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

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Reserved on: 01.02.2024***Pronounced on: 20.03.2024***+ **CRL.M.C.2790/2022, CRL.M.A. 11599/2022 & 15690/2022****SIDDHARTH KASANA**

..... Petitioner

Through: Mr. Murari Kumar and Mr.
Shiv Shankar, Advocates.

versus

THE STATE AND ANR.

..... Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State with S.I.
Manu & Inspector Asha Singh,
P.S.: Kirti Nagar.
Mr. Arunava Mukherjee & Mr.
Nisarg P. Khatri, Advocates
for R-2.**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 No. 23/2016, registered at Police Station Kirti Nagar, Delhi, for offences punishable under Sections 376/493/495/496/417/406/323/506/120B/34 of the Indian Penal Code, 1860 ('IPC') and all subsequent criminal proceedings arising out of the said FIR including pending Sessions Case No. 519/2017



before learned Additional Sessions Judge, Fast Track Court-01, Tis Hazari Courts, Delhi (*'learned Trial Court'*) titled as 'State vs. Manish Rathi & Ors'.

2. Brief facts of the case are that a complaint was lodged by the complainant/respondent no. 2 alleging that she (aged about 28 years at the time of incidence) had been victimized by the accused persons, who had purportedly dragged the complainant in an unlawful marriage which had been solemnized between the complainant and accused no. 1 i.e., Sh. Sidharth Kasana, petitioner herein, on 15.04.2012. It is alleged that the complainant had been sexually exploited and raped by accused no. 1 on the pretext of their marriage being legally valid, in connivance with other accused persons namely sister in law of accused no.1, i.e. accused no. 4 and her husband i.e. accused no. 5. It is alleged that at the time of marriage between accused no. 1 and the complainant, she was made to believe that parents of accused no. 1 i.e., accused no. 2 Sh. Surender Singh Kasana and accused no. 3 Smt. Santra Devi were against the alleged marriage, and due to the said reason, accused no. 1 had told the complainant that there shall only be a simple function and after that they would organise a reception party in presence of everyone once he is able to convince his parents. For the said reason, in March, 2012 the accused no.1 had taken the complainant to a rented apartment in Nandi, Delhi with the help of accused no. 4 and 5, instead of taking her to her matrimonial house. However, after the alleged marriage, accused no. 1 had taken the complainant to her matrimonial house occasionally and during the said visits, the complainant had observed



that parents of accused no. 1, i.e. accused no. 2 and accused no. 3 had no problem with the said marriage, which was contradictory to the stand taken by the accused no. 1 earlier at the time of marriage with the complainant. It is further alleged that the accused persons had never disclosed the fact that accused no. 1 had already been married to one Ms. 'X' and it was only on 14.08.2013 when she had got to know about the same. It was only after the complainant had discovered from an affidavit filed by the father of accused no. 1 before the Delhi High Court that accused no. 1 was already married to Ms. 'X'. It is further alleged that out of the alleged illegal wedlock between accused no. 1 and the complainant, a child was born on 03.05.2013. It is further alleged that the said criminal act of the accused persons had jeopardized the future of the complainant as well as of her child. It is further alleged that accused no.1 was alcoholic and used to beat the complainant regularly and had sexual relations with her multiple times without her consent. It is further alleged that the consent of the complainant was taken on the pretext that both of them are legally married couples. It is also alleged that at the time of birth of their child i.e., on 30.03.2013 when the complainant was 9 months pregnant, the accused no. 1 had mercilessly beaten her, and in fact he had never taken care of the complainant and rather had continuously assaulted her, during the time of pregnancy and even before it. It is also alleged that when the complainant had asked accused no. 1 to drop her at her parental house in order to receive proper medical assistance from her parents for delivery of her child, the accused no. 1 had taken her to the Max



Hospital, Saket and had promised to take care of her and the child. However, after the delivery of the child, accused no. 4 i.e. the complainant's sister-in-law had stayed with the complainant at a rented accommodation and had tried her level best to separate the child from the complainant. It is alleged that on 16.05.2013, accused no. 4 and accused no. 5 had forcefully taken the custody of complainant's child who was only 12 days old at that time and had forcefully thrown her out of the house. It is alleged that on 17.05.2013, the complainant had gone to her parental house at 1 AM and on the very next day, the complainant had gone to her rental house where accused no. 4 and accused no. 5 had kept her child, but to her shock, she had found out that the said house was locked. After that, the complainant had gone to the house of accused no. 1 i.e., her alleged matrimonial house and was informed by the accused persons that they neither have her child, nor did they know the whereabouts of the child. It is further alleged that accused no. 6 and accused no. 7 i.e. sister-in-laws of the complainant had stated that irrespective of how much the complainant finds her child, she would not be able to find her. It is further alleged that it was only after the intervention of the Delhi High Court that the custody of the child was handed over to the complainant on 21.08.2013. However, during investigation, it had been revealed that accused no. 1 had taken away minor/infant child with assistance from one Ashmeet Singh. It is further alleged that the complainant had also lodged another complaint against accused no.1 on 22.11.2013 that he had threatened the complainant in front of her family members at mediation centre, Tiz Hazari Court, Delhi.



Thereafter, the present FIR was registered on 11.01.2016.

3. Learned counsel appearing on behalf of the petitioner submits that the charge-sheet in the present case was filed against the petitioner and other co-accused persons i.e. his parents, siblings and relatives after investigation, which is pending for quashing before this Court. It is stated that the petitioner and respondent no. 2 were in consensual live-in relationship since 15.04.2012 and out of this relationship, a child was born. It is argued that the facts, incidents, allegations and grievances referred to in the FIR by the respondent no. 2 had arisen after a petty quarrel between the parties and consequently respondent no. 2 herein, in a fit of rage, had left the house and had abandoned their 12 days old child with the petitioner. It is also stated that as an afterthought, the petitioner and his family members were dragged in the pending litigation without any reasons or basis. It is further submitted that respondent no. 2 had filed false and frivolous Habeas Corpus petition before this Court bearing W.P.(CrI.) 1252/2013, and the same had been filed only for the purpose of harassing the petitioner and his family members. Learned counsel for the petitioner further argues that the petitioner has been falsely implicated in the present case, and the respondent no. 2 was always aware that the petitioner was married to Ms. 'X'. In fact, the petitioner had sent an e-mail dated 06.08.2011 at 01:12 AM and 01:18 AM from his e-mail id to the respondent no. 2 herein, containing his marriage photographs with Ms. 'X', and several other e-mails had also been exchanged between the petitioner and the respondent no. 2 on 06.08.2011, 08.08.2011, 10.08.2011, 04.12.2011.



Moreover, respondent no. 2 was fully aware of separation of the petitioner with his first wife Ms. 'X' and that the petitioner was not legally divorced. It is stated that the respondent no. 2 had assured the petitioner to support him even after his bad marriage with Ms. 'X', and the petitioner and respondent no. 2 were in an intimate relationship after the petitioner had separated from his first wife Ms. 'X', and both of them had decided to cohabit out of passion. It is also argued that respondent no. 2 is an educated working woman of the same age group as the petitioner and was also a prudent adult during the time of such cohabitation. It is further submitted that respondent no. 2, in her own complaint/FIR, claims to have been lawfully married to the petitioner herein under the Hindu rites and rituals. The petitioner states and submits that in order to fulfil her malicious intent, respondent no. 2 has dragged and implicated even the family of the petitioner under false charges. It is also stated that the proceedings initiated against the petitioner are gross abuse of the process and provisions of law, as admittedly, respondent no. 2 has stated that she had been living with the petitioner by her own choice. It is argued that the case of the petitioner, on the plain reading of the FIR and the charge-sheet, squarely falls under *Exception-2* of Section 375 of IPC. Therefore, it is prayed that the present FIR be quashed, along with all consequential proceedings emanating thereof.

4. *Per contra*, learned APP for the State opposes the present petition and argues that a complaint in this case was filed by the complainant on 11.01.2016 alleging therein that she had come in contact with the accused/petitioner Siddharth Kasana through a



common friend when he was running a placement agency. Both of them had got married on 15.04.2012, and the petitioner had told her that her parents will not agree this marriage, and on this pretext, he had taken her to a rented accommodation. Moreover, the present FIR has been registered after the intervention of the learned Trial Court. It is also stated that there are specific statements of witnesses which reveal that even after getting married to one Ms. 'X', the accused no. 1 had entered into a matrimonial alliance with the complainant. It is further submitted that there are serious allegations against the present petitioner and his role has also been specified specifically in the FIR. Therefore, it is prayed that the present petition be dismissed.

5. Learned counsel for the complainant/respondent no. 2 further submits that on 18.03.2014, the respondent no. 2 herein had filed a complaint under Section 156(3) of Cr.P.C. before the learned Chief Metropolitan Magistrate, West District, Tis Hazari Court, Delhi for registration of FIR under Sections 376/493/495/417/406/323/506/120B/34 of IPC. It is stated that *vide* order dated 02.08.2014, the said application was dismissed by the learned Metropolitan Magistrate, West District, Tis Hazari Courts, Delhi. Thereafter, on 04.09.2014, the respondent no. 2 had challenged the order of the learned Magistrate by way of revision petition before the learned Sessions Court, Tis Hazari Court, Delhi, praying for registration of FIR against Sh. Siddharth Kasana and co-accused persons. It is stated that the accused persons were summoned by the learned Sessions Court and were heard in the revision petition. It is further stated that *vide* order dated 02.01.2016, learned Sessions Court had allowed the revision



petition of respondent no. 2 herein and had directed the police to register an FIR against the accused no. 1/petitioner Sh. Siddharth Kasana and other accused persons, and as a result on 11.01.2016, the present FIR No. 23/2016 was registered by the police. It is further stated that the respondent no. 2 in her statement under Section 164 Cr.P.C has supported the case of the prosecution. It is therefore, prayed that the present case is not a case for quashing of the FIR and it is liable to be dismissed.

6. This Court has heard arguments addressed by the learned counsels appearing on behalf of both the parties, and has perused the material placed on record.

7. Before proceedings to appreciate the contentions raised before this Court, it will be pertinent to take an overview of the law and principles governing quashing of FIRs.

8. In *State of Haryana v. Ch. Bhajan Lal* 1992 SCC (Cri) 426, the Hon'ble Apex Court had culled down principles to be considered while quashing FIRs, and the same are extracted hereunder:

“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 extraordinary 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 channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.



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.
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.
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.
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.
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.
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.
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.”

9. Further, the Hon'ble Apex Court in case of *Neeharika Infrastructure v. State of Maharashtra* 2021 SCC OnLine 315, after



analysing the judicial precedents, had summarized the following principles that govern the law on quashing of a FIR under Section 482 of Cr.P.C:

“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.”



10. When the factual matrix of the present case is examined in light of the principles laid down in the above judgments of the Hon'ble Apex Court, this Court finds that allegations levelled against the present petitioner are specific and serious in nature, and the statement of the complainant recorded under Section 164 of Cr.P.C , which is on record, support the case of the prosecution. This Court notes that the complainant had alleged that the accused no. 1 i.e. the petitioner Sh. Sidharth Kasana had deceived and unlawfully married the complainant, subjecting her to sexual exploitation and rape under the guise of a legitimate marriage, which was allegedly supported by other accused persons. It is further the case of the prosecution that the petitioner had concealed his existing marriage with Ms. 'X' from the complainant, and had kept the complainant unaware about the same, between the period of May, 2011 to August, 2013. It is also important to consider that the petitioner has not denied the factum of him being married to Ms. 'X', but has argued that the complainant was aware about the said fact and they were living in a live-in-relationship; however, such contentions and issues are triable in nature and cannot be gone into and decided in a petition seeking quashing of FIR. Moreover, a child was born from the union of the petitioner and the complainant, but the petitioner herein had allegedly neglected both the complainant and the child. It is also the case of the prosecution that the accused persons had forcibly taken custody of the child when the child was only 12 days old, leading to a series of litigation for the child's custody. Thus, the case of the complainant is that she has endured relentless sufferings, facing not only physical and emotional



abuse but also enduring various forms of harassment and intimidation from the petitioner and other co-accused persons.

11. Considering the overall facts and circumstances of the case, after going through the contents of the FIR, chargesheet and supplementary chargesheet placed before this Court, this Court is of the opinion that there are specific allegations against the present petitioner, which neither appear to be absurd or improbable, nor it can be said that the same do not *prima facie* disclose commission of cognizable offences. Thus, the present case is not a fit case for quashing the FIR in question insofar as the petitioner Sh. Sidharth Kasana is concerned, who is the main accused in this case. However, the petitioner shall be at liberty to advance arguments raised before this Court, at the time of framing of charge before the learned Trial Court.

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

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

14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 20, 2024/hs

(corrected and uploaded on 02.05.2024)