



2024:DHC:9384



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

% **Date of order: 4th December, 2024**

+ **CRL.M.C. 4877/2023 & CRL.M.A. 8068/2024**

SURAJ PARKASH

.....Petitioner

Through: **Mr. R. K. Ruhil, Mr. Anil Kumar and
Mr. Rahul Kasana, Advocate.**

versus

STATE (NCT OF DELHI) & ANR.

.....Respondents

Through: **Mr. Satish Kumar APP for the State
along with Sheetal, PS Hauz Khas.
Ms. Kaadambari Singh, Advocate
(Amicus Curiae) with Ms. Muskaan
Chawla and Ms. Tanya Singh Kaurav,
Advocates for R-2.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC' hereinafter) (Section 528 of the Bhartiya Nyaya Suraksha Samhita, 2023) seeking quashing of the FIR bearing no. 283/2021, dated 1st September, 2021 registered under Section 376 of the Indian Penal Code, 1860 ('IPC' hereinafter) at Police Station - Hauz khas, New Delhi.

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KUMAR BABBAR
Signing Date: 06/12/2024
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2. The learned counsel for the petitioner submitted that the complainant/prosecutrix and the petitioner were in a relationship and had established physical relations with due consent.

3. It is submitted that the contents of the FIR and the subsequent statement given under Section 164 of the CrPC reveals that there are no allegations regarding the petitioner being indulged in physical relations with the prosecutrix on false pretext of marriage.

4. It is submitted that the marriage between the parties did not take place due to non-interest shown by the prosecutrix and the said claim is evident from the fact that the petitioner was ready to get married to her against the wishes of his family.

5. It is also submitted that the WhatsApp chats and the transcript of the audio recordings clearly shows *bonafide* of the petitioner and do not raise any question regarding whether the petitioner was indulged in act warranting framing of charges under Section 376 of the IPC or not.

6. Therefore, in light of the foregoing submissions, the learned counsel for the petitioner submitted that the present FIR be quashed as there is no case made out against the petitioner.

7. *Per Contra*, the learned APP appearing for the State vehemently opposed the instant petition submitting to the effect that there are serious allegations against the petitioner and the complaint clearly establishes that the petitioner had sexually assaulted the prosecutrix.



8. It is submitted that the issues raised by the petitioner are a matter of trial and therefore, the merit of the case may not be decided at this stage and the instant petition be dismissed.

9. Heard the learned counsel for the parties and perused the records.

10. The petitioner in the present case has approached this Court to exercise its discretionary powers under Section 482 of the CrPC to quash the FIR lodged against him for allegedly sexually harassing the prosecutrix.

11. In support of his claims, the petitioner has placed the screenshots of the WhatsApp chats and transcript of the audio recordings to prove his innocence, however, the learned APP for the State has submitted that the FIR has been lodged under Section 376 of the IPC and since the same is a heinous offence, no occasion arises for quashing of the same.

12. On the said aspect, this Court deems it apposite to discuss the law regarding quashing of an FIR in such cases. In ***Mohd. Wajid v. State of U.P.*, 2023 SCC OnLine SC 951**, the Hon'ble Supreme Court reiterated the position of law regarding quashing of an FIR in cases alleging heinous crimes and held as under:

“32. However, as observed earlier, the entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in the case of Bhajan Lal (supra). The parameters are:—

“(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 FIR 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 FIR 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.”

33. In our opinion, the present case falls within the parameters Nos. 1, 5 and 7 resply referred to above.



34. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”



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13. Therefore, this Court is duty bound to look into the aspect and satisfy whether the contents of the FIR are cogent enough to establish *prima facie* case against the petitioner or not.

14. Upon perusal of the FIR and statement recorded under Section 164 of the CrPC, it is made out that even though the prosecutrix has leveled allegations against the petitioner and the said allegations stem from his alleged misconduct in the year 2015, the parties had performed *roka* ceremony in the year 2019.

15. Furthermore, with respect to the allegation regarding the sexual assault on 19th March, 2020, the petitioner has pleaded *alibi* and the same is proven from the record of his duties at PHS Dariyawala, Jind, Haryana and the subsequent status report filed by the respondent State.

16. As discernible from the material on record, the prosecutrix was in constant touch with the petitioner and both the parties used to share details about their life on a daily basis and other personal details.

17. It is not disputed by the petitioner that the parties had entered into physical relationship, however, he claims the same to be consensual. It is also established from the statement recorded under Section 164 of the CrPC of the prosecutrix that the parties had taken steps to get married, however, the families did not agree due to the caste factor.

18. Despite the said reservations from the petitioner's family, the petitioner was ready to get married to the prosecutrix and she herself did not



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show any interest later on and entered into a relationship with another person.

19. The WhatsApp chats between the parties also shows that the prosecutrix had sent several messages to the petitioner and conveyed information regarding her decision to get married to another person, therefore, the instant FIR is nothing but an afterthought.

20. As held in the case cited above, the Courts are duty bound to look into the possibility of presence of ulterior motive on part of the prosecutrix to seek vengeance from the petitioner.

21. Furthermore, the evidence before this Court are of utmost importance to adjudicate whether the consent was given voluntarily, or under the misconception of the fact.

22. The relevant material on record, i.e. the recordings, WhatsApp chats, statement recorded under Section 164 of the CrPC etc. clearly establishes that the ingredients of Section 376 of the IPC are not met as the parties had consensually agreed to enter into physical relationship and the same was also not based on false promise of marriage.

23. It is true that the provision under which the FIR has been lodged is one of the most heinous crimes against women, however, it is also an established fact that some people use it as a weapon to unnecessarily harass the male counterpart.

24. The instant case is a classic example of how an innocent person had faced undue hardships due to misuse of the penal provision and therefore,



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this Court is of the firm view that nothing would come out of the case if the matter is subjected to trial.

25. Therefore, this Court is of the view that the arguments advanced by the learned counsel for the petitioner are cogent enough to quash the impugned FIR and this Court deems it appropriate to exercise its discretionary powers conferred under Section 482 CrPC to quash the same.

26. In view thereof, the FIR bearing no. 283/2021 dated 1st September, 2021, registered for offences punishable under Section 376 of the IPC at police station-Hauz Khas, New Delhi and all the consequential proceedings arising therefrom is quashed.

27. Accordingly, the instant petition is allowed and stands disposed of. Pending applications, if any, stand dismissed.

28. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

DECEMBER 4, 2024

Rk/av

Click here to check corrigendum, if any