



2024:DHC:6614



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

% Reserved on: 23rd July, 2024
Pronounced on: 22nd August, 2024

+ **CRL.M.C. 5571/2024, CRL.M.A. 21256/2024, CRL.M.A.
21257/2024 & CRL.M.A. 21258/2024**

SAANVI MALUPetitioner

Through: Mr. Abhinav Mukhrjee, Sr.
Advocate Mr. Surjendu Sankar
Das, Mr. Annie Mittal, Ms.
Khushboo Hora and Mr. Samarjit
Chauhan, Advocates.

versus

STATE OF NCT OF DELHI AND ANRRespondents

Through: Mr. Hitesh Vali, APP for State with
SI Sarita Vats, PS Kapashera.

Mr. Tanveer Ahmed Mir, Advocate
with Mr. Vaibhav Suri, Mr. Saud
Khan, Mr. Tushan Rawal, Ms.
Arianana D. Ahluwalia and Mr.
Pulkit Shree, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This petition seeks quashing of FIR No. 86/2023 dated 2nd February 2023, under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO”) registered at P.S. Kapasehra and proceedings

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emanating therefrom. The FIR was registered at the behest of a 20-year-old boy. His parents got divorced. He along with two siblings lived with their father. The father married the petitioner subsequently on 13th March 2019. The allegations in the FIR were against his step-mother.

Background facts

2. It is alleged by complainant that petitioner used to touch him inappropriately at various times. He described an incident on 21st November 2019 in Dubai, alleging her behaviour was erotic towards him; another in the third week of September 2021, where he alleged that she proposed marriage to him; another incident on 10th November 2021, when petitioner allegedly took video of him taking a bath; also on 10th April 2022, when she again touched him inappropriately. Various other incidents have been alleged. The complainant and other siblings were studying in Dubai. As per the complainant, petitioner left his father on 17th October 2022 and he felt free to disclose the incident. Thereafter, he decided to register a complaint.

3. Pursuant to the investigation, a charge sheet was filed on 16th June 2023, followed by the first supplementary charge sheet on 15th September 2023 and a second supplementary charge sheet was filed on 2nd December 2023.

4. Arguments were heard on the point of charge, and an order was passed on 27th May 2024, by the ASJ (POCSO) South-West District, Dwarka Courts. After giving an opportunity to petitioner to address arguments, ASJ held that the material on record disclosed *prima facie* case for the offence under Section 10 read with Section 9(1)(n) and Section 12



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of POCSO and Section 506 Part-I of the Indian Penal Code (“IPC”) against accused. Accordingly, charges were framed and directions were given to record the statement of the child victim / vulnerable witness.

Submissions of Parties

5. Senior Counsel for petitioner, in support of the petition for quashing, submitted *inter alia* under:

Firstly, the FIR was based on the incidents of November 2019, September 2021, November 2021 and of May 2022 and August 2022. The complaint was however filed 3½ years later after the first incident when the complainant had attained adulthood. Complainant’s (Respondent No.2’s) date of birth is 23rd August 2004 and on the date of first alleged incident, he was 15 years of age. On the date of filing the complaint on 19th December 2022, he was 18 years of age, while the FIR was registered only on 2nd February 2023. After the complaint was filed, IO tried to contact respondent no.2 and his parents but they did not respond and therefore, it demonstrates a casual nature and lack of seriousness on the part of complainant/ respondent no.2.

Secondly, pursuant to this filing by respondent no.2, a complaint was filed by petitioner dated 15th November 2022 which culminated into FIR No.525/2022, under Sections 323/354/376/377/506/509/34 IPC, alleging cruelty by her husband and her step-children. The complaint alleged that she was molested and beaten up by two daughters of her husband. Quashing petitions were filed by the step-daughters and the husband being CrI. M.C. 6099/2023, CrI. M.C. 6100/2023 and CrI. M.C. 6101/2023



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which were allowed by a detailed judgment of a Coordinate Bench of this Court.

Thirdly, another complaint was filed by Ms. Harshita Malu, step-daughter of petitioner on 18th November 2022, which culminated into FIR No. 526/2022 dated 20 November 2022, under Sections 354/509/354-B/354-A/34/506/376/354(D) of IPC registered at P.S. Kapasehra. The said FIR alleges rape by the cousin of petitioner and abetment of the same by petitioner. Senior Counsel for petitioner stressed that despite the complaint of November 2022 and December 2022, by the son and daughter of petitioner's husband, the husband had served a notice for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, on 10th November 2022. Further, a hand-written note dated 31st October 2020, on the notepad of Sheraton Hotel, was adverted to, which states that they both were agreeable to go for divorce and that he confessed to having slapped and assaulted the petitioner.

Fourthly, petitioner's counsel submitted that petitioner and her husband (Mr. Vikas Malu) were married on 13th March 2019. But after marriage, petitioner shared several matrimonial issues with him and his children, which complicated their domestic life. Subsequent notices of 15th November 2022, addressed to petitioner, were pointed out where Mr. Malu wanted to resolve issues amicably and to rejoin her matrimonial home.

Fifthly, pictures of Raksha-Bandhan celebration on 12th August 2022, were provided which were of the dates when an incident of inappropriate touching has been alleged by the complainant/respondent no.2, thereby



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submitting that it was inconceivable that sexual assault could have occurred in a family gathering.

Sixthly, proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and Section 125 of the Code of Criminal Procedure, 1973 (“**Cr.P.C.**”) had been initiated by petitioner seeking maintenance from her husband. Serious improvements and inconsistencies were pointed out in the statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C. of complainant and his sister.

Seventhly, a video on which reliance was placed by respondent no.2 regarding the alleged incident of 21st November 2019, was sent for forensic examination, however copy has not been provided to petitioner.

6. Counsel for respondent no.2 vehemently objected to petitioner’s quashing petition, submitting *inter alia* that *firstly*, the Trial Court had already dismissed the discharge application and proceeded to frame charges. Petitioner has an alternative remedy to move against dismissal of discharge application. *Secondly*, by framing the charge, the Trial Court has concluded that a case of suspicion has been made out based on existing material along with the charge sheet and is worthy of being translated into evidence during trial. *Thirdly*, petitioner has a remedy to file a revision petition under Section 397 Cr.P.C. against the order of framing charge which is an appropriate remedy and a petition under Section 482 Cr.P.C. for quashing cannot be sustained. *Fourthly*, the presumption under POCSO, per Section 30 of the Act, the so-called “*reverse burden*” applies to petitioner; the investigating authorities have laid down foundational facts, which were tested and charges have been framed; any defence at this stage cannot be considered, and there has to be



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a presumption drawn, of a culpable mental state. *Fifthly*, documents on which petitioner relies, i.e. hand-written note, photographs of Rakshabandhan function, and notices, do not form part of the Trial Court Record and were not part of FIR No.525/2022 either, thereby raising doubts about veracity. *Sixthly*, the nature of grounds canvassed by petitioner, are to be tested during the course of trial, and more particularly, the alleged improvements, omissions and contradictions in the statements of complainant and other witnesses.

7. Counsel for respondent no.2 relied upon the following decisions: ***Mohit @ Sonu & Anr v. State of UP & Anr.*** (2013) 7 SCC 789 (if a specific remedy is provided by way of an appeal or revision, powers of Section 482 cannot and should not be resorted to); ***Vipin Sahni & Anr v. CBI.*** 2004 SCC Online SC 511 (there is an efficacious alternative remedy for filing an application under Section 397); ***Rajeev Kourav v. Bhaisaab & Ors.*** (2020) 3 SCC 317 (improvements/ omissions/ contradictions in statements of witnesses cannot be a ground to quash entire criminal proceedings).

8. In rejoinder, Senior Counsel for petitioner submitted that the decision in ***Mohit @ Sonu*** (*supra*) relied upon by respondent no.2, has since been overruled by a larger Bench in ***Prabhu Chawla v. State of Rajasthan & Anr.*** (2016) 16 SCC 30 where the exercise of power under Section 482 Cr.P.C. was preserved and held that it cannot be displaced. He further relied on: ***Iqbal @ Bala & Ors v. State of UP & Ors.*** (2023) 8 SCC 734 and ***Salib @ Shalu v State of UP & Ors.*** 2023 SCC Online SC 947 (The Court owes a duty to examine the FIR with care and more closely if the primary ground for challenging the FIR, charge sheet, and



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consequent proceedings has an ulterior motive behind the initiation of such proceedings); **Rajiv Thapar & Ors. v. Madan Lal Kapoor** (2013) 3 SCC 330 (one of the grounds of quashing under section 482 is that the trial would result in abuse of process of court, which ground is not available in revisional jurisdiction). On this aspect Senior Counsel also adverted to **State of Haryana & Ors v Bhajan Lal & Ors.** 1992 Supp (1) SCC 335 (one of the parameters being that proceedings were instituted with *mala fide*, malicious, ulterior motives); **Vijay v State of Maharashtra** (2017) 13 SCC 317 (the mere availability of an alternative remedy cannot be a ground to disentitle relief under Section 482); **Harish Dahiya @ Harish & Anr v. State of Punjab & Ors.** (2019) 18 SCC 69 (grounds for quashing criminal proceedings under Section 482 are different and distinct from those in discharge under Section 237 Cr.P.C.); **Sanjay vs. Maharashtra & Anr.** 2023 SCC Online Bom 658 (where a revision petition against an order refusing discharge was held to be maintainable even though the earlier quashing petition was dismissed, thereby endorsing that scope and grounds for revision under Section 397 were distinct from those for quashing under Section 482); Complainant highlighted that in **Prabhu Chawla's** (*supra*) decision, charges had not been framed, as opposed to this case where charges have already been framed.

Analysis

9. In **Prabhu Chawla** (*supra*), the Supreme Court, referencing its prior decision in **Madhu Limaye v. The State of Maharashtra** (1977) 4 SCC 551 affirmed that while the availability of an alternate remedy under Section 397 of the Cr.P.C. does not limit the High Court's inherent powers



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under Section 482 of the Cr.P.C., these powers should be exercised only under compelling circumstances and not as a convenient alternative to specific powers within the Cr.P.C. itself. The Court emphasized that Section 482 is extensive but must not override statutory provisions like Section 397(2). Furthermore, in **Vipin Kumar Gupta v. Sarvesh Mahajan** 2019 SCC OnLine Del 12349 this Court, drawing on its judgement in **Rajesh Chetwal v. State** 2011: DHC: 4313 highlighted that despite no prescribed limitation period for petitions under Section 482, the principles of inordinate delay and laches are applicable, warranting dismissal of petitions filed after an undue delay.

10. What does stand out in the above sequence of facts and circumstances, is that a marriage has gone deeply sour and allegations are flying, thick and fast on both sides. Between 2019, when petitioner and Vikas Malu were married, and 2022 when complaints started pouring in, there are plethora of cross allegations detailing various incidents. While petitioner alleges cruelty at the hands of her husband and stepchildren, the stepchildren have filed complaints against petitioner. Notwithstanding the reasoning provided by the Coordinate Bench of this Court while quashing the FIR No.525/2023 registered at behest of petitioner, this petition has to be seen on its own merits.

11. There may have been some merit in petitioner's contention that complaint was made by respondent no.2 in December 2022 and the FIR was registered much after, and that the alleged incidents, as per FIR, were from November 2019 to 2021. The Court notes that complainant was 15 years old in 2019 and became major only in 2022. Without seeing it from the lens of marital discord, between petitioner and her husband, it cannot



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be overlooked, at least at this stage, that maybe a 15-year-old boy mustered up courage to disclose such problematic incidents only after attaining majority. More so, considering his father and stepmother were in stresses and strains of deep marital discord, thereby creating an environment of an uneasy and unstable family life.

12. What also is evident *prima facie* from FIR is that the incidents alleged have some specificity, with particular dates and details of the alleged sexual assaults. Much was made out of the video of 2019, which the Court did not consider necessary to peruse, as the same had been done by the Trial Court.

13. In any event, all these aspects, including the video and statements of witnesses, will have to be tested in the crucible of a trial, where prosecution witnesses would be subject to cross-examination. And whether they sustain or not, is a question of time.

14. Petitioner's urgency in quashing this FIR is also diluted by the fact that charge sheet was filed on 16th June 2023 and cognizance was taken on 1st July 2023 by the Trial Court. To seek quashing of FIR almost one year later, does not accrue to benefit of petitioner. Further, application filed for discharge on 8th February 2024, under section 227 Cr.P.C was dismissed on 27th May 2024 by Trial Court observing that material on record disclosed a *prima facie* case against petitioner and matter was listed for trial.

15. Reliance by petitioner on family photograph, hand-written note and subsequent notices sent for restitution of conjugal rights, may also be material and may have to be seen at the stage of trial, if at all.



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16. It must also be noted that the date of complaint by respondent no.2 is 17th December 2022, and all additional documents, that petitioner is relying upon, pre-date the said complaint (i.e. hand-written note dated 31st October 2020, notice for restitution of conjugal rights dated 9th November 2022, notice dated 15th November 2022 to brother of petitioner, and pictures dated 12th August 2022). The last of the incidents complained of by respondent no.2 is dated 12th August 2022 and it is stated that what happened on that day was disclosed by respondent no.2 to his sisters. It is not inconceivable that even during a family get-together an inappropriate incident happened; however, it is indeed a mere allegation at this stage, subject to proof and trial.

17. It may possibly be that respondent no.2 would have chosen finally to break his silence regarding inappropriate incidents at hands of his stepmother. Whether the timing was chosen deliberately or whether it was at the behest of his father, who was locked in marital discord/battle with the petitioner, is something this Court cannot conclude either way, at this stage.

18. In these facts and circumstances, considering that petition has been considered on its merits, the Court need not advert to decisions cited by either party, on alternative remedy or scope of Section 482. In **Rajeev Kourav** (*supra*), the Supreme Court has significantly observed that High Court cannot embark on appreciation of evidence while considering petition filed under Section 482 for quashing of proceedings and if a *prima facie* case is made out, the Court cannot quash a criminal proceeding. In this regard the relevant para of said decision is extracted for reference:



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8. *It is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in FIR or the charge-sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.*

(emphasis added)

19. Notably, in the case cited by petitioner, ***Iqbal @ Bala*** (supra), Supreme Court addressed the challenge to the High Court's rejection of the quashing petition. The Supreme Court's view is extracted as follows:

6. *Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether we should quash the FIR?*

7. *It is relevant to note that the victim has not furnished any information in regard to the date and time of the commission of the alleged offence. At the same time, we also take notice of the fact that the investigation has been completed and charge-sheet is ready to be filed. Although the allegations levelled in the FIR do not inspire any confidence more*



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particularly in the absence of any specific date, time, etc. of the alleged offences, yet we are of the view that the appellants should prefer discharge application before the trial court under Section 227 of the Code of Criminal Procedure (CrPC). We say so because even according to the State, the investigation is over and charge-sheet is ready to be filed before the competent court. In such circumstances, the trial court should be allowed to look into the materials which the investigating officer might have collected forming part of the charge-sheet. If any such discharge application is filed, the trial court shall look into the materials and take a call whether any case for discharge is made out or not.

8. At this stage, we express no final opinion as regards the truthfulness of the allegations levelled in the FIR.

9. At this stage, we would like to observe something important. Whenever an accused comes before the court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the court owes a duty to look into the FIR with care and a little more closely.

10. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc. then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to



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constitute the alleged offence. Therefore, it will not be just enough for the court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.

11. In frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

12. In the aforesaid view, we dispose of this appeal with liberty to the appellants to prefer discharge application under Section 227 of the Code of Criminal Procedure before the trial court.

(emphasis added)

20. It is evident from the above extract that in facts of that case, investigation was over, charge sheet was still to be filed and the Supreme Court observed that Trial Court should be allowed to look into the materials and if there was any grievance, discharge application be filed, to which petitioners in that case, were relegated to.



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21. In this case, before us, these steps have already concluded and filing of quashing petition at this stage, therefore, cannot be countenanced. In any event, this Court has looked closely at the FIR and attendant circumstances, as also cross allegations, and in its opinion, this petition cannot be sustained.

22. In light of the above discussion and assessment, this petition is dismissed along with the pending applications.

23. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

JULY, 2024/SM