HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No.8170/2024

Lokesh Bhargava S/o Kanhaiya Lal Bhargava, R/o Flat 2402, Arlington Rodas Enclave, Hiranandani Estate (Mumbai)

----Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor, Rajasthan
2. Nitika Bhargav, D/o Kanhaiya Lal Bhargava, Aged About 49 Years, R/o 3/12, SFS Agarwal Farm Mansarover, PS Shiprapath, District Jaipur (Raj.)

----Respondents

For Petitioner(s)	:	Ms. Ruchi Gupta Mr. Sarvesh Jain
For Respondent(s)	:	Mr. Manvendra Singh, PP

JUSTICE ANOOP KUMAR DHAND

Order

05/12/2024

1. The instant criminal misc. petition has been preferred against the order dated 19.03.2024 passed by the Additional Chief Metropolitan Magistrate No.4, Jaipur Metropolitan-I by which cognizance has been taken against the petitioner for the offences under Section 323 IPC in pursuance of which he has been summoned.

2. Aggrieved by the aforesaid order, the petitioner has approached this Court by way of filing of this petition under Section 528 B.N.S.S.

3. Learned counsel for the petitioner submits that the respondent-complainant lodged an FIR No.993/2023 against the petitioner with Police Station Shiprapath, Jaipur, which resulted in

Final Report negative. Learned counsel submits that there was no material available with the Magistrate for taking cognizance against the petitioner under Section 323 IPC and for summoning of accused under Section 204 Cr.P.C. Learned counsel submits that, under these circumstances, interference of this Court is warranted.

4. In support of her contentions, she has placed reliance upon the following judgments passed by the Hon'ble Apex Court in the cases of **State of Haryana Versus Bhajan Lal** reported in **1992 SCC (Cri.) 426**, **M/s. Pepsi Foods Ltd. & Anr. Versus Special Judicial Magistrate & Ors.** reported in **(1998) 5 SCC 749** and **Vikas Chandra Versus State of Uttar Pradesh & Anr.** reported in **2024 SCC ONLINE SC 1534**.

5. *Per contra*, learned Public Prosecutor opposed the arguments raised by learned counsel for the petitioner and submitted that after investigation, the police found that the offence under Section 323 IPC is made out against the petitioner and the other co-accused. Since the said offence is non-cognizable, hence final report was submitted. Learned counsel submits that on the basis of *prima facie* evidence available, cognizance was taken against the petitioner and other co-accused under Section 323 IPC and, accordingly, they were summoned. Hence, under these circumstances, interference of this Court is not warranted.

6. Heard and considered the submissions made at Bar and perused the material available on the record.

7. Perusal of the record indicates that the respondent-complainant lodged a report against the petitioner and co-accused with the allegation that they had not only beaten her but also

abused her. On the basis of the aforesaid report, the matter was investigated by the Investigating Agency, After thorough investigation, it was found that the allegations levelled against the petitioner by the respondent-complainant falls within the purview of Section 323 IPC. Since the said offence is a non-cognizable, hence under these circumstances, a final report was submitted.

8. After considering the contents of the final report and the statement of the witnesses, ld. Trial Judge has taken cognizance against the petitioner under Section 323 IPC and summoned the petitioner and the co-accused.

9. It is a settled proposition of law that cognizance can be taken against the accused on the basis of the *prima facie* evidence. The defence of the accused cannot be looked at this stage. The trial court has not committed any error in passing the impugned order, which requires any interference of this Court.

10. Accordingly, the misc. petition stands dismissed. Stay application as well as all applications (pending, if any) also stand dismissed.

(ANOOP KUMAR DHAND),J

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