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

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*Reserved on: 11.03.2024**Pronounced on: 01.04.2024*+ **W.P. (CRL.) 3733/2023 & CRL.M.A. 34753/2023****DHARMENDRA SINGH MAURYA** Petitioner

Through: Mr. Ajay Chaudhary, Mr. Anil Dwedi and Mr. Lal Singh, Advocates (through VC).

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Rahul Tyagi, ASC for the State with Ms. Priya Rai, Mr. Sangeet Sibou, Mr. Jatin and Mr. Mathew Phillip, Advocates and with SI Shiv Dayal Kumar, P.S. Harsh Nagar.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The instant petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of the petitioner seeking quashing of FIR bearing No. 0571/2023, registered at Police Station Harsh Vihar, Delhi for the offences punishable under Sections 419/34/120B of the Indian Penal Code, 1860 ('IPC') and all



consequential proceedings emanating therefrom.

2. Brief facts of the present case are that the petitioner herein is presently posted as Deputy Superintendent at Central Jail No. 12, Mandoli Jail Complex, Delhi. On 01.11.2022, an anonymous typed written complaint was received in the office of the learned District Judge, Karkardooma Court, Delhi, alleging that the petitioner subjected every new under-trial prisoner ('UTP') to harassment and extorted money from their family members. It is also alleged that some inmates, in collusion with the petitioner, facilitate this extortion by transferring significant sums through Paytm under the guise of providing amenities. The petitioner has allegedly established special barracks in each ward, entrusting their operation to selected inmates, including Nazim, Vijay, Vipin, Asif, Wasim, and Bilal. Some of these inmates were transferred from other jails by the petitioner and one Superintendent Bijendra without proper authorization, exacerbating harassment of new UTPs. It is further alleged that those inmates who refuse to pay, face further harassment, while other inmates receive preferential treatment, including special food, separate accommodation, and access to mobile phones provided by the petitioner. Furthermore, it is also alleged that the petitioner had been attempting to arrange an illegal meeting for an accused inmate namely, Satender @ Satte, on 13.10.2022. It is further alleged that his wife had impersonated herself as a lawyer using a fake ID, raising doubts about the petitioner's involvement. It is further submitted in the complaint that an inquiry into the incident was entrusted to one Jail Superintendent namely Bijendra, who allegedly had colluded



with the petitioner and had cleared him of any wrongdoing, despite there being CCTV footage capturing the petitioner's involvement. It is also alleged that previous incidents of corruption involving the petitioner, including providing facilities to UTPs namely, Sukesh Chandrashekhar at Tihar Jail, have been reported. However, it is alleged that the petitioner has consistently evaded punishment with the protection of corrupt officials, who manipulate investigations in his favour. Therefore, it was prayed that an independent investigation be requested to uncover the truth and to preserve crucial CCTV footage.

3. The said complaint was marked to the learned CMM and thereafter to the learned Magistrate for necessary action. Thereafter, the learned Metropolitan Magistrate-07, Shahdara, Karkardooma Courts, New Delhi (*'learned MM'*) had forwarded the complaint to the ACP, Nand Nagri, Delhi for enquiry and necessary action. In compliance of the said directions, the ACP concerned had filed an interim Action Taken Reports (*'ATR'*) and had finally filed the complete ATR dated 13.02.2023, whereby it had been concluded that the allegations against the petitioner could not be substantiated. However, not being satisfied by the ATR dated 13.02.2023, the learned MM had passed an order dated 03.10.2023 directing the SHO, Police Station Harsh Vihar, Delhi to register an FIR for offences punishable under Sections 419/34/120B of the IPC. Pursuant to the same, the present FIR has been registered.

4. Learned counsel appearing on behalf of the petitioner argues that the petitioner has been implicated in a false case and that the



order dated 13.02.2023 passed by the learned MM fails to appreciate the fact that there are circulars of Central Vigilance Committee ('CVC') and in terms of those, no action can be taken on an anonymous complaint, irrespective of the allegations made therein, and the circulars further record that any violation thereof has to invite strict action. It is stated that the complaint in the present case was allegedly made by one of the anonymous inmates, which is a typed written complaint that goes to show that the same is an act of someone else having animosity with the present petitioner, as there is no facility of typing inside the jail, particularly in Hindi. It is also argued that even if the averments of the complaint are true to be believed, then no inmate can see as to what is happening outside the jail premises, as in this case, the anonymous complainant strangely mentions about the incident which has allegedly happened outside the jail premises. It is also argued that the learned MM has failed to appreciate the fact that any complaint filed by the prisoner/inmate has to be forwarded to the jail authorities for its redressal, and that the learned MM has also failed to appreciate the report of ACP exonerating the petitioner. It is further argued that the jail has its own mechanism for the resolution of complaints of the inmates and that there are three boxes duly locked, out of which one box is for the Superintendent of Jail, the other box is for DG (Prisons) and third one is for learned District Judge, the keys to the said boxes lie with the concerned person only, and since no one can be seen opening the concerned box, any inmate can make a complaint to either one of them. However, in the present case, an anonymous complaint has not



come through the above-mentioned mechanism, but directly to the learned District Judge. The procedure adopted is against the mechanism for filing a complaint, and therefore, the order is liable to be set aside. It is also argued by the learned counsel that the complaint in question, even if allowed and would have a name on it, would not make out a case against the petitioner under Sections 419/34/120B of IPC as there are no allegations of the petitioner impersonating someone. It is also stated that the learned MM has failed to appreciate that every month, an Additional District Judge i.e., nominated ASJ-06 visits the jail and inspects the entire jail premises and meets with all the under trial prisoners/inmates personally and hears their grievances. Moreover, the learned ASJ, who has exclusive access to the petition box, opens the box and checks if there is any complaint in that box or not. It is also stated that the learned MM has failed to appreciate that the learned ASJ, after inspecting the jail, prepares the report and forwards the same to the Director General, Prison. It is stated that the lodging of the FIR in such a manner will set a wrong precedent and give an opportunity to the UTP/inmates to harass the jail officials for their personal gain. It is also stated that the anonymous complaint mentions that the CCTV footage is deleted after a month, and it is surprising that as to how an inmate can get such information. In the light of aforementioned grounds, it is prayed that the FIR No. 571/2023, registered under Sections 419/34/120B of IPC, at P.S. Harsh Vihar be quashed along with proceedings emanating therefrom.

5. Learned ASC for the State, on the other hand, opposes the



present petition and submits that the order dated 03.10.2023 passed by the learned MM is absolutely correct and that the learned MM has given relevant reasons and has applied its mind before directing registration of the FIR. It is further submitted that as far as the argument that the complaint filed is anonymous is concerned, it is submitted that the learned MM has rightfully dealt with the same *vide* order dated 03.10.2023. Thus, the order passed by the learned MM for registration of the FIR is correct and sustains from no infirmity. It is, thus, submitted that a thorough investigation into the matter is required and therefore, the present petition be dismissed.

6. This Court has heard arguments advanced by learned counsel for the petitioner and learned ASC for the State and has gone through the case file, as well as the order dated 03.10.2023 passed by the learned MM.

7. As the petitioner has approached this Court seeking quashing of the FIR registered against him and all emanating proceedings therefrom, it is pertinent to take note of the principles that govern quashing of FIRs.

8. The Hon'ble Apex Court in case of *Neeharika Infrastructure v. State of Maharashtra* 2021 SCC OnLine 315, after analysing and examining several judicial precedents, had culled out the following principles governing the law on quashing of an FIR:

"57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in



Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits



of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

9. The Hon'ble Apex Court in ***CBI v. Aryan Singh*** 2023 SCC OnLine SC 379 held that while exercising the powers under Section 482 of Cr.P.C., the Courts have a very limited jurisdiction and are only required to consider "*whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not*".

10. In the present case, the learned MM has passed the following order dated 03.10.2022, which has been impugned before this Court:



“15. The above sequence of events, as seen in the CCTV footage makes it clear that the version of Nitin Tyagi, as recorded by the EO, is false. He has narrated in his version that he had met Bittoo by chance on that day, and he did not know the lady. However, it is evident that both of these persons came together at the spot, albeit in different cars, They then sat in the same car and conversed with each other. Thereafter, they alongwith the lady tried to enter the jail premises. After an unsuccessful attempt, Nitin talked to Mr. Dharmender Singh Maurya and then, he alongwith Bittoo sat in the same car and went away, after signalling the lady. After some time, they returned to the spot in the same car and then all three went inside the Jail. The narration of Nitin that he did not know the lady at all is also falsified by the fact that he had himself handed over the papers that he was carrying, to the lady, during checking at the gates of the jail. The CCTV footage also clearly shows that after the persons came out of the Jail, Nitin left the spot with the lady and the motorcycle driver, on the motorcycle. Therefore, it is clear that Nitin , Bittoo and the lady in black dress acted together in securing entry inside the Jail. His version that he had gone inside the Jail, to meet his private counsel , is also prima facie not believable as there is no provision under law for a private person to meet a private Advocate, inside the Jail.

16. It is noted that there is no dispute as to the fact that the Jail Official Mr. Dharmender Singh Maurya, came outside the Jail premises at the same time when the three persons failed to enter the jail. He admits to talking to Nitin about some property deal inside his vehicle. Right after the meeting, both Nitin and Bittoo then went away in their car, only to return later. It is also clear that Mr. Dharmender Singh Maurya called the Jail authorities regarding the visit of one advocate. Pursuant thereto, the three persons were able to enter inside the main Jail complex. However, the lady was denied entry inside the Jail No. 12, and she absconded when her identity card was being scrutinised. It is highly suspicious that the Advocate Yogya Sharma claims that she was to meet her client , the UTP Satender, but then she left as soon as she was informed that her picture on the ID card of Bar Council does not match her looks. She left in such a hurry, without caring to collect her ID card . After three days, she sent an unverified e -mail requesting return of her card . From the record, it appears that Bittoo came outside the Jail earlier, after all three had



gone inside together. Regarding the other two persons, the officials on duty at Jail No. 12 have stated that one male came along with the lady and informed that he has talked to Mr. Dharmender Singh Maurya. The CCTV also proves that the lady came outside together with Nitin. The whole fiasco reveals that there is something more than meets the eye. The offence having been committed prima facie ; the enquiry officer should have moved for registration of FIR immediately. However, no such action has been taken.

17. In my considered opinion, the allegations and the material on record clearly disclose commission of cognizable offences. The lady in question along with her accomplices impersonated and cheated the on-duty guards in allowing her entry into the jail premises, on the basis of an ID card of an Advocate. At Jail No. 12, she produced the said identity card to the jail officials, and when the situation went out of her control, she fled from the spot with her accomplice Nitin , who appears to have co -ordinated the whole offence. The matter requires a free, fair and thorough investigation. Detailed investigation from the Jail Authorities is required, in addition to collection of scientific and technical evidences. The identity of the offenders is also to be ascertained and custodial interrogation may also be required. In terms of the law' laid down in Kailash Vijayvargiya vs. Rajlakshmi Cliaudhuri 2023 SCC OnLine 569, Srinivas Gundluri vs. SEPCO Electric Power Construction Corporation (2010) 8 SCC 206 and Sakiri Vasu vs. State (2008) 2 SCC 409 etc., it is clear that once a complaint disclosing commission of cognizable offences is before a Magistrate, directions for registration of FIR can be issued, instead of taking cognizance of the offence straightaway. I am of the considered opinion that serious allegations against Jail Authorities, which are corroborated by unimpeachable CCTV footage, cannot be consigned to rejection merely because the complainant is not identified. As already observed in order dated 13.12.2022, for an inmate to file a complaint in his name against the wrongdoings committed by jail authorities is to invite wrath of the officials who have full control over his life and liberty. Sunlight seldom reaches the dark corridors of a jail, and a free investigation is the only way to unearth the shimmering truth in this matter, which appears to be hidden behind the opaque walls of the



Jail. Pertinently, when the record was sought from the Prisons Headquarters, it was informed vide letter dated 21.06.2023 that the documents sent by the Jail No. 12 to the Prisons Headquarters were not traceable. I also find that the ACP has blindly taken the word of the persons involved in the incident as gospel truth, without trying to verify the claims from the CCTV footage on record. The report of the ACP conveniently fails to mention as to how both the male persons acted together with the lady in securing admission inside the jail premises. **Further, the dubious role of the Jail Official Mr. Dharmender Singh Maurya also needs to be thoroughly investigated...**"

(Emphasis supplied)

11. The learned MM, after going through the CCTV footage himself, has passed a detailed and reasoned order and has given his findings regarding the sequence of events as reflected in the CCTV footage. This Court notes that at the stage of passing of order for registration of the FIR, even the *prima facie* view of the matter is not required to the extent which is required at the stage of framing of charge.

12. Thus, this Court is of the opinion that for an appellate Court to quash an order directing registration of an FIR, has to follow the principles which have been laid down by the Hon'ble Apex Court by way of legal precedents. When this Court examines the material on record, it comes to an opinion that the impugned order dated 03.10.2023 itself is detailed and well-reasoned order, and the learned MM has given appropriate and relevant reasons for coming to a conclusion regarding registration of FIR in question wherein he has discussed in detail the entire material which was available on record. It was observed by the learned MM that there were specific



allegations that on 13.10.2022, the present petitioner had illegally connived in helping the wife of one of the under-trial prisoners in meeting him inside the jail by impersonating herself as an Advocate. The allegations were corroborated by the CCTV footage, as observed by the learned MM.

13. Further, as far as the argument of the learned counsel for the petitioner that there are three boxes which are placed in the jail premises wherein the inmates can lodge the complaint with the concerned authorities and that a jail visiting judge visits the jail and can find the complaint, is concerned in this case, this Court observes that the filing of an anonymous complaint is not barred under the law and there is no bar in entertaining a complaint as discussed by the learned MM in para nos. 13 and 17 of the order dated 03.10.2023, since whenever any cognizable offence is brought to the notice of the Magistrate, he is empowered to direct the registration of the FIR after considering the material placed on record. For that reason, if a serious offence is brought to the notice of the Court which is cognizable in nature, an FIR can be directed to be registered. Thus, the argument of the petitioner that as to how the inmate had been able to file the said complaint will be a matter of investigation or trial, as the case may be, and this plea can be raised before the learned Trial Court at an appropriate stage.

14. In view thereof, this Court cannot interfere with the said order and curtail the investigation at this stage. It is also important to note that it is also not clear at this stage as to whether the police would file a chargesheet or a closure report after completion of investigation,



and thus, investigation cannot be throttled at this stage.

15. Thus, this Court does not find any reason to interfere with the order passed by the learned MM. However, in case chargesheet is filed after completion of investigation against the petitioner, the counsel for the petitioner would be at liberty to raise all the contentions before the learned Trial Court at the stage of hearing arguments on point of charge.

16. Accordingly, the present petition along with the pending application stands dismissed.

17. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

18. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 1, 2024/zp