

Delhi High Court

Meenakshi Agarwal vs State Of Nct Of Delhi And Anr on 13 February, 2023

NEUTRAL CITATION NO. 2023/DHC/001054

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (CRL) 778/2022

MEENAKSHI AGARWAL

..... Petiti

Through: Mr. M.S. Patwa, Advocate

versus

STATE OF NCT OF DELHI AND ANR

..... Respo

Through: Mr. Amit Peswani, Advoca

Ms. Nandita Rao, ASC (Cr

State with SI Nitin, P.S

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant writ petition has been filed under Article 226 of Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") for quashing of the proceedings in FIR bearing no. 488/2020 registered at Police Station ("PS") Dwarka North, Delhi for offences punishable under Sections 420/406/506/34 of the Indian Penal Code, 1860 ("IPC").

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2. The present FIR was registered on the complaint of one Mr. Rahul Gupta ("complainant") who had started a consultancy business in the name of „M/sAmbience Home & Developers in March, 2015 along with one Mr. Surya Kant Goyal. It is alleged that during hawan ceremony of his new office, he was made to meet one Mr. Abhishek Aggarwal and Mr. Shatrughan, who were introduced to him by Mr. Surya Kant Goyal. In March 2015 itself, Mr. Abhishek Aggarwal approached the complainant and requested for a sum of Rs. 15 lakhs on pretext of some urgent need/emergency and on the assurance of Mr. Surya Kant Goyal, the complainant paid Rs. 15 lakhs to Mr. Abhishek Aggarwal, and the said amount was then returned to him in June 2015. Thereafter, again in August

2015, Mr. Abhishek Aggarwal and Mr. Shatrughan came to complainant's office and requested Rs. 25 lakhs. The complainant again paid Rs. 25 lakhs to them and the same was returned to him in December 2015. It is alleged that in March 2016, Mr. Surya Kant Goyal called the complainant to a hotel where Mr. Abhishek Aggarwal, his wife Ms. Meenakshi Agarwal and Mr. Shatrughan were present and the said persons induced the complainant to invest in an upcoming railway project in Ahmedabad, Gujarat, for which he was asked to pay/invest Rs. 2.5 crores, out of total requirement of Rs. 10 crores. In order to gain his trust, the aforesaid persons took the complainant to Rail Bhawan and Parliament House, where he was made to wait outside the premises, and was later informed by the aforesaid persons that they had met the Railway Minister as well as his PA and that the Minister concerned had assured them of the allocation of upcoming project in Ahmedabad. It is alleged that in April 2016, Digitally Signed By:ZEENAT PRAVEEN Signing Date:15.02.2023 15:07:16 NEUTRAL CITATION NO. 2023/DHC/001054 complainant was informed by Mr. Abhishek Aggarwal that they had been allotted railway project, and he was asked to pay Rs. 20 lakhs immediately. Upon reaching a hotel, where the aforesaid persons were present, the complainant handed over Rs. 20 lakhs to Ms. Meenakshi Aggarwal. Further, in June 2016 again, the complainant was asked to pay Rs. 25 lakhs by Ms. Meenakshi Aggarwal, and the said amount was paid. Again in December 2016, Rs. 25 lakhs were paid by complainant to Mr. Shatrughan and Mr. Vinod. In a subsequent meeting which took place in a hotel in March 2017, the complainant was made to meet a person, who was allegedly the P.A. of Railway Minister, and he was assured that project work was scheduled to start in November 2017. The complainant was further told by Mr. Shatrughan, a government employee, that he had seen all the project related documents and that he was himself investing in the same. Thereafter, in January 2018, the complainant was taken to Ahmedabad by the aforesaid persons to see the location of railway project, a video of which was also shot by the complainant. It is further alleged that in February 2018, Ms. Meenakshi Aggarwal and Mr. Abhishek Aggarwal asked the complainant to arrange Rs. 50 lakhs more, and as per request, the same was paid by the complainant in cash to them. Again in May 2018, complainant was asked by Mr. Abhishek Aggarwal to pay Rs. 1 crore, and upon complainant's request to give something as surety in return of his money, Mr. Abhishek Aggarwal offered him his flat in Dwarka, Delhi. Thereafter, some agreements were signed between him and complainant paid Rs. 70 lakhs to Ms. Meenakshi Aggarwal on 21.05.2018. However, later on, complainant got to know that the said flat did not belong to Mr. Digitally Signed By:ZEENAT PRAVEEN Signing Date:15.02.2023 15:07:16 NEUTRAL CITATION NO. 2023/DHC/001054 Abhishek Aggarwal and was owned by someone else. In January 2019, the complainant demanded back his money, upon which, Mr. Abhishek Aggarwal and Ms. Meenakshi Aggarwal sought some time and then in April 2019, handed over three-post dated cheques to him which got dishonored in August 2020 upon presentation. It is alleged that complainant was thereafter threatened by Mr. Abhishek Aggarwal to not file any complaint with the authorities against them. The complainant claims to have been duped of Rs. 1.90 crores.

3. Learned counsel for petitioner submits that petitioner, who is a woman, has been falsely implicated in the present case without there being any role of her in the alleged offence. It is stated that present FIR is an outburst of some differences between the complainant and the husband of petitioner, and there is no material evidence, such as money trail through bank accounts, in support of the allegations leveled by the complainant and entire case is based upon cash transactions. It is further stated that allegedly, the complainant had made huge cash payments in December 2016 and

February 2017, which is just after the currency notes were demonetized in November 2016. It is also argued that though the alleged incidents pertain to year 2016/2017, the FIR has been lodged in the year 2020.

4. Learned APP for the State, on the other hand, invites the attention of this Court to the contents of FIR and specific allegations leveled therein against the petitioner. It is stated that charge sheet in the present case has also been filed and the case is listed for arguments on charge before the learned Trial Court. It is further contended by learned APP for State that considering the gravity of the allegations against the Digitally Signed By: ZEENAT PRAVEEN Signing Date: 15.02.2023 15:07:16 NEUTRAL CITATION NO. 2023/DHC/001054 petitioner and other accused persons, the present petition deserves outright rejection. Learned APP for the State, on instructions from Investigating Officer, further states that apart from the present FIR, petitioner and her husband are involved in several other cases of similar nature.

5. I have heard learned counsel for both the parties and have perused the material placed on record.

6. The petitioner by way of present petition, seeks quashing of FIR qua her under Section 482 Cr.P.C. The scope of inherent powers of High Courts under Section 482 of Cr.P.C. has been elaborated in a catena of judgments by the Hon'ble Apex Court. The guidelines for quashing of criminal proceedings have been laid down by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal* 1992 SCC (Cri) 426, which are extracted herein-under for reference:

"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 channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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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 Digitally Signed By:ZEENAT PRAVEEN Signing Date:15.02.2023 15:07:16 NEUTRAL CITATION NO. 2023/DHC/001054 wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice..."

7. Recently, the Hon ble Apex Court in Neeharika Infrastructure v. State of Maharashtra, 2021 SCC OnLine 315, has analysed the precedents and culled out the relevant principles that govern the law on quashing of an FIR under Section 482 of the Cr.P.C. It has been held as under:

"...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;

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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 Digitally Signed By:ZEENAT PRAVEEN Signing Date:15.02.2023 15:07:16 NEUTRAL CITATION NO. 2023/DHC/001054 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..."

8. In the present case, the complainant has leveled specific allegations against the petitioner as to how she was instrumental in Digitally Signed By:ZEENAT PRAVEEN Signing Date:15.02.2023 15:07:16 NEUTRAL CITATION NO. 2023/DHC/001054 inducing the complainant to part away with his money. It is stated that petitioner had demanded money from the complainant on several occasions on pretext of same being an investment in an upcoming railway project in Gujarat and the same was paid to her by the complainant. The Court has perused the contents of FIR where the entire timeline of the incidents has been submitted by the complainant including the details as to how the petitioner and her husband/co-accused initially gained the trust of complainant, as well as the details regarding meetings of the complainant with accused persons in hotels and the role of each accused person in either inducing him to part away with his money or demanding the money or receiving the same. Furthermore, there are allegations against the petitioner and her husband/co-accused in duping the complainant by selling him a property which did not belong to them and obtaining money for the same. It is also alleged that petitioner had handed over three post-dated cheques to the complainant which later got dishonored.

9. As informed to this Court, the petitioner is previously involved in two other cases of similar nature having similar modus operandi for which FIR No. 577/21 at PS Dabri, Delhi under Section 420 IPC, and FIR No. 717/13 at PS Uttam Nagar, Delhi under Section 420/34 IPC was registered against her. Apart from these, the petitioner's husband (co-accused in present case) is also involved in two other cases of similar nature i.e. FIR No. 50/2018 registered at PS Gurugram, Haryana under Sections 406/420/34 IPC and FIR No. 74/2019 registered at PS EOW, Delhi under Sections 406/420/120B IPC.

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10. It is a settled law that this Court cannot appreciate evidence in a minute manner while considering a petition filed under Section 482 Cr.P.C. [See Priti Saraf & Anr. v. State of NCT of Delhi & Anr. 2021 SCC OnLine SC 206], and this Court can neither test veracity of the allegations nor can it proceed in the manner that a judge conducting a trial is supposed to do on the basis of the evidence collected during the course of trial [See Mahendra KC v. State of Karnataka (2022) 2 SCC 129]. The inherent power under Section 482 Cr.P.C. has to be exercised only in exceptional cases

and is not to be exercised only for the asking [See Ramveer Upadhyay and Anr. v. State of U.P. and Anr. 2022 SCC OnLine SC 484].

11. Moreover, neither the allegations leveled against the petitioner by the complainant are entirely absurd or improbable, nor it is a case where no prima facie offence at all or no cognizable offence is made out, so as to quash the proceedings within the ambit of principles laid down by the Hon ble Apex Court in Bhajan Lal (supra) and Neeharika Infrastructure (supra). No exceptional or rare circumstances have been shown by petitioner which requires this Court to interfere with the proceedings at this stage. Since the chargesheet has now been filed in the present case, needless to say, all the contentions of the petitioner can be raised at the time of arguments on charge, which shall be dealt with by the learned Trial Court as per law.

12. Thus, considering the allegations against the petitioner herein as well as taking into account her previous involvement in cases of similar nature, this Court is of the opinion that present case is not a fit case for quashing of criminal proceedings.

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13. Accordingly, the present petition stands dismissed.

14. However, it is clarified that no observation made hereinabove by this Court shall have any effect on the merits of the case during the trial.

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J FEBRUARY13, 2023/kss Digitally Signed By:ZEENAT PRAVEEN Signing Date:15.02.2023 15:07:16