



2024:DHC:9715



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 11th December, 2024*

+ CRL.M.C. 4174/2022 & CRL.M.A. 17189/2022

TUSHAR TAMANGPetitioner

Through: Mr. Ashutosh Bhardwaj
and Ms. Preeti Sharma,
Advocates.

versus

STATE N.C.T. OF DELHI & ANR.Respondent

Through: Mr. Rajkumar, APP for the
State with SI Chetan Rana,
PS VK South.
Mr. N. Hariharan, Senior
Advocate (*Amicus
Curiae*), assisted by Mr.
Kaveesh Nair and Ms.
Punya Rekha Angara,
Advocates.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition has been filed, *inter alia*, seeking quashing of FIR No. 204/2018 dated 30.04.2018 registered at Police Station Vasant Kunj for offences under Sections 323/341/509/34 of the Indian Penal Code, 1860 ('IPC'), and all consequential proceedings arising therefrom.

2. The FIR in the present case was registered following a complaint by the complainant who alleged that on 29.04.2018, while she was on her way to deliver important RWA papers to Mr. Abdul Mahood, a Delhi Jal Board employee, she encountered a confrontation involving the accused persons including the petitioner. She alleged that she was approached by



Chanderkala/accused, who began beating and verbally abusing her in the vicinity of B-344, Vasant Kunj. During the alleged incident, the two sons of the accused, Tushar Tamang (the present petitioner) and Gyan, joined in the altercation. The complainant's driver, Babulal, was also assaulted, and the accused allegedly took the complainant's car keys. Furthermore, it was alleged that Chanderkala tore the complainant's clothes, while her sons filmed the alleged incident and threatened to broadcast the videos on social media to defame her.

3. After the completion of the investigation, charge sheet in the present case was filed on 18.09.2020 under Sections 323/342/354/354B/509/34 and cognizance was taken *qua* the accused persons including the petitioner.

4. The learned counsel for the petitioner submits that the petitioner was merely a bystander during the alleged incident and had no involvement in the commission of the offences. He submits that the charge sheet, as well as the investigation conducted by the police, failed to consider critical evidence in the form of CCTV footage, which clearly shows that the petitioner was not a participant in the altercation.

5. The learned counsel emphasized that the footage would conclusively establish the petitioner's innocence, as it depicts him merely standing by during the event without any involvement in the crime.

6. He submits that the complainant has failed to allege specific acts of omission or commission by the petitioner constituting any offence.



7. The limited question that falls for consideration before this Court is, firstly, whether the FIR should be quashed on the grounds that the evidence in the possession of the petitioner demonstrates his non-involvement in the alleged crime; and secondly, whether, in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'), the High Court can direct further investigation when cognizance has already been taken by the Magistrate and the charge sheet has been filed.

8. To address this, it is crucial to examine the scope of Section 482 of the CrPC and the guiding principles that govern the exercise of inherent powers by the High Court in ensuring justice and fairness in criminal proceedings.

9. The first issue for consideration is whether the FIR should be quashed on the grounds that the petitioner has relied upon the CCTV footage as evidence showing his non-involvement in the alleged offence. The petitioner claims that the footage clearly demonstrates that he was a mere bystander at the scene of the incident and had no participation in the commission of the crime.

10. The argument of the petitioner is compelling as it directly challenges his involvement in the case. However, the central question lies in whether the footage, not having been included in the chargesheet and its veracity not yet tested by the investigating agency, is sufficient to quash the FIR at this stage.

11. The law in relation to quashing of the FIR in exercise of inherent powers is well settled. The Hon'ble Apex Court in the case of *Indian Oil Corporation v. NEPC India Limited and*



Others : (2006) 6 SCC 736 has discussed the scope of jurisdiction under Section 482 of the CrPC. The relevant portion of the same is reproduced hereunder:

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.



(iv) *The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.*

(v) *A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”*

(emphasis supplied)

12. Section 482 of the CrPC confers the High Court with an inherent power to quash an FIR or a complaint, upon satisfaction of well-established parameters. While considering a petition seeking quashing of an FIR or complaint, the Court must take into consideration – if the allegations made in the FIR/complaint taken at face value, *prima facie* do not constitute any offence or make out any case against the accused ; if the allegations made in the FIR do not disclose any cognisable offence, which justifies a police investigation under Section 156(1) of the CrPC ; if the allegations made in the FIR/complaint and the evidence collected in support of the same do not disclose the commission of any offence, and do not build any case against the accused ; if a criminal proceeding is based on *mala fides*, or the proceeding is maliciously instituted with an ulterior motive. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the



Court to act according to its whim or caprice. [Ref: *State of Haryana v. Bhajan Lal* : 1992 Supp (1) SCC 335; *Neeharika Infrastructure v state of Maharashtra* : 2021 SCC OnLine 315]

13. In the present case, the petitioner argues that the CCTV footage exonerates him by showing that he was a mere bystander and had no involvement in the alleged crime. This argument, while compelling, hinges entirely on the footage, which was not part of the charge sheet and has not been examined by the investigating agency. The veracity of the CCTV footage has not been tested, and its authenticity remains unverified as it was not included in the investigation. Hence, the ground taken by the petitioner does not meet the high threshold required for quashing an FIR under Section 482 of the CrPC. The absence of the CCTV footage in the chargesheet and the failure of the investigating agency to examine this vital evidence means that the petitioner's claim cannot be regarded as of "sterling quality" at this stage.

14. While the ground taken by the petitioner may not meet the stringent test required for quashing the FIR at this stage, it cannot be ignored that the petitioner is at a significant disadvantage due to the omission of crucial evidence from the investigation. The petitioner should not be left remedyless in this situation, where an essential piece of exculpatory evidence is ignored, and he is forced to face a protracted trial despite his potential innocence. The petitioner should not be left at the mercy of a trial that could be based on incomplete or flawed evidence.

15. This brings us to the second issue : whether the High Court, in the exercise of its inherent powers under Section 482 of



the CrPC, can direct further investigation when cognizance has already been taken by the Magistrate and the charge sheet has been filed.

16. The scope of Section 482 of the CrPC has been expanded in several judgments, establishing that the High Court can intervene to ensure that an incomplete or flawed investigation does not result in the miscarriage of justice. In ***Devendra Nath Singh v. State of Bihar : (2023) 1 SCC 48***, the Hon'ble Apex Court summarised the precedents on the powers of the Trial Court and the High Court to order further investigation and laid down the following principles :

45. For what has been noticed hereinbefore, we could reasonably cull out the principles for application to the present case as follows:

45.1. The scheme of the Code of Criminal Procedure, 1973 is to ensure a fair trial and that would commence only after a fair and just investigation. The ultimate aim of every investigation and inquiry, whether by the police or by the Magistrate, is to ensure that the actual perpetrators of the crime are correctly booked and the innocents are not arraigned to stand trial.

45.2. The powers of the Magistrate to ensure proper investigation in terms of Section 156CrPC have been recognised, which, in turn, include the power to order further investigation in terms of Section 173(8) CrPC after receiving the report of investigation. Whether further investigation should or should not be ordered is within the discretion of the Magistrate, which is to be exercised on the facts of each case and in accordance with law.

45.3. Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the limitations of Section 173(8)CrPC, in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482CrPC could be exercised to direct further investigation or even reinvestigation. The provisions of Section 173(8)CrPC do



not limit or affect such powers of the High Court to pass an order under Section 482CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.

45.4. Even when the wide powers of the High Court in terms of Section 482CrPC are recognised for ordering further investigation or reinvestigation, such powers are to be exercised sparingly, with circumspection, and in exceptional cases.

45.5. The powers under Section 482CrPC are not unlimited or untrammelled and are essentially for the purpose of real and substantial justice. While exercising such powers, the High Court cannot issue directions so as to be impinging upon the power and jurisdiction of other authorities. For example, the High Court cannot issue directions to the State to take advice of the State Public Prosecutor as to under what provision of law a person is to be charged and tried when ordering further investigation or reinvestigation; and it cannot issue directions to investigate the case only from a particular angle. In exercise of such inherent powers in extraordinary circumstances, the High Court cannot specifically direct that as a result of further investigation or reinvestigation, a particular person has to be prosecuted.

(emphasis supplied)

17. The petitioner, in the present case contends that he was merely a bystander during the alleged incident and that he had no active involvement in the commission of the offence. His main contention is that the available CCTV footage from the scene of the incident would clearly establish his innocence, as it would show him as an observer rather than a participant in the crime. However, the petitioner claims that this critical footage was not procured or included in the charge sheet, despite it being a vital piece of exculpatory evidence.

18. This omission of evidence raises serious concerns about the fairness of the investigation. The failure to consider such evidence leaves the petitioner in a vulnerable position, potentially leading to an unjust trial based on incomplete or inaccurate facts.



Given that the CCTV footage has the potential to exonerate the petitioner, its absence from the charge sheet becomes a central issue in this case.

19. In the case of ***Vinubhai Haribhai Malaviya v. State of Gujarat : (2019) 17 SCC 1***, it was argued before the Hon'ble Apex Court that once cognizance had been taken, the Trial Court lacked the authority to order further investigation, either suo motu or upon an application by the accused. The Hon'ble Apex Court distinguished and overruled certain earlier judgments and rejected this argument, holding as under:

“42. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440] , Samaj Parivartan Samudaya [Samaj Parivartan Samudaya v. State of Karnataka, (2012) 7 SCC 407 : (2012) 3 SCC (Cri) 365] , Vinay Tyagi [Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] , and Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] ; Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the



powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi [Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347 : 2004 SCC (Cri) 1603] . Therefore, to the extent that the judgments in Amrutbhai Shambhubhai Patel [Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel, (2017) 4 SCC 177 : (2017) 2 SCC (Cri) 331] , Athul Rao [Athul Rao v. State of Karnataka, (2018) 14 SCC 298 : (2019) 1 SCC (Cri) 594] and Bikash Ranjan Rout [Bikash Ranjan Rout v. State (NCT of Delhi), (2019) 5 SCC 542 : (2019) 2 SCC (Cri) 613] have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Admn.) [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361] and Reeta Nag v. State of W.B. [Reeta Nag v. State of W.B., (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] also stand overruled.

(emphasis supplied)

20. In the present case, the petitioner is faced with the undeniable prejudice of having to undergo a protracted trial despite the availability of exonerating evidence, which has been overlooked in the investigation and the charge sheet filed before the Trial Court. The principles of justice demand that the petitioner be given the opportunity to present this vital evidence before the trial progresses any further. The failure to procure and examine the CCTV footage undermines the integrity of the investigation, and the petitioner cannot be left without recourse in such circumstances.



21. Allowing the police to conduct further investigation ensures that no relevant evidence is excluded from the case, thereby safeguarding the petitioner's right to a fair trial. Additionally, it ensures that the trial proceeds on the basis of all relevant and available evidence, allowing the Court to arrive at a just and informed decision.

22. While the petitioner has argued that the allegations against him are false, this Court holds that such assertions require a proper investigation and cannot be presumed at this stage, particularly when the evidence in question has not been made part of the investigation. Therefore, though the FIR in the present case cannot be quashed at this stage, the petitioner cannot be left high and dry in these circumstances.

23. In the totality of the circumstances and in the broader interest of justice, the police are hereby directed to investigate the CCTV footage as part of further investigation into the present case. Upon obtaining and analyzing the footage, the police should file a supplementary charge sheet to include the findings from this investigation.

24. The court records its appreciation for the able assistance of Mr. N. Hariharan, Senior Advocate, as Amicus Curiae.

25. The present petition is disposed of in the aforesaid terms.

26. Pending application also stands disposed of.

AMIT MAHAJAN, J

DECEMBER 11, 2024