



\$~47

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

+ **CRL.M.C. 4206/2023**

DR RAVINDU PRABHAT TIWARI AND ANR.....Petitioners

Through: **Mr. D.P. Chaturvedi, Advocate.**

versus

STATE THROUGH SHO PS

DWARKA SOUTH AND ANR

.....Respondents

Through: **Mr. Sanjeev Sabharwal, APP for the State.**

**Mr. Rohan J. Alva, *Amicus Curiae*,
and Mr. Anant Sanghi, Advocates for
Respondent No. 2.**

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

28.01.2025

%

1. This hearing has been done through hybrid mode.
2. The present petition under Section 482 of the CrPC has been filed seeking the following prayers: -

“(a) quash the FIR No.312/2018 U/s.354/509/34 IPC, registered at PS-Dwarka South, New Delhi and, consequent proceedings arising out of the said FIR pending disposal before the Court of Ms. Surbhi, Ld. MM (Mahila Court-O2), Dwarka Courts, New Delhi, may kindly be quashed in the facts and circumstances as explained hereinabove, in the - interest of justice.

(b) Pass any other or further order/s which this Hon’ble court may deem fit and proper in favour of the petitioners.”

3. The present FIR was registered on the basis of a complaint made by the respondent No. 2 on 18.09.2018. It was stated in the said complaint that, on



22.06.2018 at about 18:45 hours, while her husband was parking his car in the allotted space of the society, a cricket ball hit his car and caused damage. It was further stated that earlier also the wind-shield of their car had been broken by the children on which they had to incur substantial loss. Similarly, the window pane of their house had also been broken. It is stated in order to stop further damage, the husband of respondent No. 2, asked the boys for the bat and brought it home with an effort to stop the children and the same was recorded in the CCTV footage of the society. It is alleged that at about 18:50 hours, parents of one of the children entered their house and started using abusive language and demanded the return of the bat. It is further alleged that, thereafter, petitioner Nos. 1 and 2 forcibly entered into the bedrooms of their house looking for the bat. It is alleged that while respondent No. 2 was trying to stop, petitioner No. 1 started abusing her and pushed her very hard by keeping hands on her breast. It is further alleged that petitioner No. 2 also started abusing her in filthy language and physically assaulted her by pulling her hair and slapping her. Thereafter, the investigation was conducted and chargesheet was filed before the Court of competent jurisdiction.

4. Learned counsel for the petitioners submits that the present FIR is in abuse of process of the Court as the same has been registered belatedly as a counter blast to the complaint filed by the petitioner No. 2 on 22.06.2018 with respect to the injury suffered by her children. It is submitted on the basis of her complaint a cross FIR No. 187/2018 dated 24.06.2018, under Sections 323/341 of the IPC, was also registered at PS Dwarka South against respondent No. 2. It is further submitted that the trial in the FIR registered at the instance of the present petitioner No. 2 is also pending and the chargesheet in the said case has been filed before the Court of competent jurisdiction and



the charges for the offences punishable under Sections 354/34 of the IPC has been framed by learned JMFC, Dwarka Court, *vide* order dated 09.01.2025.

5. In view of the above, it is submitted that the present proceedings have been initiated by the respondent No. 2 maliciously wreaking vengeance as a counter blast to the FIR registered at instance of petitioner No. 2. Reliance has been placed on the following observation made by the Hon'ble Supreme Court in **Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors., (2008) 12 SCC 1: -**

“27. The powers possessed by the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

32. In *State of Haryana & Ors. v. Bhajan Lal & Ors.*, [1992] Supp. 1 SCC 335, this court in the backdrop of interpretation of various relevant provisions of the Cr.P.C. 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 of the Constitution of India or the inherent powers under section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this court made it clear that 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 to myriad kinds of cases wherein such power



should be exercised:

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

6. It is further submitted that, in the present FIR, the order on charge was passed by the learned Trial Court on 04.01.2023 whereby, charges for the offences punishable under Sections 354/509/34 of the IPC were framed against the present petitioners. The said order on charge was challenged by way of a revision petition No. 49/2023 by the petitioner No. 2, whereby *vide* order dated 24.03.2023 in the said petition, she was discharged for offence punishable under Section 354 of the IPC, however, it was ordered that charge for the offence punishable under Sections 509/34 of the IPC shall be framed against her.

7. *Per Contra*, learned APP for the State, assisted by learned counsel for respondent No. 2, submits that the prosecution evidence in the present case has been concluded and the matter is listed for recording of the statements of the petitioners under Section 313 of the CrPC before the learned Trial Court. It is further submitted that the issues raised cannot be decided by this Court in the present proceedings as they are matters of dispute and, at the present stage, especially when the evidence has been recorded before the learned Trial Court no grounds for interference are made out.

8. Reliance has been placed by the learned counsel appearing on behalf of the respondent No. 2 on the following judgments: -

- a) **R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21;**
- b) **V. Ravi Kumar v. State, (2019) 14 SCC 568;**



- c) **State of Uttar Pradesh v. Akhil Sharda and Ors., (2023) 11 SCC 626;**
- d) **CBI v. Aryan Singh, 2023 SCC OnLine SC 379;**
- e) **State of Odisha v. Pratima Mohantay, (2022) 16 SCC 703.**

9. Heard the learned counsel for the parties and perused the records.

10. At the very outset, it is pertinent to note that the charges against the present petitioners were framed by the learned Trial Court for the offences punishable under Sections 354/509/34 of the IPC *vide* order dated 04.01.2023. The said order was challenged by petitioner No. 2 and not by petitioner no. 1 and the learned ASJ *vide* order dated 24.03.2023 had dropped the charge for the offence punishable under Section 354 of the IPC *qua* petitioner No. 2. However, it was found that *prima facie* charge for the offence punishable Section 509 of the IPC is made out against petitioner No. 2 as well. It is a matter of record that the present petition was filed on 24.05.2023 with the aforesaid prayers as mentioned hereinabove.

11. It is not in dispute that petitioner No. 1 did not challenge the order on charge passed by the learned Trial Court and the fact that the prosecution evidence is complete in the present case is not disputed. All the witnesses cited by the prosecution in the chargesheet have been examined and cross-examined.

12. In the considered opinion of this Court, in order to examine the contention of the petitioners as raised in the present petition including the allegations in the present FIR being registered as a counter blast with delay, it will have to examine the evidence which has been recorded before the learned Trial Court. In order to arrive at a finding with respect to the prayers



in the present petition this Court cannot hold a mini trial at this stage. The Hon'ble Supreme Court in the matter of **Akhil Sharda** (*supra*), has observed and held as under: -

“18. Having gone through the impugned judgment and order [*Akhil Sharda v. State of U.P.*, 2020 SCC OnLine All 284] passed by the High Court by which the High Court has set aside the criminal proceedings in exercise of powers under Section 482CrPC, it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482CrPC. As observed and held by this Court in a catena of decisions no mini trial can be conducted by the High Court in exercise of powers under Section 482CrPC jurisdiction and at the stage of deciding the application under Section 482CrPC, the High Court cannot get into appreciation of evidence of the particular case being considered. (See *Pratima* [*State of Odisha v. Pratima Mohanty*, (2022) 16 SCC 703] ; *Thom* [*CBI v. Thommandru Hannah Vijayalakshmi*, (2021) 18 SCC 135] ; *Rajiv* [*Rajiv Thapar v. Madan Lal Kapoor*, (2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] and *Neeharika* [*Neeharika Infrastructure (P) Ltd. v. State of Maharashtra*, (2021) 19 SCC 401] .)”

13. Admittedly, in the present petition the order on charge passed by the learned JMFC as well as the order passed by the learned ASJ in the said revision petition has not been challenged.

14. In view of the above, in the considered opinion of this Court, no grounds are made out for exercise of the powers under Sections 482 of the CrPC for quashing of the proceedings in the present FIR at this stage.

15. The petition is dismissed and disposed of accordingly.

16. Pending application(s), if any, stands disposed of.

17. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case and any observations made herein are only for the



purpose of the present petition.

18. Petitioners are also at liberty to agitate the grounds raised in the present petition before the learned Trial Court at appropriate stage during the course of the trial.

19. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

JANUARY 28, 2025/kr

Click here to check corrigendum, if any