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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 25.02.2025*+ **CRL.M.C. 5579/2019 & CRL.M.A. 39376/2019**

SH. SATYA PRAKASH & ANR.Petitioners

Through: Mr. Mohit Mathur Sr. Adv
with Mr. Shailesh Jha, Mr.
Vignesh Ramanathan
Advocates.

versus

STATE & ANR.Respondents

Through: Mr. Raj Kumar, APP for the
State.
Mr. A.K. Singh, Mr.
Medhanshu Tripathi, Mr.
Haridwar Singh and Mr.
Kamlesh Kamal, Advocate for
R-2.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J**

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'] on behalf of the petitioners – Sh. Satya Prakash and Sh. Rameshwar – seeking quashing of FIR No. 96/2017, registered on the complaint of respondent no. 2 – Smt. Bijaya Laxmi Mishra – on 27.02.2017, at Police Station Vasant Kunj North, District South-West, Delhi, for



offences punishable under Sections 354/509/34 of the Indian Penal Code, 1860 [hereafter 'IPC'].

FACTUAL BACKGROUND

2. Essentially, the petitioners' grievance is that the present FIR is a cross FIR registered with the ulterior motive, in connivance with one Sub-Inspector Sh. Sandeep Kumar, who had visited the residence of the petitioner no. 1 (Sh. Satya Prakash) in the enquiry of DD no. 37A, recorded pursuant to a PCR call made by the petitioners' sister Ms. Nirmala Kumari, who had lodged a complaint against the son of respondent no. 2 i.e. Sh. Pratik Mahapatra. On the said complaint, an FIR No. 95/2017 was registered under Sections 323/354/354B/509/506 of IPC against Pratik Mahapatra. It is therefore alleged that, in connivance with the police officials, the present cross-FIR bearing no. 96/2017 was registered on the basis of a false complaint filed by the mother of accused Pratik Mahapatra i.e. respondent no. 2 herein.

3. As discernible from the records, SI Sandeep Kumar, *vide* DD no. 37A dated 26.02.2017, had reached the place of incident. Two separate complaints were handed over to him by two complainants, i.e. one complaint by the sister of petitioners, and another complaint by the respondent no. 2 herein, on the basis of which two cross-FIRs were registered.

4. In the present FIR, the respondent no. 2 has alleged that on the



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day of the incident, the petitioners, Sh. Satya Prakash and Sh. Rameshwar, who were residents of B-11/8169, Vasant Kunj and occupied the ground floor of the respondent's flat, had called her son to their residence through the security guard, Sh. Vedprakash. The petitioners had accused her son of climbing the balcony of his flat no. B-11/8171, by using a ladder from their premises. The son of respondent no. 2, however, had clarified that the main door of the flat was locked from the inside and that there was no other way out but through the balcony. He had further explained that he had climbed the balcony using a ladder provided by the security guard, from the public passage and not from the private premises of the petitioners. Despite this explanation, the petitioners had allegedly pushed the respondent's son back and used abusive language against him. In addition, the petitioners' sister had come out of the house and had also started using offensive language toward the respondent. Upon hearing the commotion on the ground floor, the respondent no. 2 had rushed to the spot to intervene and rescue her son. The respondent no. 2 had reportedly requested the petitioners to resolve the matter, as her son had entered through the public passage under the supervision of the security guard and had not committed any offence. However, it is alleged that the petitioners had immediately hit the respondent no. 2 on the chest and had hurled filthy language, including terms such as "Saali" and "Kutti", thus insulting and outraging her modesty in a highly disturbing manner.



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5. On the other hand, in FIR No. 95/2017, the sister of the petitioners herein had alleged that on 26.02.2017, at around 10 PM, when they had returned to their house, the guard had informed them that one Mahapatra's son, residing in 8171, had been climbing into their house with the help of a ladder. Upon receiving this information, they had called Mahapatra's son, and when he had arrived, he had begun misbehaving and abusing them. It is further alleged that he had slapped her, had used abusive language, had pulled her clothes, and had even threatened to kill them. Subsequently, they had dialed 100 number and lodged a complaint.

6. In both the FIRs, investigations have been concluded and chargesheets stand filed.

RIVAL CONTENTIONS

7. The learned Senior counsel appearing on behalf of the petitioners argued that the present FIR No. 96/2017, registered under Sections 354/509/34 of the IPC, had been instituted as a cross-FIR with an ulterior motive, in connivance with the SI Sandeep Kumar, who had visited the residence of petitioner no. 1 while conducting the enquiry of DD No. 37A recorded when the petitioner's sister, Ms. Nirmala Kumari, had dialled 100 and lodged a complaint against the son of respondent no. 2. It was further argued that, following the complaint by the petitioner's sister, FIR No. 95/2017 for offences punishable under Sections 323/354/354B/509/506 of the IPC had



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been registered against Pratik Mahapatra, the son of respondent no. 2. Accordingly, the learned Senior counsel contended that, in connivance with the police, the aforementioned cross-FIR had been registered on the basis of a false complaint lodged by the mother of accused Pratik Mahapatra. He further stated that no calls had been made by respondent no. 2 to register an FIR, as evidenced by the RTI reply dated 29.10.2019.

8. The learned Senior counsel also contended that SI Sandeep Yadav, the IO of FIR No. 95/2017, had misused his official position to assist accused Pratik Mahapatra. He had completed the investigation, prepared the chargesheet, and obtained approval from the SHO/ACP on 24.10.2017; however, he had not filed the chargesheet for the subsequent 18 months, instead keeping it at his residence. However, in the present FIR, he ensured that chargesheet against the petitioners was filed on 30.10.2018 by another officer, SI Manish Meena, before the concerned Court. Subsequently, SI Sandeep Yadav had threatened the petitioners that he would not file the chargesheet for another three years in the FIR lodged on the complaint of their sister, and he had continued to harass the petitioners by using the cross-FIR as a tool to force a settlement. In addition, the petitioner's mother had filed another police complaint with the Joint Commissioner of Police, New Delhi on 12.12.2017. The learned Senior counsel further submitted that ACP, South had ordered a departmental enquiry against SI Sandeep Yadav, and his



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vigilance report dated 15.04.2019 had recommended suitable action against him, as the allegations levelled by the complainant had been found to be true and substantiated. The learned Senior Counsel also argued that respondent no. 2 had changed her statement in her complaint to the SHO and before the learned Magistrate, indicating that the incident had been reported after due reflection and in connivance with the SI Sandeep Yadav.

9. It was additionally argued that on 06.06.2016, petitioner no. 1 had not been present at his house. On that day, respondent no. 2, her son Pratik Mahapatra, her husband B.K. Mahapatra, and a property dealer, Mr. Juneja, had visited the petitioners' house and had requested that his mother and sister permit them to erect two concrete pillars at the corners of the petitioners' courtyard, so that respondent no. 2 could construct a roof over the courtyard to create a hall on the first floor. Furthermore, respondent no. 2 and the property dealer had offered Rs. 2,00,000/- to the petitioner's mother in lieu of such permission. When she had refused to allow the additional construction—which would have obstructed sunlight, rain, and fresh air to the petitioner's house and would have contravened DDA rules, given that she had paid extra for the courtyard at the ground floor to enjoy these elements—the respondent no. 2 and Mr. Juneja had become infuriated. The learned Senior counsel thus contended that the dispute in this case was civil in nature, relating to a property dispute, which had been given the colour of a criminal case in



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connivance with the IO. Reliance on behalf of the petitioners was placed on certain judicial precedents, and argued that the facts of the present case are squarely covered by the principles laid down by the Hon'ble Supreme Court for quashing of FIR and, therefore, the present FIR be quashed.

10. On the other hand, the learned counsel for respondent no. 2 submitted that the present FIR had been lodged by respondent no. 2, against the petitioners herein, alleging that the petitioners had physically assaulted respondent no. 2's son and used abusive language, despite his explanation that he had accessed the balcony from a public passage, as the main door was locked and there was no trespass on the petitioners' property. Moreover, he argued that respondent no. 2 had been physically assaulted by the petitioners, who had struck her on the chest and hurled filthy language, thereby outraging her modesty. He further contended that in the absence of cross-FIR No. 95/2017 and its chargesheet before this Court, the present FIR No. 96/2017 and its chargesheet cannot be quashed. The learned counsel argued that the maintainability of the present FIR cannot be challenged or adjudicated on the basis of allegations related to an unrelated FIR No. 95/2017, particularly when the delays and issues in that case bear no direct bearing on the merits or facts of the present FIR. Further, he argued that since the chargesheet in the present FIR was filed in a timely manner and no allegations were made against the I.O. in this FIR, the petitioners could not claim that



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the delay in filing the chargesheet in FIR No. 95/2017 should serve as a ground for quashing FIR No. 96/2017.

11. The learned counsel for respondent no. 2 further argued that, as held by the Hon'ble Supreme Court, an FIR cannot be quashed unless it is evident that even if the allegations are accepted as true, no *prima facie* case is made out. He stated that the allegations against the petitioners, as outlined in the FIR and subsequent chargesheet, clearly meet the legal threshold required for Sections 354, 509, and 34 of the IPC. He also submitted that the Area Federation Welfare Association had lodged multiple complaints against the petitioners, highlighting their unlawful and unauthorized construction activities on government land and common areas.

12. The learned counsel for respondent no. 2 further argued that, since cross-FIR No. 95/2017 and its chargesheet are not pending adjudication before this Court, the present FIR cannot be quashed without considering the said FIR and its chargesheet. Moreover, he contended that the petitioners have the opportunity to present CCTV footage and other evidence – which they claim was not produced by the IO – at the relevant stage of the trial, and therefore, the present petition should be dismissed.

13. The learned APP appearing for the State also opposed the present petition and argued that the allegations against the petitioners are serious, and that a *prima facie* case against them was made out.



Therefore, he prayed that the present petition be dismissed.

14. This Court has **heard** arguments addressed by learned counsel appearing for either side, and has perused the material placed on record.

ANALYSIS & FINDINGS

15. In a nutshell, the allegations against the present petitioners are that on the day in question, they had physically assaulted the son of respondent no. 2, and subsequently had also struck respondent no. 2 on the chest while hurling abusive and filthy language against her. Chargesheet against the petitioners stands filed for offences under Sections 354/509/34 of the IPC, i.e. for assaulting a woman with intent to outrage her modesty and for uttering abusive words intended to insult her modesty.

16. In the present case, it can be observed that the two cross-FIRs relate to incidents that had allegedly occurred on the same day i.e. 26.07.2017, and at the same time within a residential premises. Two complainants – one being the respondent no. 2 herein and the other being the sister of petitioners – have presented differing versions of the events, with each alleging that the respective accused persons had committed offences involving outraging modesty and sexual assault, among other acts, against them. Chargesheets in both the FIRs have been filed before the concerned Courts. In this Court's opinion, at this stage, in a petition filed under Section 482 of the Cr.P.C., it is not



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within the purview of this Court to determine the veracity of the respective allegations, nor to conclusively decide as to what would have transpired on the day of the incident. When dealing with petitions seeking quashing of cross-FIRs, the Court must exercise great caution and circumspection, particularly when both FIRs have been registered at the same time and pertain to the same incident. In such cases, where two conflicting versions of the same occurrence are presented by opposing parties, it becomes inherently difficult to ascertain the truth merely by a bare reading of the FIRs. The allegations in both complaints may be true to some extent, entirely true, or completely false, and determining the actual sequence of events requires a careful examination of the evidence collected by the investigating agency during the course of investigation. However, it is well-settled that this is a task that falls within the domain of the trial courts. The truthfulness or falsity of allegations can only be established after considering the statements of witnesses, their cross-examination during the course of trial, and the electronic or forensic evidence if any. The High Court, while exercising its jurisdiction under Section 482 of Cr.P.C., cannot engage in an assessment of disputed facts or act as a fact-finding body at this stage. Any premature interference by quashing an FIR, particularly in cases of cross-complaints arising from the same incident, may amount to preempting the due process of law and prejudicing the trial proceedings. Therefore, in cases where two cross-FIRs exist, both



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must be adjudicated upon in accordance with law. The Hon'ble Supreme Court in *A.T. Mydeen v. The Assistant Commissioner: 2021 SCC OnLine SC 1017* had expressed, in context of trial of cross-FIRs, that each case has to be decided on its own merit.

17. The learned senior counsel for the petitioners had argued at length that SI Sandeep Yadav had conspired with respondent no. 2 by failing to file the chargesheet in a timely manner in the cross FIR registered on the complaint of the petitioners' sister, and further that the sister of petitioners had already submitted several complaints to higher authorities. However, the Court finds that while these allegations raise concerns regarding the conduct of the said investigating officer, the petitioners have legal remedies available to address such issues, and they have already approached the appropriate higher authorities. Nonetheless, these contentions cannot serve as a basis to quash the present FIR. It is significant to note that the I.O. in the present case is different from the one in the other FIR, and the chargesheet in the present case has been duly filed. Accordingly, the alleged delay or misconduct of the I.O. in the cross FIR cannot be the premise for quashing the present FIR.

18. The principles governing quashing of an FIR are well-settled. In *State of Haryana v. Bhajan Lal: 1992 SCC (Cri) 426*, the Hon'ble Supreme Court observed that except in exceptional circumstances, where non-interference would result in miscarriage of justice, the Courts must not interfere at the stage of the investigation of an



offence. It was held 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 extra-ordinary 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 F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order 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 F.I.R. 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 accused and with a view to spite him due to private and personal grudge."

19. The principles governing quashing of FIRs and criminal proceedings were summed up by the Hon'ble Supreme Court in ***Neeharika Infrastructure (P) Ltd. v. State of Maharashtra: (2021) 19 SCC 401*** after analysing catena of judicial precedents. The relevant observations of the Supreme Court are set out below:

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

13.1. 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;

13.2. Courts would not thwart any investigation into the cognizable offences;

13.3. 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;

13.4. The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'.

13.4. 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;

13.5. 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;

13.6. Criminal proceedings ought not to be scuttled at the initial stage;

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

13.8. 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.

13.9. The functions of the judiciary and the police are complementary, not overlapping;

13.10. 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;

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

13.12. 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;



13.13. 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;

13.14. 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 13.15. 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."

20. The allegations against the petitioners are physically assaulting and outraging the modesty of respondent no. 2. Testing these allegations on the anvil of the principles laid down in cases of *State of Haryana v. Bhajan Lal (supra)* and *Neeharika Infrastructure (P) Ltd. v. State of Maharashtra (supra)*, this Court cannot conclude that the allegations are inherently improbable, absurd, or fabricated to such an extent that no case is made out. The contents of the FIR and the material collected during the investigation do not reflect any exceptional circumstances warranting interference under Section 482 of Cr.P.C. At this stage, there is no clear indication that the complaint was lodged with malice or that it is a sheer abuse of the process of law. Accordingly, this Court finds no ground to quash the present FIR.



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21. In view thereof, the present petition is dismissed, alongwith pending application.

22. It is, however, clarified that the observations made in this judgment are only for the limited purpose of deciding the present petition seeking quashing of FIR, and these observations shall not be construed as this Court's expression on the merits of the case, nor shall they influence the trial proceedings in any manner.

23. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 25, 2025/ns