. After sometime, she out of her own free wish, started to live with the respondent No. 2, who took her to Tis Hazari Courts, Delhi and got an affidavit of marriage prepared on 15.02.2022 and they solemnized the marriage.

4. The respondent No. 2 had further alleged in his complaint that they had been living together in relationship for three years and Petitioner No. 1/ Ms. Ritika had been regularly taking money from him for herself as well as for other petitioners' expenses. She spent about Rs.25,00,000/- of the complainant in a period of three years. The respondent No.2 used to fulfil all her financial requirements and had bought multiple mobile phones along with the jewellery and branded clothes during that period. According to the complainant/respondent No. 2, the petitioner No. 1 *conspired with the other petitioners, to commit theft of three branded watches worth more than Rs.13,00,000/-, five pair of branded eye glasses worth Rs.1,50,000/- and also took his Audi A6, Model 2016 bearing Registration No. GJ01-RU-1111.*

5. The respondent No. 2 had further alleged that because of the utmost trust in the relationship, petitioner No. 1, Ms. Ritika Raj took the debit card, Insurance papers, Cheque Books, SIP and when the respondent No. 2 asked those things to be returned, she gave him threats of dire consequences. It was further claimed by the respondent No. 2 that the petitioner No. 1 had done various illegal transactions from his account by forging his signatures



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and without his knowledge from unknown locations of IDBI Bank. It was also claimed that she also demanded Rs.1 Crore from the respondent No. 2, on the threat that she would issue the blank cheques of the complainant.

6. Further, she along with the other co-accused, presented one cheque bearing No. 716878 in favour of Naman Sharma on 29.03.2022 for an amount of Rs.15,90,000/-, without the knowledge of the complainant. He got the same stopped on which threats were extended by the petitioner No. 1 that she along with the other co-accused would distribute the blank cheques of the complainant to other persons for harassing the respondent No.2, if he failed to give her the demanded amounts. She with the help of other bank employees, changed his mobile number in the Bank Account and she along with the all accused persons conspired against the complainant and threatened him with dire consequences.

7. However, it is submitted by the Petitioners that this FIR No. 481/2022, Police Station Jamia Nagar is liable to be quashed on the ground that it is based on frivolous allegations which are far from truth and are made with the sole intend to harass the petitioners. In fact, the petitioner No.1 had lodged a Complaint of rape against him on 17.02.2022, on which FIR No. 108/2022 dated 28.02.2022, was registered under Section 376/506 of IPC, at Police Station Phase-III, Gautam Budh Nagar, Noida, Uttar Pradesh. The respondent No. 2 on coming to know about this FIR registered on the complaint of petitioner No. 1, made a false complaint on 22.02.2022 at Police Station Phase-III, Gautam Budh Nagar, Noida, U.P., on similar facts and allegations on which *FIR No. 106/2022 under Section 420/406/467/468/471 of IPC, was registered on 25.02.2022.* The respondent No. 2 failed to join the enquiry upto July, 2022 and he avoided the enquiry



in this FIR because he was aware that the allegations are false and fabricated and had been made only as a counter-blast to the FIR of rape registered against him.

8. Thereafter, the complainant/respondent No. 2 filed the present Complaint under Section 156(3) of Cr.PC, which has resulted in registration of the present FIR no. 481/2022. It is claimed that the allegations made in the present case are similar to the first Complaint dated 17.02.2022, in which after conducting the investigation, the Investigating Officer has submitted a Closure Report under Section 173 of Cr.P.C. on 14.10.2022, before the competent Court. In case the Closure Report is accepted, it would prove that the allegations made by the respondent No. 2, are false and he would be liable for prosecution under Section 340 Cr.P.C.

9. It is claimed that the present FIR is on similar facts and two FIRs on the same Complaint, are not maintainable. It is further asserted that under Section 300 Cr.P.C. read with Article 20(3) of the Constitution of India, a person cannot be subjected to double jeopardy. The petitioner No. 1, Ms. Ritika is aged about 34 years having a young child of six years with no male member in the family, to look after the child and protect him from the illegal acts of the complainant/respondent No. 2. She is an educated lady working as an Assistant Manager in a Bank and has clean antecedents.

10. Moreover, petitioner No. 2 is 65 years old and wife of petitioner No. 2 is about 62 years old, who is suffering from many old age ailments. The liability of taking care of both of them is on the petitioner No. 1 but in order to create pressure on petitioner No. 1, this present case has been filed.

11. It is also claimed that the alleged incident happened between 17.02.2022 to 24.07.2022. The present FIR is highly belated and is liable to



be quashed on the ground of delay. Moreover, the ingredients of the Sections under which the FIR has been registered, are not made out. Hence, it is submitted that the present FIR is liable to be quashed.

12. In support of her assertions, the petitioner has relied upon Vijay Kuamr Ghai and Others vs. State of West Bengal and Others, (2022) 7 SCC 124; Parteek Bansal vs. State of Rajasthan and Others, 2024 SCC OnLine SC 564; Prem Chand Singh vs. State of Uttar Pradesh and Another, (2020) 3 SCC 54; T.T. Antony vs. State of Kerala and Others in Crl.A. No. 689/2001; Damodaran P. And Others vs. State of Kerala and Others in Crl.A. No. 4066/2001 and State of Kerala and Others vs. Revada Chandrasekhar and Others in Crl.A. Nos. 690-91/2001, (2001) 6 SCC 181.

13. **The respondent No. 2 has filed his Counter-Affidavit** wherein it is denied that the present FIR no. 481/2022 is a counter-blast to the rape FIR no. 108/2022 registered against him or its contents are identical to his earlier Complaint, on which FIR No. 106/2022 was registered in which Closure Report has been submitted.

14. It is asserted that in the present FIR 481/2022 there are specific allegations in the present Complaint about he being induced to spend Rs.25,00,000/- on petitioner No. 1; of getting false notarized affidavits prepared to assert that she was single and eligible for marriage. There are also specific allegations of theft as she had stolen valuable items such as expensive watches and eyewear and also Audi Car No.16. Also, in her official capacity, she has misappropriated certain amounts from his account by changing the mobile number to a dummy number in the Bank Account of the complainant. Further, averments are made that the stolen blank cheques have been misappropriated and misused by the petitioner No. 1. The



misappropriated cheque has been handed over by her to the other co-accused persons, to be presented for Rs.15,90,000/-. At that very time, she changed the mobile number of the complainant to dummy number so that no intimation would not be received by the respondent No. 2. It is further submitted that these facts have been admitted by the Bank during the investigations.

15. The petitioner No. 1 has also confessed about her illegal acts to the extent of changing the mobile number, in her telephonic conversations. She has been harbouring the other accused persons by not giving information or by providing incorrect information. She has given a threat of depositing the signed blank cheque of the complainant. It is, therefore, submitted that the present FIR is on facts which are different from his earlier Complaint. Moreover, the time and place of the illegal acts to which the second FIR pertains, are also different. It is thus submitted that the present FIR is not liable and to be quashed.

16. The respondent No. 2 in support of his case, has relied upon Anju Chaudhary vs. State of Uttar Pradesh and Another, (2013) 6 SCC 384 wherein it has been observed that where the incidents reported in the two FIRs, are not the same, but the second FIR pertains to a larger investigation then the registration of the second FIR is permissible.

17. Submissions heard and record perused.

18. The law is well settled that if the transactions are similar or identical, no two FIRs on the same cause of action, can be maintained.

19. In the landmark case of Babubhai vs. State of Gujarat & others (2010) 12 SCC 254 the Supreme Court applied the **test of "sameness"** and opined that if the answer to question "*whether both the FIRs relate to the*



same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction" is affirmative, then the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the **two different incidents/crimes**, the second FIR is permissible. It was also held that in case in respect of the same incident the accused in the first FIR comes forward **with a different version** or counter claim, **investigation on both the FIRs has to be conducted.**

20. In the case of Rameshchandra Nandlal Parikh vs. State of Gujarat & Another (2006) 1 SCC 732, it has been held that **if subsequent complaints were not in relation to same offence** or occurrence or did not pertain to same party as alleged in the first report then on that ground the subsequent complaint need not be quashed.

21. The Supreme Court, in Amitbhai Anilchandra Shah vs. Central Bureau of Investigation and another (2013) 6 SCC 348 discussed the applicability of '**consequence test**' as laid down in the case of C. Muniappan & others vs. State of Tamil Nadu (2010) 9 SCC 567 and observed that there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence however, the second FIR would be permissible if the **offence disclosed does not form part of the same transaction as covered by the first FIR** or cannot be said to be **arising as a consequence of the offence** covered by the first FIR.

22. Similar observations were made in the case of Awadesh Kumar Jha @ Akhilesh Kumar Jha vs The State Of Bihar, 2016 (3) SCC 8 wherein it was held that even if the alleged offences under the second FIR **in substance**



are distinct from the offences under the first FIR then they cannot, in any case, said to be in the form of the part of same transaction.

23. Thus, it is no more res-Integra that if the allegations in the second Complaint are different or of larger magnitude, then second FIR is maintainable. In such cases, the Court is required to examine the circumstances of a given case to decipher whether the FIRs are based upon the separate incident or similar or different offences or the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the earlier FIR.

24. In the present case, a comparison of the Complaint which became the basis of First FIR No. 106/2022 and the Second FIR No. 481/2022, shows that while some allegations are similar or overlapping but the second FIR No. 481/2022 is distinguishable as the substratum of both the complaints is evidently different.

25. Pertinently, the *accused persons are different* in the two FIRs as the petitioner Nos. 2 and 3, who have been named as accused here, are not the named accused in the earlier FIR, which had been registered against the petitioner No. 1 and four other persons.

26. The first FIR essentially, is only to the extent of forging the documents of the Mercedes car and the threat calls. However, in the present FIR no. 481/2022, *there are additional allegations of theft* of Audi. Car No. 16, three watches and five eye glasses. There are also allegations *qua* the petitioners for taking the Debit Cards, insurance papers and cheque books and SIPs of the complainant/respondent no.2.

27. Thus, while some allegations are similar but in the second FIR, *there are specific allegations made of illegal transactions* having been done from



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his account no. 01090104000361743 by forging his signatures and making multiple transactions without the knowledge of the complainant from unknown locations of IDBI Banks.

28. There is also allegations, which do not find mention in the previous FIR, that the petitioner has ***threatened to issue and distribute all the blank cheques of the complainant*** and have raised a demand of Rs. 1 Crore from him. Specifically, cheque bearing No. 716878 has been presented in favour of Naman Sharma on 29.03.2022, for an amount of Rs.15,90,000/-, without the knowledge of the complainant, which was stopped by him, on which threats were extended by petitioner No. 1 that she along with the other co-accused, would distribute the blank cheques of the complainant to other persons for harassing the respondent No.2, if he failed to give her the demanded amounts.

29. Additionally, there are other allegations that the petitioner no. 1 with the help of other bank employees, has changed his mobile number in the Bank Account and have issued chequebooks without the knowledge or consent of the complainant and had also activated UPI payment mode on the other number and had also taken blank cheques bearing no. 716877-716887, which are over and above, the allegations made in the earlier FIR.

30. In the light of the aforesaid discussion, it cannot be said that the allegations in the second Complaint, are identical to the earlier FIR in which the Closure Report has been filed. As already noted above, the accused persons are different and certain allegations of theft, extortion of money, misappropriation of signed cheques, etc are over and above the previously filed FIR and are based upon separate incidents and form part of a separate truncation altogether. The incidents have taken place at different dates or



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time. Even if the *modus operandi* is the same in all alleged offences, these may classify as "*same kinds of offences*" but do not constitute "*same offences*" because if they have been committed multiple times then each time it constitutes a separate offence warranting the accused be tried for all of the offences.

31. The registration of FIR is a mechanism for verification of the allegations and averments made in the Complaint and does not *prima facie* prove the guilt of the petitioners. It is still open to the Investigating Officer to investigate the alleged crimes and to submit a report accordingly. In case, the Investigating Officer finds that there are no merits in the allegations or that these allegations have already been examined in the earlier FIR and found to be baseless, there is nothing which prevents him from submitting the Final Report, in terms of his investigations. There is no ground of quashing of FIR at this stage.

32. The Petition is, therefore, dismissed and disposed of accordingly. The pending application(s), if any, also stands disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 28, 2024/RS