



2024:DHC:669



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

Date of decision: 29.01.2024

+ CRL.M.C. 3860/2022 & CRL.M.A. 16096/2022
HAJI ASHRAF

..... Petitioner

Through: Mr.Sunil Satyarthi, Adv. along
with petitioner in person.

versus

STATE GOVT NCT OF DELHI NEW DELHI

..... Respondent

Through: Mr.Aman Usman, APP.
SI Deepak Dhanda, PS Amar
Colony.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed challenging the order dated 23.11.2017 passed by the learned Additional District and Sessions Judge-02, South-East District, Saket Courts, New Delhi in Criminal Revision No. 329/2017, titled ***Haji Ashraf v. The State (NCT of Delhi)***, partially setting aside the order dated 13.04.2017 passed by the learned Metropolitan Magistrate-08, South-East District, Saket Courts, New Delhi in FIR No. 133/2014 registered with Police Station: Amar Colony, South-East District, New Delhi, and directing the learned Metropolitan Magistrate to frame charges against the petitioner herein for



2024:DHC:669



offences under Sections 448/380/323/341 read with Section 34 of the Indian Penal Code, 1860 (in short, 'IPC'), while discharging him of the offence under Section 394 of the IPC.

2. The learned counsel for the petitioner submits that it is the case of the prosecution that on the intervening night of 17/18.02.2021 at about 10.25 PM, the petitioner along with the co-accused came to shop no. 24, Okhla Subzi Mandi, New Delhi belonging to the complainant, beat her son, who was sleeping on the first floor room above the shop and threw him out of the shop. It is alleged that they also took away 400-500 bags of onions from the shop and put their locks on the room which is above the shop, the stairs, and the basement.

3. The learned counsel for the petitioner submits that barring the statement of the complainant-Ms.Gulnarjiya and her son Mr.Nazmusajia there is no other witness to the alleged offence. He submits that the alleged offence is stated to have been committed in a crowded *mandi* wherein the entry and exit of the vehicles is regulated. Therefore, it is impossible for a person to take out 400-500 bags of onion without being noticed by any third person, and without there being entry made of the entry or exit of a vehicle from the *mandi*. There are also no documents of the ownership or possession of 400-500 bags of onion with the complainant as on that date, which would be a pre-requisite of the offence.

4. He further submits that all allegations have been made by the complainant only to settle the civil disputes pending



2024:DHC:669



between the parties in relation to the ownership and possession of the shop in question. He submits that such misuse of the criminal process should not be allowed.

5. On the other hand, the learned APP submits that in the present case, there are statements of the complainant- Ms.Gulnarjiya as also of her son Mr.Nazmusajia. He submits that whether these shall be sufficient to hold the conviction of the petitioner, is a matter of trial; they are sufficient to at least proceed against the petitioner at this stage. He further submits that the plea taken by the learned counsel for the petitioner is, in fact, a defence to the accusation, which again has to be considered only at the time of the trial.

6. I have considered the submissions made by the learned counsels for the parties.

7. In *State of Haryana & Ors. v. Bhajan Lal & Ors.*, 1992 Supp (1) SCC 335, it has been held that inherent powers under Section 482 Cr.P.C. can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of the circumstances in which such power should be exercised is where the allegations made in the FIR 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 or 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



2024:DHC:669



with a view to spite him due to private and personal grudge.

8. In *Satish Mehra v. State (NCT of Delhi) & Anr.*, (2012) 13 SCC 614, the Supreme Court held that though the inherent power to interdict a proceeding at the threshold or at an intermediate stage of the trial should be exercised sparingly, however, this power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the material revealed by the investigation carried out usually come on record and such material can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such material, even if accepted in its entirety, does not, in any manner, disclose the commission of the offence alleged against the accused.

9. Tested on the above principles and as noted hereinabove, one of the allegations against the petitioner is that the petitioner, along with the co-accused, had taken away 400-500 bags of onion from the shop of the complainant. It was for the investigation to find out and reveal how these bags could be carried by four persons. The offence is alleged to have been committed at Okhla Subzi Mandi, which is a regulated area and, therefore, it does not inspire any confidence that the 400-500 bags of onion can be taken away by persons unnoticed without there being any independent witness or corroboration of the statements made by the complainant/the alleged victim. The investigation does not even reveal any material for the complainant/victim to be in possession of the 400-500 bags of



2024:DHC:669



onion, as claimed. In my opinion, therefore, there is no sufficient material to proceed against the petitioner under Section 380 of the IPC.

10. A reading of the accusation against the petitioner also does not make out any case under Section 341 of the IPC.

11. However, as far the charges under Sections 323 and 448 read with Section 34 of the IPC are concerned, in view of the statement of the complainant and the injured, at the present stage, it cannot be said that there is no case made out against the petitioner for proceeding with the trial.

12. Accordingly, the Impugned Order dated 23.11.2017 is partially set aside. The charges framed against the petitioner under Sections 380 and 341 of the IPC are set aside. The trial shall, however, proceed on charges under Sections 323 and 448 read with Section 34 of the IPC against the petitioner.

13. The petition is partly allowed.

14. The application has been rendered infructuous.

15. There shall be no order as to costs.

NAVIN CHAWLA, J

JANUARY 29, 2024/rv/RP

Click here to check corrigendum, if any