



2024:DHC:8932



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

% **Date of order: 12th November, 2024**

+ **CRL.M.C. 5164/2023**

SACHIN SHARMA

.....Petitioner

Through: **Mr. Shashank Datta and Mr. Narendra
Sharma, Advocates.**

versus

STATE (GOVT. OF NCT OF DELHI) AND OS.Respondents

Through: **Ms. Richa Dhawan, APP for the State
along with SI Ravi Rana, DIU/SD.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter “CrPC”) (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) has been filed on behalf of the petitioner seeking quashing of the FIR No. 997/2015, registered at the Police Station – Kotla Mubarakpur, Delhi, under Section 370 of the Indian Penal Code, 1860 (hereinafter “IPC”) and Sections 23 and 26 of the Juvenile Justice (Care And Protection of Children) Act, 2000 (hereinafter “JJ Act”).

2. The brief facts that led to the filing of the instant petition are as follows:

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- a. At the behest of the complaint filed by Ms. Mala, mother of the respondent no.2/victim, under Section 370 of the Indian Penal Code, 1860 and Sections 23 and 26 of the JJ Act at Police Station – Kotla Mubarakpur, Delhi, an FIR dated 31st August, 2023 was registered against the petitioner and several others.
- b. In the aforesaid FIR, the complainant alleged that the respondent no. 2, i.e., her daughter, was employed as a domestic help at the petitioner's house and her employment was facilitated by one Mr. Mahavir, who ran a Placement Agency namely Leelawati Placement Agency, operating in the area of Police Station – Kotla Mubarakpur, Delhi. It has been stated in the chargesheet that for a period of one year, the accused paid the agreed salary to the mother of respondent no. 2, pursuant to which the accused paid nothing to respondent no. 2 or her family for a period of two years.
- c. Consequent to the above, a raid was conducted, and respondent no. 2 was rescued from the petitioner's house and sent to a Child Care Home after a medical examination. During investigation, it was discovered that as per the school certificate, the date of birth of the respondent no. 2 was 18th August 1997, whereas as per the ration card, her date of birth was 10th November 1999.
- d. After investigation, the petitioner was chargesheeted for the offences under Section 370 of the IPC and Sections 23 and 26 of the JJ Act. Subsequently, *vide* order dated 1st December 2018, the



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learned Trial Court framed charges against the petitioner under the Section 370 of the IPC and Sections 23 of the JJ Act.

e. Being aggrieved by the same, the petitioner approached this Court seeking quashing of the aforementioned FIR.

3. Learned Counsel appearing on behalf of the petitioner submitted that the complaint was filed by the mother of respondent no. 2 in order to extort money from the petitioner. Further, the complaint was filed only when the respondent no. 2 refused to leave the house of the petitioner at the request of her mother.

4. It is submitted that the respondent no. 2 used to take care of the petitioner's minor child, and she was provided with all the amenities including education, good food and a high standard of living, due to which she resided happily in the petitioner's house.

5. It is submitted that the petitioner has been charged for offences punishable under Section 370 of the IPC and Section 23 of the JJ Act, however, it is pertinent to note that no allegation of cruelty has been made out against the petitioner by the respondent no. 2 due to which it is evident that the ingredients of the said offences are absent and thus, no such offence is made out against the petitioner, and the allegations advanced thereto are baseless.

6. It is submitted that after the registration of the aforesaid FIR, the respondent no. 2 was sent to the Child Care Home, however, she was willing to go back to the house of the petitioner which is evident from the perusal of



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the statement of the respondent no. 2 recorded under Section 164 of the CrPC.

7. It is submitted that Section 23 of the JJ Act is not applicable in the instant case because the petitioner did not have actual control over the child as it can only rest with the guardian and not with any other person. It is further submitted that as per Section 2 of the JJ Act, the definition of the term “guardian” includes anyone who has actual charge or control over the child and is recognized by a competent authority. Placing reliance on this provision, the learned counsel submitted that the offence is not made out against the accused.

8. It is submitted that the respondent no. 2 is now a major and she does not want to pursue the case and has no objection if the present petition is allowed, therefore, it is prayed that the present FIR and all the consequential proceedings emanating therefrom may be quashed.

9. *Per Contra*, Mr. Saurabh Kansal, learned Amicus Curiae vehemently opposed the instant petition submitting to the effect that from a plain reading of the FIR itself, the offences as alleged are made out against the petitioner.

10. It is submitted that after filing of the chargesheet and framing of charges, the instant petition is unfounded as the petitioner has not challenged the order of charge, which in itself is sufficient ground for the rejection of the petition. Additionally, the petitioner has not paid the salary to respondent no. 2, making him liable to be prosecuted under Section 370 of the IPC in addition to Section 23 of the JJ Act.



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11. It is submitted that the material available on record reveals that the allegations made against the petitioner *prima facie* make out a case against him and the present case is not a fit case for this Court to exercise its inherent powers to quash the FIR. Therefore, in view of the foregoing submissions, the instant petition may be dismissed being devoid of any merit.

12. Heard the learned counsel appearing on behalf of the petitioner and the learned Amicus Curiae, and perused the material on record.

13. Before advertng to the merits of the instant case, this Court finds it appropriate to discuss the settled position of law with respect to the principles to be followed for quashing of criminal proceedings.

14. In *Supriya Jain v. State of Haryana and Another.*, (2023) 7 SCC 711, the Hon'ble Supreme Court reiterated the jurisprudence *qua* principles to be followed for quashing an FIR at the stage where charges have been framed and the trial is awaited, and observed as under:

“16. This is a case where the charges have been framed and the accused are awaiting trial. Having regard to the totality of the facts and circumstances, noticed above, we are of the considered opinion that the investigation and the follow-up steps are not so patently and unobtrusively defective or erroneous (except to the extent we propose to mention before concluding our judgment) that allowing the trial to progress might cause a miscarriage of justice. This is also not an appropriate stage to delve deep into the records. It is no part of the business of any of the courts to ascertain what the outcome of the trial could be, conviction or acquittal of the accused. The small window that the law, through judicial precedents, provides is to look at the allegations in the FIR and the



materials collected in course of investigation, without a rebuttal thereof by the accused, and to form an opinion upon consideration thereof that an offence is indeed not disclosed from it. Unless the prosecution is shown to be illegitimate so as to result in an abuse of the process of law, it would not be proper to scuttle it.

17. The principles to be borne in mind with regard to quashing of a charge / proceedings either in exercise of jurisdiction under section 397, Cr. PC or section 482, Cr. PC or together, as the case may be, has engaged the attention of this Court many a time. Reference to each and every precedent is unnecessary. However, we may profitably refer to only one decision of this Court where upon a survey of almost all the precedents on the point, the principles have been summarized by this Court succinctly. In Amit Kapoor vs. Ramesh Chandra, this Court laid down the following guiding principles:

“27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.



27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and



materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a fullfledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.



27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

*27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist. ****

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.”

15. In the above said judgement, the Hon’ble Supreme Court, while dealing with the High Courts’ inherent powers under Section 482 of the CrPC, has analysed and demarcated the scope within which the said powers are to be exercised by the High Courts. It was held that the High Court must use its inherent powers very sparingly with respect to quashing of the criminal proceedings, which must be done only in the rarest of rare cases.

16. It was also held that at the time of framing of charges, the High Courts should not examine the evidence to determine whether there is sufficient basis for the case to end in a conviction. The Courts are only concerned with



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whether the allegations as a whole would constitute an offence, or it is an abuse of the process of Court which leads to miscarriage of justice. The test to be applied to determine if the proceedings warrant the interference of the Court to quash the same, is whether the uncontroverted allegations determined from the record of the case, *prima facie* establish the offence or not. If such uncontroverted allegations *prima facie* establish the commission of the offence, the Courts shall not quash the proceedings against the accused at the stage of framing of charges.

17. In the instant case, the petitioner is charged for the commission of offences under Section 370 of the IPC and Section 23 of the JJ Act. The offences under these provisions are grave and serious in nature and have adverse social implications.

Section 370 of the IPC reads as under:

“(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by— First.—using threats, or Secondly.—using force, or any other form of coercion, or Thirdly.—by abduction, or Fourthly.—by practising fraud, or deception, or Fifthly.—by abuse of power, or Sixthly.—by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1.—The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.



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Explanation 2.—The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.”



Section 23 of the JJ Act reads as under:

“Punishment for cruelty to juvenile or child.- Whoever, having the actual charge of or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.”

18. Section 370 of the IPC deals with trafficking of a person and states that whoever, for the purpose of exploitation, recruits or transports or harbours or transfers or receives a person or persons by using threats or using force or any form of coercion, or by abduction, or by practising fraud, or deception or by abuse of power, or by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control of the person recruited, transported, harboured, transferred or received, commits the offence of trafficking. Trafficking of a person is said to be committed when it is done with the objective of exploitation of the victim.

19. With regard to the JJ Act, the objective of the same is to ensure proper care and protection of juveniles. It envisages a comprehensive framework to ensure justice for children in any situation of abuse or exploitation. Section 23 of the JJ act, in particular, seeks to protect children from any kind of mental or physical suffering from anyone having charge of or control over



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such children. Therefore, it is clear that the offence under this provision is serious in nature as it seeks to protect the well-being of children.

20. This Court has meticulously perused the entire material placed on record and is of the considered view that applying the principles enunciated by the Hon'ble Supreme Court, in the instant case, the uncontroverted allegations as made out from the record of the case, can be said to *prima facie* establish the commission of the offence by the petitioner.

21. The chargesheet clearly postulates that the victim was employed by the petitioner to work at his house as domestic help, in exchange of commission paid to the aforesaid Placement Agency which facilitated the same, in addition to agreed salary that was to be paid to the poor family of the victim, as inducement for such employment. As per the allegations, the petitioner did not pay the victim for her work as domestic help in the petitioner's house and did not allow her to meet with her family. This is likely to have caused the victim unnecessary physical and mental suffering.

22. There is already an order of charge passed by the learned Trial Court on 1st December, 2018 against the petitioner, which the petitioner has not challenged. As a matter of fact, the petitioner was directed by the Child Welfare Committee to deposit a total sum of Rs. 2,29,737/- as he did not pay the agreed salary to the victim. Therefore, if the uncontroverted allegations are considered as a whole in the instant case, there is a *prima facie* case pointing towards the involvement of the petitioner in the commission of the offences.



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23. The contents of the FIR states that the victim hails from a different state, who belonging to a poor family, was brought to Delhi to work as a domestic help through a Placement Agency. Further, the allegations levelled against the petitioner, particularly under Section 370 of the IPC, are of such a nature that it not only effects a particular individual but the same has an impact on the overall morality of the society, thus, being offence of a heinous nature involving a minor.

24. Therefore, considering the gravity of the allegations in light of the materials placed on record, this Court finds a strong suspicion of a planned syndicate in place for trafficking of children and the petitioner may or may not have a role to play in the same, which can only be conclusively determined during the course of trial. Therefore, the interference of this Court is unwarranted and this Court does not deem it fit to exercise its jurisdiction under Section 482 of the CrPC (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) to quash the FIR in the instant case.

25. Therefore, in light of the settled position of law as well as the facts of the present case, this Court does not find any cogent reasons on merits for quashing the FIR against the petitioner as no grounds have been made out by the petitioner warranting the same.

26. Accordingly, the instant petition stands dismissed along with the pending applications, if any.



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27. It is made clear that the observations made by this Court in the preceding paragraphs are not to be taken as expression of this Court on the merits of the case.

28. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 12, 2024

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Click here to check corrigendum, if any

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