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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 62/2025**
BINATONE TELECOMMUNICATIONS PVT LTD & ANR.

.....Petitioners

Through: Mr. Narender Kumar, Mr. Prithvi
G.N. and Mr. Rahul Sharma,
Advocates for Petitioners No. 1 & 2.

versus

THE STATE NCT OF DELHI & ORS.Respondents

Through: Mr. Amit Ahlawat, APP for State.
SI Shajid Hussain, P.S. Malviya
Nagar.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **09.01.2025**

CRL.M.A. 304/2025 (*seeking exemption from filing certified copies of the annexures*)

1. Exemption is granted, subject to all just exceptions.
2. The Applicant shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.
3. Accordingly, the application stands disposed of.

CRL.M.C. 62/2025

4. The present petition under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023¹ (old Section 482 of the Code of Criminal Procedure, 1973²) seeks quashing of FIR no. 427/2011 dated 28th October,

¹ "BNSS"

² "Cr.P.C."



2011, under Section 420, 406 and 34 of the Indian Penal Code, 1860³ registered at P.S. Malviya Nagar by Respondent No. 2 and the proceedings emanating therefrom.

5. The aforementioned FIR has been registered on a complaint made by Respondent No. 2 – the managing director of Studio 309, Media Pvt. Ltd., with whom the Petitioner company had entered into an agreement dated 27th July, 2010 for “Public Relations Media Activity”. The Petitioners submit that in pursuance of the said agreement, Petitioner No. 1 company approached Respondent No. 2 for a proposal to launch their product, the ‘Binatone Mobile Phones’, on 9th September, 2010 at an event at Hotel Lalit, Connaught Place, New Delhi. They allege that for this purpose, they released an advance amount of Rs. 3 Lakhs for booking of the venue, however, on the day of the event, a major short circuit took place due to the negligence of respondent No. 2 which led to Petitioner No. 1 company facing monetary as well as reputational damages. In this regard, it is claimed that Respondent No. 2 accepted that the event was caused due to their negligence and even gave a cheque of Rs. 18,81,890/- to the Petitioner No. 1 company which was later dishonoured.

6. The Petitioners claim that *inter-alia* due to the said event, they sent a termination notice dated 1st October 2010, to Respondent No. 2 company and indicated that they were inclined to initiate civil proceedings against them. The Petitioners claim that it is for this reason that Respondent No. 2 has filed a baseless and false complaint against them on the basis of alleged fabricated invoices. Nonetheless, investigation into the FIR was undertaken by the police authorities and a chargesheet was filed against Petitioner No. 1

³ “IPC”



company, Petitioner no. 2 – the authorised representative of Petitioner No. 1 and Respondent No. 3 – one Mr. Saugat Chatterjee before the Metropolitan Magistrate, Saket Court, New Delhi in 2018. It is also submitted that after receiving summons from the Trial Court, while the Petitioners have been regularly appearing in the case till date no charges have been framed against them. Further, it is submitted that Respondent No. 3 has been declared as a proclaimed offender by the Trial Court.

7. In light of the foregoing, the Petitioners argue that the criminal proceedings imitated against them by Respondent No. 2 is only a tactic to put pressure on the Petitioners to return the amount allegedly paid to them and settle the civil dispute.

8. The Court has considered the submissions of the Petitioners for quashing of the FIR, but remains unpersuaded. The investigation has already taken place and chargesheet was filed in 2018. However, after nearly more than a decade, Petitioners have filed the instant petition seeking quashing of FIR No. 427/2011 dated 28th October, 2011, by invoking the inherent jurisdiction of this Court under Section 528 of the BNSS. In this regard, at the outset, it must be noted that even though the inherent jurisdiction of this Court can be exercised to prevent the abuse of process of law and to secure the ends of justice, however, in cases regarding quashing of ongoing criminal proceedings, it is incumbent upon the Court to exercise such jurisdiction sparingly and with abundant caution. Reliance in this regard is placed on the case of *Rajiv Thapar & Ors. v. Madan Lal Kapoor*⁴, wherein the Supreme Court laid down certain parameters for a High Court to examine before exercising their inherent jurisdiction to quash a criminal



proceeding. The relevant extracts of the said judgment are as follows:

“28. The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and

⁴ (2013) 3 SCC 330



discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

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?

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."

9. Summarising the aforesaid position of law for quashing of an FIR at the pre-trial stage, the Supreme Court in ***Rathish Babu Unnikrishnan v.***



State (NCT of Delhi)⁵ observed as follows:

“16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pretrial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process.”

10. In the present case, while the Petitioners have sought to argue that the dispute between the parties is a purely civil dispute, however, in the opinion of the Court, *prima facie* allegations made in the FIR and Chargesheet filed against the Petitioners indicate that elements of a cognizable offence. In this regard, the Court takes note of the judgment of **Indian Oil Corporation v. NEPC India Limited and Ors**⁶, wherein the Supreme Court observed as follows:

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]..... The principles, relevant to our purpose are:

i) A complaint can be quashed where the allegations made in 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 the case

⁵ 2022 SCC OnLine SC 513

⁶ (2006) 6 SCC 736



alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

11. On the basis of the material placed on record, it is not possible for the Court to conclude that sufficient reasons are made out to reject or discard the accusations made by the Complainant/prosecution and quash the proceedings at this nascent stage.

12. Counsel for Petitioners has also pointed out that the arguments on framing of charge are yet to conclude before the Trial Court. In fact, the



Court is informed that Respondent No. 2 - the Complainant has urged before the Trial Court that further investigation is required in the present case as the bail have not been charge sheeted, and no reasons have been given by the Investigating Officer⁷ for excluding their name. Furthermore, the Court is informed that the Trial Court has taken cognizance of this issue and summoned the IO in the matter.

13. Thus, having regard to the aforementioned circumstances and the well-established legal position discussed above, the Court is not inclined to entertain the present petition and accordingly the same is dismissed.

14. Nothing mentioned herein, shall not reflect the Court's opinion on the merits of the case. The Petitioners shall be at liberty to urge all the grounds urged in the present petition before the Trial Court. Considering the fact that the chargesheet was filed in 2018 and till date the charges have not been framed, the Trial Court is directed to expedite the proceedings.

15. The present petition is dismissed in the above terms.

SANJEEV NARULA, J

JANUARY 9, 2025

as

⁷ "IO"