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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 5932/2023, CRL.M.A. 22291/2023 & CRL.M.A. 28318/2024

SHIV AGRAWAL & ORS.Petitioners
Through: Mr. Ranjan Kumar, Mr. Kapil Dev
Yadav, Mr. Govil Upadhyaya and
Ms. Kirti Gupta, Advocates

versus

STATE NATIONAL CAPITAL TERRITORY OF DELHI
THROUGH SHORespondent
Through: Ms. Richa Dhawan, APP for the State
with the Investigating Officer SI Ravi
Rana.
Mr. Sermon Rawat, Mr. Vansh
Kapoor, Mr. Harshit Jain and Ms.
Aastha Vishwakarma, Advocates for
respondent No.2

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER
% **19.12.2024**

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 (hereinafter "BNSS")] has been filed on behalf of the petitioners seeking quashing of the FIR bearing number 0259/2017 dated 23rd May, 2017, registered under Sections 379/356/342/506/420/468/471/34 of the Indian Penal Code, 1860 (hereinafter "IPC") at Police Station - Saket, South Delhi and also for



setting aside of the order dated 23rd May, 2017, passed by the learned ACMM/South/Saket in case number 6204/2017, directing the SHO concerned to register FIR.

2. Learned counsel appearing on behalf of the petitioners submitted that a mere reading of the contents made in the FIR shows that no case is made out for commission of the offences punishable under Sections 379/356/342/506/420/468/471/34 of the IPC.

3. It is submitted that since the petitioners had lodged an FIR bearing number 544/2016 dated 17th August, 2016 against the complainant in which the investigating agency, after completion of investigation, has filed the charge-sheet and cognizance has been taken by the concerned Court, the aforesaid FIR bearing number 0259/2017 was lodged on the basis of false and fabricated story as a counter blast. He submitted that the instant FIR is nothing but a gross misuse of the process of law and lodged with malicious and *mala fide* intention.

4. It is submitted that the instant FIR was registered in pursuance of the order dated 23rd May, 2017, passed by the concerned learned Magistrate on an application filed under Section 156 (3) of the CrPC. It is submitted that the said order was passed without application of judicial mind.

5. It is submitted that the instant FIR was registered by the police on the basis of the order passed by the Magistrate concerned without any material being available which can be connected to the petitioners with the allegations as made in the said FIR. It is prayed that in view of the aforesaid, the entire FIR may be quashed by this Court while exercising power under Section 528 of the BNSS. In order to strengthen his arguments, learned counsel for the petitioners has relied upon the judgment passed by the



Hon'ble Supreme Court in the case of ***Mohammad Wajid and Ors. Vs. State of U.P. and Ors.*** MANU/SC/0846/2023 and in particular relied upon paragraphs 28 and 29 of the same.

6. It is submitted that the instant FIR has been lodged with *mala fide*, malicious, illegal and vexatious intentions as the same has been instituted with an ulterior motive for wreaking vengeance upon the petitioners and other accused persons so that the petitioners do not pursue their FIR. It is further submitted that in view of the aforesaid circumstances, the instant FIR may be quashed.

7. *Per contra*, learned APP appearing for the State vehemently opposed the instant petition and submitted that instant petition is filed belatedly and after a gap of six years of the registration of the FIR. It is submitted that the order dated 23rd May, 2017 was passed by the Court concerned on the ground that there are sufficient material on record to establish the allegations made in the complaint. In pursuance of the said order, the police has registered the FIR on the same day, i.e., 23rd May, 2017.

8. Learned APP appearing for the State, on a query made by the Court, explained that due to non-receipt of the FSL report and COVID-19 pandemic, there is a delay in filing the charge-sheet. It is submitted that as per the FSL report, it is evident that the petitioners herein have fabricated and forged documents and signatures respectively, and the signature in question does not match with that of the complainant.

9. Learned APP submitted that the allegations made by the petitioners in the FIR lodged by him against the complainant are about siphoning of money of the company and there is no evidence on record as such. It submitted that in the supplementary charge-sheet, in paragraph no. 7, it is



clarified that no role in siphoning of money of the complainant has been assigned. She accordingly submitted that this case does not fall within the principle as laid down by the Hon'ble Supreme Court "*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*".

10. Learned counsel for the State submitted that the instant petition itself is a gross misuse of process of law and may be dismissed with heavy costs.

11. At this stage, learned counsel appearing for the complainant vehemently opposed the instant petition and submitted that there is no force in the arguments advanced by the learned counsel for the petitioners for the purposes of quashing the instant FIR.

12. It is also submitted that the petitioners did not challenge the impugned order and the FIR for six years. Learned counsel for the complainant submitted that there is no ground or cogent reasons for this Court to exercise powers under Section 528 of BNSS and the prayer of quashing the instant FIR may be rejected.

13. In rejoinder, learned counsel for the petitioner submitted that it is wrong to say that the complainant has not siphoned of money of the complainant. He referred to paragraph no. 16 of the supplementary charge-sheet dated 20th September, 2016, and submitted that cognizance has already been taken against the complainant in FIR no. 544/2016.

14. Heard the learned counsel for the parties and perused the contents made in the petition as well as the Status Report filed by the State, the charge-sheet which has been handed over today for perusal of the Court and



the judgment of the Hon'ble Supreme Court relied upon by the learned counsel appearing for the petitioner. This Court has also perused the contents made in the supplementary charge-sheet filed in the FIR no. 544/2016 which was lodged by the petitioners against the complainant.

15. As per the law, to invoke its inherent jurisdiction under Section 482 of the CrPC (now Section 528 of the BNSS), the High Court has to be fully satisfied that the material produced by the accused is such that it would lead to the conclusion that the defence is based on sound, reasonable and indubitable facts, and that the material so produced is such as would clearly defeat or negate the allegations contained in the FIR without conducting trial. Further, as per *Rajiv Thapar v. Madan Lal Kapoor*, (2013) 3 SCC 330, the material placed on record has to be of such impeccable quality that would persuade a reasonable person to dismiss and condemn the accusations as false. Therefore, in order to meet the ends of justice, the High Court may be persuaded by its judicial conscience to prevent the abuse of the process of law.

16. During the course of arguments, learned APP handed over the charge-sheet for perusal of the Court. Having perused the charge-sheet, this Court finds that there are evidences collected by the police to establish the allegations made in the FIR.

17. The chargsheet dated 23rd May, 2017 clearly state that in terms of the investigation, it is crystal clear and established that the blackberry mobile phone, which was submitted by the accused company for investigation of FIR no. 544/2016 is owned by the complainant and the company has no right to retain the same.

18. The contents of the chargsheet further state that the company also



accepted the presence of complainant and other alleged persons on the date of incident, i.e., 16th August, 2016. Therefore, the investigating agency added Sections 392/411 of the IPC.

19. The chargesheet has also taken note of the fact that the accused company has mentioned in his reply that they had called the complainant for account settlement on the day of the incident, however, as to why and for what purpose the mobile of phone of the complainant was retained remained unexplained.

20. Therefore, taking into consideration the entirety of the matter, including the material evidence available on record collected by the police during investigation, this Court is of the considered view that sufficient material is there on record to establish the allegations as made in the FIR against the petitioners, which was lodged in pursuance of the order passed by the learned Magistrate pursuant to a complaint made under Section 156 (3) CrPC. Further, no contention has been put forth on behalf of the petitioners to justify the delay in challenging the impugned order and seeking quashing of the FIR.

21. Thus, taking into account the fact that chargesheet has been filed and the contents of the FSL report state that the petitioners herein have fabricated and forged documents and signatures respectively, and the signature in question does not match with that of the complainant; this Court is of the view that there is no merit in the instant petition seeking quashing of the FIR as the allegations made therein *prima facie* make out a case against the petitioners for commission of the offences.

22. In view of the aforesaid facts and circumstances, it is held that this Court is not inclined to exercise its powers under Section 482 of the CrPC



(now Section 528 of the BNSS).

23. Accordingly, the instant petition, along with the pending applications, if any, stand dismissed.

CHANDRA DHARI SINGH, J

DECEMBER 19, 2024
NA/ryp

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