



2024:DHC:8670



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

Date of decision: 29th OCTOBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 6982/2022 & CRL.M.A. 27030/2022, CRL.M.A. 27031/2022**

NITIN SAXENA

.....Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate, Mr. Madhu Sudhan, Sr. Advocate, Mr. Shri Singh, Mr. Vikhyat Oberoi, Mr. Shivam Prakash, Mr. Ankit Kakar, Mr. Ravi Sharma & Ms. Nishita Gupta, Advocates.

versus

GOVERNMENT OF NCT OF DELHI ANR.

.....Respondents

Through: Mr. Yudhvair Singh Chauhan, APP for the State.
Mr. Arjun Syal and Ms. Mehaak Jaggi, Advocates for R-2.
SI Sakshi, PS Hari Nagar.
W/SI Reena, PS Prashant Vihar.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court seeking quashing of FIR No.308/2022 dated 28.03.2022, registered at Police Station Hari Nagar for offences punishable under Sections 354A/341/509/34 IPC (subsequently added Sections 376D and 506 IPC), Final Report filed under Section 173 Cr.P.C stating that offences punishable under Sections 376D/354A/341/509/506/34 IPC is made out against the Petitioner and the



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Order dated 21.11.2022 passed by the Ld. MM-06, West District, Tis Hazari Courts, Delhi in Cr. Case No.11772/2022 taking cognizance of the offences punishable under Sections 376D/354A/341/509/506/34 IPC.

2. Shorn of unnecessary details, facts leading to the filing of the present petition are that on 27.03.2022, a complaint was given by Respondent No.2/Prosecutrix at PS Hari Nagar. In the complaint, the Respondent No.2/Prosecutrix stated that she is serving as a security officer at Sri Santoshi Mata Mandir. It is stated that she attends and participates in all the functions held in the temple and assist in Pooja etc. It is stated that on 19.03.2022 at around 6:30 PM in the evening, she had gone to the temple to offer prayer where she noticed that some persons, including the Petitioner herein were sitting inside the temple. Respondent No.2/Prosecutrix identified the Petitioner herein who lives in the building situated behind the temple. It is stated that when Respondent No.2/Prosecutrix tried to enter the temple by using a small gate, the Petitioner got angry and asked the persons sitting with him to stop the Respondent No.2/Prosecutrix from entering the temple. It is stated that on hearing the command of the Petitioner, the persons who were wearing masks ran after the Respondent No.2/Prosecutrix. It is stated that in order to escape from these persons, the Respondent No.2/Prosecutrix tried to run away but the Petitioner herein and other persons along with him caught hold of Respondent No.2/Prosecutrix and misbehaved with her and did obscene acts with her. It is stated that Respondent No.2/Prosecutrix somehow managed to run away from there and took a bus from jail road and reached her home. On the said complaint of Respondent No.2/Prosecutrix, the present FIR was registered against the Petitioner.



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3. It pertinent to mention here that the incident occurred on 19.03.2022, however, the FIR was got registered on 28.03.2022.
4. Material on record indicates that the Petitioner had approached the Trial Court on 04.04.2022 for grant of bail in the event of arrest. The Respondent No.2/Prosecutrix was also present in Court during hearing. Holding that there is an inordinate delay in registration of FIR, notice U/s 91 Cr.P.C has already been served upon Santoshi Mata Mandir, Hari Nagar to provide CCTV footage of the spot but reply is awaited, offences under which FIR has been registered are bailable, the FIR contains general and vague allegations, no previous involvement of Petitioner has been alleged or proved and the parties are stated to be on inimical terms, bail in the event of arrest was granted by the Trial Court to the Petitioner vide Order dated 04.04.2022.
5. Material on record indicates that on the very same day, i.e., on 04.04.2022, when the Petitioner was granted anticipatory bail, a statement under Section 164 Cr.P.C of Respondent No.2/Prosecutrix was recorded wherein the Respondent No.2/Prosecutrix stated that she was security in-charge of Sri Santoshi Mata Mandir, Hari Nagar. It is stated by the Respondent No.2/Prosecutrix that the Petitioner resides in the building situated behind the temple. It is stated that the Petitioner did not like that the Respondent No.2/Prosecutrix was a part of the security service of the temple and the Petitioner used to pass comments on her and constantly used to threaten her by stating that he would get her arrested. It is stated that on 19.03.2022 when the Respondent No.2/Prosecutrix was going from back side gali of the temple, she saw the Petitioner and three other persons along with him who were wearing masks came towards her in the gali and caught



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hold of the Respondent No.2/Prosecutrix. It is stated that the Respondent No.2/Prosecutrix started running but those three persons caught her and within which time the Petitioner came there and it is stated by Respondent No.2/Prosecutrix that all the four persons pressed her breast, pulled down her pyjama and inserted their fingers in her private part and the Petitioner threatened her with dire consequences. It is stated that the Respondent No.2/Prosecutrix somehow managed to run away from there by giving a kick and then took a bus from jail road and reached her home. It is stated that after the said incident, the Respondent No.2/Prosecutrix was traumatized and, therefore, she did not tell anyone about the incident. It is stated that on gathering some courage, the Respondent No.2/Prosecutrix filed a complaint on 27.03.2022 and the FIR was registered on 28.03.2022. On the said statement, the offence punishable under Sections 376D and 506 IPC were added.

6. Material on record indicates that since the offence punishable under Sections 376D and 506 IPC were added, the Petitioner approached the Trial Court by filing another application for grant of bail in the event of his arrest. The anticipatory bail was granted to the Petitioner vide Order dated 24.05.2022. Material on record indicates that the co-accused person was also granted bail in event of arrest vide Order dated 30.05.2022 passed by the Trial Court. Chargesheet has been filed for offences punishable under Sections 376D/354A/341/509/506/34 IPC.

7. The Petitioner has approached this Court by filing the present petition seeking quashing of FIR, Chargesheet and the Order dated 21.11.2022 passed by the Ld. MM-06, West District, Tis Hazari Courts, Delhi taking cognizance of the offences punishable under Sections



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376D/354A/341/509/506/34 IPC.

8. Learned Senior Counsel appearing for the Petitioner states that the entire case against the Petitioner is false. He states that the Petitioner has disputes with his brother over property bearing No.GC-28, G-Block, Hari Nagar, Delhi, of which the Petitioner is the owner. He states that Petitioner's brother has been running an illegal Chowki and duping various devotees in the said property. He states that when the Petitioner tried to stop the said illegal activities, the Petitioner was threatened by his brother that false cases would be filed against him. He states that the Petitioner was threatened by his brother on 22.03.2024 and the complaint was filed on 27.03.2022 by the Respondent No.2/Prosecutrix. It is stated that on 02.04.2022, a civil suit being CS (OS) 192/2022 was filed by the brother of the Petitioner seeking cancellation of Sale Deed of the property in question which is in favour of the Petitioner. It is stated that in the said suit, the brother of the Petitioner has relied upon the aforesaid handwritten Complaint dated 27.03.2022 given by the Respondent No.2/Prosecutrix, on the basis of which the present FIR was registered, to seek interim orders.

9. Learned Senior Counsel appearing for the Petitioner further submits that there is a material improvement in the complaint given by the Respondent No.2/Prosecutrix inasmuch as, there is no allegation of rape in the complaint which was given on 27.03.2022 which was given after 09 days of the incident, whereas on the date when the Petitioner was granted anticipatory bail i.e., on 04.04.2022, the Respondent No.2/Prosecutrix in her statement recorded under Section 164 Cr.P.C improved her statement by introducing ingredients of Section 376D IPC. He states that the case of the Respondent No.2/Prosecutrix is not believable at all and, therefore, FIR,



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Chargesheet and the Order dated 21.11.2022 passed by the Ld. MM-06, West District, Tis Hazari Courts, Delhi taking cognizance of the offences punishable under Sections 376D/354A/341/509/506/34 IPC deserve to be quashed.

10. Learned Senior Counsel for the Petitioner draws attention of this Court to a portion of the chargesheet which states that on the date of incident i.e., on 19.03.2022 at 06:20 PM, the Petitioner is seen entering inside the drawing room of his house and the Petitioner remained in the drawing room of his house till 07:05 PM.

11. *Per contra*, learned APP for the State contends that the powers under Section 482 Cr.P.C must be exercised sparingly by the High Court. He states that a reading of the FIR brings out the case against the Petitioner for offences punishable under Sections 376D/354A/341/509/506/34 IPC. He states that the contentions raised by the Petitioner can only be examined at the time of trial and, therefore, the present FIR ought not to be quashed.

12. Learned Counsel appearing for Respondent No.2/Prosecutrix submits that the Respondent No.2/Prosecutrix could not come earlier for recording of statement under Section 164 Cr.P.C because she was having some prior commitments. She could come only on 04.04.2022, the date on which the bail application of the Petitioner was listed. He states that the offences punishable under Sections 376D/354A/341/509/506/34 IPC is made out against the Petitioner and, therefore, the petition should be dismissed.

13. Heard learned Counsel appearing for the Parties and perused the material on record.

14. It is well settled that the powers under Section 482 Cr.P.C is very wide but conferment of wide power requires the Court to be more cautious



while exercising its powers. It is well settled that Section 482 CrPC casts an onerous and more diligent duty on the Court. However, at the same time when the High Court deems it fit with regard being had to the parameters of quashing and the self-restraint imposed by law, may pass appropriate interim orders. In State of Haryana v. Bhajan Lal, **1992 Supp (1) SCC 335**, the Apex Court has laid down the parameters for exercise of Section 482 Cr.P.C by the Courts and the same reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or 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 a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order*



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of a Magistrate within the purview of Section 155(2) of the Code.

- (3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) *Where the allegations made in the FIR or complaint 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.*
- (6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) *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*



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

15. The Apex Court in Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330 laid down factors to determine the veracity of a prayer for quashment raised under Section 482 Cr.P.C which reads as under:

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1.Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2.Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3.Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?



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30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

16. Applying the aforesaid parameters in the facts of the present case, it is seen that the complaint was filed by Respondent No.2/Prosecutrix against the Petitioner on 27.03.2022 and the FIR was registered on 28.03.2022 for offences punishable under Sections 354A/341/509/34 IPC which were all bailable in nature. The Petitioner, thereafter, approached the Trial Court for grant of bail in the event of arrest which was granted on 04.04.2024. On the very same day, statement under Section 164 Cr.P.C of Respondent No.2/Prosecutrix was recorded wherein the Respondent No.2/Prosecutrix completely changed her statement by introducing the ingredients of Section 376D IPC by stating that the Petitioner herein and the other three persons along with him inserted their fingers in the private part of the Respondent No.2/Prosecutrix and, thereafter, on the said statement, the offences punishable under Sections 376D and 506 IPC were added.

17. This Court is of the opinion that there is substantial improvement between the belated complaint of the Respondent No.2/Prosecutrix which



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was given on 27.03.2022 and the statement of Respondent No.2/Prosecutrix which was recorded under Section 164 Cr.P.C on 04.04.2022 wherein the Respondent No.2/Prosecutrix introduced the ingredients of Section 376D IPC. The material before Court is such which will persuade a person of ordinary prudence to dismiss and condemn the accusations as false and the judicial conscience of this Court persuades this Court to exercise its jurisdiction under Section 482 Cr.P.C to quash the offence punishable under Section 376D IPC.

18. The incident is dated 19.03.2022. The complaint was filed on 27.03.2022 without any allegation of rape. Bail was granted to the Petitioner on 04.04.2022 and on that very date, ingredients of Section 376 IPC have been introduced in the complaint. No worthwhile reason is forthcoming as to why Respondent No.2 kept quiet from 19.03.2022 to 04.04.2022 and has not reported that the offence of rape has been committed on her. Coupled with the above fact, material on record shows that the brother of the Petitioner has used this complaint to which he could not have had access in civil proceedings which casts a doubt on the veracity of the statement on 04.04.2022.

19. In the facts of the present case, this Court is of the opinion that the allegations regarding offence under Section 376 IPC is inherently improbable and any person of ordinary prudence cannot reach a just conclusion that there sufficient ground for proceeding against the Petitioner herein. The material on record also suggests that proceedings have been initiated with malice. This Court is of the view that the ingredients of Section 376 IPC have been inserted/instituted by the Prosecutrix in order to wreck vengeance on the Petitioner.



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20. Regarding other offences, this Court is of the opinion that there are sufficient material given in the first complaint itself which was given on 27.03.2022. Reliance placed by the Petitioner on the CCTV footage would be examined only during the time of trial and cannot be considered at this juncture.

21. This Court is, therefore, only inclined to quash the offence punishable under Section 376D IPC which has been introduced subsequently in the chargesheet. The offence punishable under Section 376D IPC is, therefore, quashed.

22. The matter is remanded back to the Trial Court for further proceedings regarding other offences.

23. With these observations, the petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

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S. Zakir