



2024:DHC:6243



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

Date of Decision: 08th August, 2024

+ **CRL.M.C. 3198/2019, CRL.M.A. 13168/2019 & CRL.M.A. 37523/2019**

HDFC BANK LTD

.....Petitioner

Through: Mr. Narender Hooda, Sr.
Advocate with Mr.
Rishabh Raj Jain,
Advocate.

versus

THE STATE & ANR

.....Respondents

Through: Mr. Ajay Vikram Singh,
APP for the State.
Mr. Ajjay Arora, Mr.
Kapil Dutta, Mr. Vansh
Luthra & Mr. Simran
Arora, Advocates for
NDMC.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeking quashing of FIR No.211/2019 dated 28.04.2019, registered at police station Moti Nagar, for offence under Section 3 of the Delhi Prevention of Defacement of Property Act, 2007 ('DPDP Act').

2. The present FIR was registered on the basis of a complaint

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received by Head Constable Tej Pal against the petitioner. It was alleged that on 22.03.2019, during an inspection carried out by the officials of the Advertising Department, North Delhi Municipal Corporation ('NDMC'), it was found that the petitioner had erected illegal advertisements without obtaining any prior permission under Sections 142 and 143 of the Delhi Municipal Corporation Act, 1957 ('DMC Act') for the same.

3. The learned senior counsel for the petitioner submits that the present FIR was registered merely because the petitioner had installed a sign board. He submits that the allegations taken at their highest do not constitute a case under Section 3 of the DPDP Act as the petitioner had not defaced any public property by writing/inking it with ink, chalk, paint, etc.

4. It is also pointed out by the learned senior counsel for the petitioner that it is alleged in the FIR that the offence was made out as the petitioner did not obtain the relevant permission under Section 142 and 143 of the DMC Act. The said sections pertain to tax on advertisements. He submits that the sign board did not constitute an advertisement. He draws the attention of this Court towards the judgment of the Hon'ble Apex Court in the case of ***Harsh Automobiles Private Limited v. Indore Municipal Corporation* : 2023 SCC OnLine SC 1304**, while dealing with an issue of tax on advertisements by a municipal authority, has noted that by mere mentioning of the name of the business on a display, the same would not take on the nature of an advertisement unless it serves to solicit customers. It was also

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observed that in the absence of name boards and sign boards, it would drive a potential customer to a situation where they would be unable to identify the business.

5. He submits that even if there was any apparent violation of DMC Act, the proper recourse would have been to serve the petitioner with a notice to rectify the non-compliance instead of registration of FIR under Section 3 of the DPDP Act.

6. He submits that the FIR mentions that the advertisement was displayed at B/34, UGF, Near Muthoot Finance, Moti Nagar, New Delhi, however, the premise mentioned in the notice under Section 91 of the CrPC is Plot No.34, Najafgarh road, Industrial Area, Delhi.

7. The petitioner has also relied upon the judgment in the case of ***T.S. Marwah & Ors. v. State : 2008 (4) JCC 2561*** where a Coordinate Bench of this Court had quashed the charge framed against the petitioner therein for the offence under Section 3(1) of the West Bengal Prevention of Defacement of Property Act, 1976 [analogous to Section 3(1) of the DPDP Act] and observed as under:

“A bare look at Section 3(1) goes to show that the offence committed therein would be punishable only if the defacement is done in respect of property in public view by writing or marking with ink, chalk, paint or any other material There is nothing in the charge sheet filed against the petitioner to indicate that any property was defaced by writing or marking with ink, chalk, paint or any other material The only allegation is that the banner was put on an electric pole. Mere putting of the banner will not get covered by section 3 (1) of The West Bengal Prevention of Defacement of Property Act, 1976. It is true that Sec. 2(AA) defines defacement which includes impairing or interfering

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with the appearance, beauty, damaging, distinguishing, spoiling or injuring in any other way whatsoever, but Section 3(1) is not all embracing and it refers only such type of defacement for the purpose of prosecution as is done by writing or marking with ink, chalk, paint or any other material.”

8. The learned counsel for the petitioner also drew the attention of this Court towards certain orders of the Trial Court where the learned Magistrate has acquitted the accused therein in similar circumstances by placing reliance upon the judgment of ***T.S. Marwah & Ors. v. State*** (*supra*). He points out that the said orders have not been challenged which shows that the allegations in the FIR are absolutely frivolous in nature and a sheer abuse of the process of law.

9. The present petition is filed under Section 482 of the CrPC. The Hon'ble Apex Court in the case of ***State of Haryana v. Bhajan Lal*** : 1992 Supp (1) SCC 335 has expounded as to when the inherent jurisdiction of this Court should be exercised to used to quash the proceedings. The relevant portion of the same is reproduced 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



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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 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."

(emphasis supplied)

10. The offence under Section 3 of the DPDP Act is levelled against the petitioner. The same reads as under:

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“3. Penalty for defacement of property

(1) Whoever defaces any property in public view by writing or marking with ink, chalk, paint or any other material except for the purpose of indicating the name and address of the owner or occupier of such property, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.

(2) When any offence is committed under sub-section (1) is for the benefit of some other person or a company or other body corporate or an association of persons (whether incorporated or not) then, such other person and every president, chairman, director, partner, manager, secretary, agent or any other officer or persons connected with the management thereof, as the case maybe, shall, unless he proves the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

(3) The aforesaid penalties will be without prejudice to the provisions of Section 425 and Section 434 of the Indian Penal Code, 1860 (45 of 1860) and the provisions of relevant Municipal Acts.”

(emphasis supplied)

11. The word — ‘defacement’ has been defined under the DPDP Act under Section 2(a) as under:

“defacement” includes impairing or interfering with the appearance or beauty, damaging, disfiguring, spoiling or injuring in any other way whatsoever and the word “deface” shall be construed accordingly”

12. In the present case, admittedly, there is no allegation that the petitioner defaced the public property with ink, chalk, paint or any other material. The only allegation is that the petitioner posted a sign board of its name on a property without proper permissions from NDMC under Sections 142 and 143 of the DMC Act. It is also relevant to note that the notice under Section 91 of the CrPC mentioned a different address where the sign board was posted than the FIR.



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13. The limited question in the present matter is whether the offence under Section 3 of the DPDP Act is made out whereby it would not be appropriate for this Court to address whether the petitioner violated the provision under DMC Act.

14. However, it is pertinent to note that Section 3 of the DPDP Act does not penalise the violation of the provisions of the DMC Act. *Prima facie*, in the opinion of this Court, even if the allegations are taken at their face value, no offence is made out against the petitioner.

15. Considering the aforesaid discussion and keeping in mind that such allegations are leading to acquittals before the Trial Court, this Court is of the opinion that the continuance of the proceedings would amount to abuse of the process of Court and this is a fit case to exercise discretionary jurisdiction under Section 482 of the CrPC.

16. In view of the same, FIR No.211/2019 and all proceedings arising therefrom are quashed.

17. It is seen that the present FIR was lodged way back in the year 2019. The chargesheet was also filed in the present case even though no *prima facie* case is made out against the petitioner and there are clear precedents of charges being quashed in such cases. It seems that the present proceedings were instituted at the behest of Respondent No.2 due to the petitioner not having obtained certain permissions under the DMC Act.

18. It is relevant to note that while the learned Additional Public Prosecutor for the State and the learned counsel for

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Respondent No.2/ NDMC have not opposed the quashing of the present FIR today, however, they had contested the same previously.

19. It is clear that the allegations levelled in the FIR are clearly frivolous in nature despite which the case has gone on for more than half a decade. The same amounts to sheer abuse of process of law. Such frivolous matters unduly burden the criminal courts and waste precious judicial time. In the case of ***Subrata Roy Sahara v. Union of India : (2014) 8 SCC 470***, the Hon'ble Apex Court had deprecated the practice of registering of frivolous criminal cases. The propensity of State Departments pursuing ill-considered cases up to the highest Courts was also taken note of. The relevant portion of the same is reproduced hereunder:

“191. The Indian judicial system is grossly afflicted with frivolous litigation. Ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims. One needs to keep in mind that in the process of litigation, there is an innocent sufferer on the other side of every irresponsible and senseless claim. He suffers long-drawn anxious periods of nervousness and restlessness, whilst the litigation is pending without any fault on his part. He pays for the litigation from out of his savings (or out of his borrowings) worrying that the other side may trick him into defeat for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for what he has lost for no fault?... ”

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193. This abuse of the judicial process is not limited to any particular class of litigants. The State and its agencies litigate endlessly up to the highest Court just because of the lack of responsibility to take decisions. So much so that we have started to entertain the impression that all

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administrative and executive decision-making are being left to courts just for that reason....”

20. The judgment in ***T.S. Marwah & Ors. v. State*** (*supra*) was passed by this Hon'ble Court way back in the year 2008. Despite the same, FIRs were registered on subsequent occasions in relation to similar allegations. As noted above, even the present FIR was registered in the year 2019. It is not disputed that accused persons in such cases have been acquitted by relying on the aforesaid judgment. It has not been brought on record that such orders have been challenged by the respondents. The respondents were clearly aware of the law that no offence is made out under Section 3 of the DPDP Act and the allegations as levelled in the present case would ultimately lead to an acquittal of the petitioner.

21. It is not clear that despite the law being clear in regard to the offence of defacement of a property, why the concerned Officers are still hellbent on registering FIRs.

22. On being asked, the learned Additional Public Prosecutor for the State submits that the FIR was registered on a complaint received from the Municipal Corporation of Delhi (MCD).

23. It is settled law that the Police registers FIR under Section 154 of the CrPC on receiving a complaint for commission of a cognizable offence. Pursuant to the law as declared by this Court in ***T.S. Marwah & Ors. v. State*** (*supra*), it is apparent that the allegations do not disclose commission of any offence under Section 3 of the DPDP Act.

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24. In such circumstances, why such FIRs are registered is not clear unless the same is registered to harass the parties. It is also not clear as to why such complaints are made by the MCD. The concerned Officer who gave the complaint was clearly not cognizant of the provisions of the Act and the law declared in that regard.

25. When such complaints are made and the FIRs are registered despite the law being well-settled, it shocks the conscience of the Court. The departments, that is, Delhi Police and the MCD, are also loaded with much work for the service of citizens. Such complaints and FIRs only shows the insensitivity of the concerned Officers towards the plight of the citizens.

26. The filing of such complaints by the Officers has the effect of not only wasting the precious judicial time of the Trial Courts and the High Courts, but the same also puts burden on the *exchequer* since the State machinery is also put to motion on registration of frivolous FIRs on such complaints.

27. It is a common knowledge that Courts are already burdened with huge pendency of cases and when precious judicial time is wasted on adjudication of such cases which ought not to have been registered, the time which could have been devoted and better spent on adjudication of genuine cases, is taken away to the detriment of common citizens who are waiting for years for their turns in Court.

28. The amount of time wasted in the proceedings in relation to the present FIR calls for imposition of cost. Thus, a cost of

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₹1,00,000/- is imposed on the respondents (that is, ₹50,000/- on each respondent), to be paid to the Delhi High Court Legal Services Committee, within a period of six weeks from date.

29. Let proof of deposit of cost be furnished to the Registry of this Court.

30. The respondents are at liberty to recover the cost from the erring Officers.

31. The present petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

AUGUST 8, 2024/‘Aman’

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