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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 29.01.2025*+ **CRL.M.C. 3404/2022 & CRL.M.A. 14286/2022**

YOGESH SHEGAL AND ANR.Petitioners

Through: Mr. Atul Sharma, Advocate

versus

STATE NCT OF DELHI & ANR.Respondents

Through: Mr. Raj Kumar, APP for the
State.Ms. Nagma Khan and Ms.
Nasmeen, Advocates for R-2**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J**

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'] on behalf of the petitioners seeking quashing of FIR No. 352/2020, registered at Police Station KNK Marg, Delhi for the offences punishable under Sections 376D/354/323 of the Indian Penal Code, 1860 [hereafter '*IPC*'] and the consequential proceedings emanating therefrom.

2. The brief facts of the case, as disclosed from the Status Report, are that on 14.10.2020, the complainant 'R' had lodged a complaint wherein she had stated that on 11.10.2020, at about 11:30 AM, while



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she was on her way to her shop in the market, Yogesh Sehgal (petitioner no. 1), along with his wife Priya (petitioner no. 2), had started beating her. During this altercation, both of them had hit the complainant hard on her private parts and had pressed her breasts. Furthermore, both the accused persons had inserted their fingers into her vagina. According to the complainant, the entire incident had been witnessed by several people in the market, and it was recorded in the CCTV cameras. The complainant had claimed that she had sustained several injury marks on her face, breast, and thighs, and an MLC had been prepared at BSA Hospital, *vide* MLC No. 2203/20. The complainant had also stated that Yogesh Sehgal's wife i.e. petitioner no. 2 herein had previously filed a rape case against the complainant and her husband, Rajiv. On the basis of these allegations, the present FIR was registered, and the investigation was initiated.

3. During the investigation, it was discovered that on 12.10.2020, a Kalandra under Sections 107/150 of Cr.PC had been prepared by ASI Joginder against both parties (First party: Yogesh Sehgal & Priya Sehgal; and Second party: Kamal Rohilla, Radhika & Rajbeer Rohilla) due to a dispute over installing a water motor. On 14.10.2020, the accused Yogesh Sehgal was arrested in the present case, whereas his wife Priya Sehgal was granted anticipatory bail by this Court. During the course of investigation, the complainant had provided a pendrive containing CCTV footage of the incident in question, which had been taken into police possession through a



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seizure memo. The CCTV footage had revealed that a quarrel had occurred between the complainant and the accused persons. On 15.10.2020, the statement of complainant 'R' was recorded under Section 164 of Cr.P.C. before the learned Magistrate. After completion of investigation, chargesheet in the present case was filed.

4. The Status Report also reveals that on a complaint filed by petitioner no. 2 Priya Sehgal, an FIR No. 351/2020 for offences punishable under Sections 376D/354B/323 of IPC had been registered against Rajbeer, Kamal Rohilla, and 'R'. Additionally, on Priya Sehgal's complaint, an FIR bearing no. 372/2019 under Sections 323/354/354B/451/506/34 of IPC had earlier been registered against Jaya Chatterji, Raju Kumar @ Rajiv, Radhika Chatterji, Monika Chatterji, and Tapan. The chargesheet in the latter case had also been filed before the concerned court and was at the stage of prosecution evidence.

5. The learned counsel appearing for the petitioners argues that the petitioners herein have been falsely implicated in this case since they had already lodged a complaint against the complainant herein. It is contended that the allegations which have been levelled and the story which has been put up by the prosecution and the complainant – that the entire incident was captured by the CCTV footage – is not substantiated by any CCTV footage. It is also argued that chargesheet has already been filed in this case, and the I.O. has totally ignored the fact that a perusal of the CCTV footage clearly reveals that no incident as alleged by the complainant herein had taken place. It is



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also stated that no public witness has been cited by the prosecution even though it is alleged that the incident had taken place in the market and there were several persons who had witnessed the incident. Therefore, it is prayed that the present petition be allowed.

6. The learned APP appearing for the State, on the other hand, draws this Court's attention to the statement recorded under Section 164 of Cr.P.C. and states that the victim has substantiated her allegations and has provided detailed information regarding the individuals involved in the sexual assault. He also draws this Court's attention to the MLC of the victim and states that the injuries found on her person, particularly those that were visible on her face, breast, and thighs, indicate that the incident in question indeed had indeed taken place. The learned APP further asserts that the case is listed for arguments on charge, and the contentions raised by the learned counsel for the petitioners, including the issues related to the adequacy of evidence and the handling of the case, can be raised and argued before the learned Trial Court at the time of addressing arguments on charge. Therefore, it is prayed that the present petition be dismissed.

7. This Court has **heard** arguments advanced on behalf of both the parties and has perused the material available on record.

8. Since by way of this petition, the petitioners have sought quashing of FIR, it shall be apposite to note that in case of *State of Haryana v. Bhajan Lal*: 1992 SCC (Cri) 426, the Hon'ble Supreme



Court had 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. Further, the principles which were laid down by the Hon'ble Apex Court, to be followed while adjudicating a petition seeking quashing of criminal proceedings, are 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.”

9. In *Skoda AutoVolkswagen India Private Limited v. State of Uttar Pradesh: 2020 SCC OnLine SC 958*, it was held as follows by the Hon’ble Supreme Court:

“40. It is needless to point out that ever since the decision of the Privy Council in *King Emperor v. Khwaja Nazir Ahmad*, the law is well settled that Courts would not thwart any investigation. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the court will not permit an investigation to go on.

41. As cautioned by this Court in *State of Haryana v. Bhajan Lal*, the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. While examining a complaint, the 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 or in the complaint.

42. In *S.M. Datta v. State of Gujarat* this Court again cautioned that criminal proceedings ought not to be scuttled at the initial stage. Quashing of a complaint should rather be an exception and a rarity than an ordinary rule. In *S.M. Datta*, this Court held that if a perusal of the first information report leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.”

10. 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'. (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 above 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.”

11. After hearing arguments and going through the case file, this Court is of the opinion that in the present case, the contentions which have been raised by the learned counsel for the petitioners primarily are that the basis on which the chargesheet has been filed – that is the evidence collected by the investigating officer – would point out towards innocence of the present petitioners, and therefore, the FIR be quashed. However, in this Court’s opinion, the principles which guide the High Courts while deciding petitions seeking quashing of an FIR have been enumerated in decisions of *Neeharika Infrastructure (P) Ltd. v. State of Maharashtra* (*supra*) and *State of Haryana v. Bhajan Lal* (*supra*), as noted above. The material placed on record, at this stage, reveals that the complainant in her complaint and her statement recorded under Section 164 of Cr.P.C. has levelled specific allegations of commission of sexual assault against the



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petitioners herein. Whether the allegations are false, or whether the CCTV footage reveals the incident in question in a manner as claimed by the complainant, and whether the statements of the witnesses are reliable or not, cannot be decided by this Court in proceedings under Section 482 of Cr.P.C. as the same are essentially triable issues, to be decided on the anvil of examination and cross-examination. Considering the same, the material on record does not lead to a conclusion that the allegations of sexual assault levelled in the present FIR are inherently absurd or improbable.

12. Thus, in view of foregoing discussion, the present petition along with pending application is accordingly dismissed.

13. The petitioners however shall be at liberty to raise all the contentions raised before this Court, at the stage of addressing arguments on charge before the learned Trial Court.

14. It is however clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 29, 2025/zp