

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

% **Pronounced on: 16th March, 2022**

+ **CRL.M.C. 1064/2022 & CRL.M.A.4586/2022 (for stay)**

MR. ABHISHEK GUPTA & ANR.

....Petitioners

Through: Mr. Tanmaya Mehta, Mr. Arjit
Kumar Singh, Ms. Shreya Gupta
and Ms. Vasu Vats, Advs.

Versus

STATE OF NCT OF DELHI & ANR.

.... Respondents

Through: Mr. Sanjay Jain, ASG with Mr.
Amit Gupta, APP and Mr. Padmash
Mishra and Mr. Nishant Tripathi,
Advs. with Inspector Narender
Singh and SI Subhash Chandra.

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. The petition has been filed under Section 482 of the Cr.P.C. praying for the quashing of charge-sheet dated 4th December, 2021 emanating from FIR No.214/2021 dated 30th October, 2021 registered with the Crime Branch, Rohini, Sector 18, Delhi and all proceedings emanating therefrom. The FIR No.214/2021 was registered with the Crime Branch, Rohini on the basis of a complaint that was lodged with them on 19th October, 2020 by the respondent No.2 by way of an email addressed to the Commissioner of Police, Delhi.

2. Mr. Tanmay Mehta, learned counsel for the petitioner submitted that the entire case was a product of *mala fide*, falsehood and absurdity and this was a case of sheer abuse of the criminal process. It was his contention that the case was covered by the judgment of the Supreme Court in *State of Haryana and Ors. Vs. Bhajan Lal* 1992 Suppl. (1) SCC 335 and this Court ought to quash the charge-sheet in accordance with the guidelines incorporated in Para No.102 of the said judgment. It was further submitted that the entire FIR and the charge-sheet dated 4th December, 2021 was so absurd and inherently improbable that it was liable to be quashed.

3. The first contention raised by the learned counsel was that property bearing No.17/43, Punjabi Bagh, Delhi belonged to Mr. Sunil Datt and Mr. Ashok Kumar, whereas the complainant who had been divorced by Mr. Sunil Datt way back in 2000 was claiming a right to the ground floor. She could produce no document to reflect that she had been in possession of the ground floor for the last two years. Moreover, after the husband and wife had divorced, it could not be reasonably believed that 17 years later the respondent No.2 would have been given the keys of the ground floor by the ex-husband. It was submitted that Smt. Janak Dulari, the aunt of Mr. Sunil Datt and Mr. Ashok Kumar, who are brothers, is living in the first floor of the same property and there were some disputes *inter se* parties. The learned counsel contended that the petitioners have been unnecessarily dragged into these disputes.

4. The learned counsel further submitted that in the initial complaint and PCR calls, the petitioners had not been named. The presence of the petitioner No.2 Ajay Gupta, at the site on 28th January, 2020 was on

account of the fact that the brothers, who were residents of Birmingham, United Kingdom had asked him to go to the premises at the instance of Smt. Janak Dulari, their aunt and he had only accompanied the Police. Therefore, there could be no trespass when the petitioner No.2 had gone to the property on that occasion. Subsequently, there were other complaints made to the Police against some others, such as one Mr. Prakash Chand Sharma.

5. There were complaints by the respondent No.2 against “*Uparwali*” which would be only against Smt. Janak Dulari, who resided on the first floor. Furthermore, there were conflicting details given in the various complaints by the respondent No.2, sometimes alleging that Mr. Prakash Chand Sharma had been sent by Smt. Janak Dulari and sometimes alleging that he had gone there at the behest of the petitioners. There were other accusations against Mr. Santosh Kapoor, who is the Chartered Accountant of Mr. Sunil Datt and Mr. Ashok Kumar and, therefore, the petitioners have nothing to do with him. These contradictions were sufficient to falsify the complaint of respondent No.2.

6. It was submitted by the learned counsel that the FIR had been registered for the commission of offences under Section 120B, 451, 323, 506, 509, 341 read with Section 34 IPC. Yet, the complainant has not disclosed any material on the basis of which any of these offences were made out against the petitioners. Hence, it was submitted that the charge-sheet be quashed.

7. Mr. Sanjay Jain, Additional Solicitor General (ASG) for the respondent No.1/State appearing on advance notice, on the other hand,

submitted that this petition ought to be dismissed at the threshold. Though the charge-sheet had been filed, cognizance was yet to be taken by the learned Metropolitan Magistrate. Moreover, all the arguments submitted by the learned counsel were relevant for determination of the charge that would have to be framed.

8. Relying on the judgment of the Supreme Court in *K. Neelaveni Vs. State* 2010 (11) SCC 607, the learned ASG for the respondent No.1/State submitted that since there was discretion vested with the Magistrate to accept or reject the conclusions drawn by the Investigating Officer, the petition was premature as it had been filed without waiting for an order to be passed by the Magistrate in terms of Section 190 of the Cr.P.C. It was further submitted that the complainant/respondent No.2 is a single woman, whereas the petitioners were land-grabbers. It is further submitted that there were 11 accused as per the charge-sheet in the case. Moreover, the relationship between the complainant/respondent No.2 and her husband Mr. Sunil Datt was irrelevant to the case at hand. Further, the Investigating Officer had recorded in the Final Report that the complaint filed by Smt. Janak Dulari against the respondent No.2 stood closed. The complaint of respondent No.2 was not being acted upon by the Police of Police Station Punjabi Bagh, Delhi which prompted her to send a letter to the Commissioner of Delhi Police. There was no *mala fides* in such action.

9. When there were allegations of molestation, the local Police were bound to have investigated the matter, which they failed to, violating the directions of the Supreme Court in *Lalita Kumari Vs. Govt. of UP & Ors.* 2012 (4) SCC 1. Therefore, it was but natural for the Commissioner of

Police, Delhi to mark the complaint to the Crime Branch, and he had acted completely within the parameters of law as had the Crime Branch, when they registered the instant FIR. As regards, the minor discrepancies in the statements of the respondent No.2, she would be able to explain them anyway at the time of trial. All the 11 accused were connected with one another, inasmuch as it was found that it was the petitioner No.1 Mr. Abhishek Gupta who had written down the complainant of Smt. Janak Dulari in his own hand. Mr. Sunil Datt and Mr. Ashok Kumar were yet to be arrested in the matter. Thus, investigations too, were pending. As it was apparently a case in which property was being sought to be usurped from the possession of a single woman who is living in the ground floor peacefully with her young son, the Crime Branch rightly charge-sheeted all of them, including the petitioners.

10. In rejoinder, the learned counsel for the petitioners has placed reliance on the judgment of the Supreme Court in *Anand Kumar Mohatta Vs. State (NCT of Delhi)* (2019) 11 SCC 706.

11. Heard learned counsel for the petitioners as well as the learned ASG and considered the materials on record as well as the cited judgments.

12. The Supreme Court in *Bhajan Lal* case (supra), after considering several judgments, distilled the principles governing the exercise of the extraordinary power of the court under Article 226 of the Constitution of India or its inherent powers under Section 482 of the Cr.P.C. Several categories of cases by way of illustrations were also listed out. It would be useful to reproduce the same for ready reference below:

“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 extraordinary 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 FIR 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 FIR 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.”

13. At the same time, the Apex Court also recorded a note of caution in the following words:

“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.”

14. It is very clear that the decision to exercise or not to exercise the inherent powers under Section 482 of the Cr.P.C. would be predicated on the facts of each case but while considering the facts, the court cannot embark on an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR. When seen on these touchstones, it is clear

that the entire thrust of the arguments of the learned counsel for the petitioners is on the genuineness of the allegations made against the petitioners. Thus, there has been an emphasis on the fact that though the incident had occurred in Punjabi Bagh, it was an year later that the FIR was registered by the Crime Branch; that the possession of the respondent No.2 of the ground floor of property No.17/43, Punjabi Bagh (West), Delhi was unexplained on the basis of documents; that the relationship between the respondent No.2 and her husband was strained and it was not possible to believe that he would have permitted her to enter the premises by handing over the keys to her; that there were contradictions in the various complaints given to the Police; that the names of the petitioners and others were randomly taken and that there was *mala fide* in the registration of the complaint by the respondents and the entire case was absurd.

15. Suffice it to note here that these submissions reflecting on the reliability of the statements of the respondent No.2 or the genuineness of her complaint cannot be subject matter of the present proceedings. The court cannot weigh the material in such a fashion to determine the question of truth in the complaint. As observed in ***Bhajan Lal*** case (supra), it is when the allegations made in the FIR, if taken at face value alongwith other materials accompanying the FIR, do not disclose an offence, that the court would be justified in quashing the FIR. If the allegations made in the FIR or complaint or the evidence collected, though remaining uncontroverted, do not disclose the commission of an offence, then the FIR and charge-sheet could be quashed. Finally, if the allegations in the FIR or

complaint were inherently improbable, then the FIR and charge-sheet could be quashed. None of these situations prevail in the present case.

16. It is meaningless to argue that the respondent No.2 could not produce documents for her authorised entry into the premises, as the FIR is not against her. Admittedly, the petitioner No.2 claims to have gone to the premises (though alongwith the Police) and had found her there. The *inter se* rights of the parties i.e., the respondent No.2, her son and Mr. Sunil Datt, are for them to resolve. The petitioners cannot question whether or not Mr. Sunil Datt had allowed the mother and son entry into the ground floor as the son had sought such a right from his father, as averred by the respondent No.2 in her complaint.

17. The respondent No.2 has clearly stated that while she was staying at property No.17/43, Punjabi Bagh on 28th January, 2020, when she was in the house with her son Mr. Sahil Datt, petitioner No.2 Ajay Gupta of Ganpati Builders alongwith his goons forcibly entered her house and threatened her alongwith Smt. Janak Dulari, intending that they would be forced to vacate the house. They attempted to physically assault her. There was a video clipping of the incident and the matter was immediately reported to the Police vide DD No.50A dated 28th January, 2020. On the next day, both petitioner No.2 Ajay Gupta and his son petitioner No.1 Mr. Abhishek Gupta again came to the house and threatened them, again intending with these threats, that the respondent No.2 and her son would vacate the premises. The incident was again brought to the notice of the Police. Another specific incident has been described as having occurred on 4th February, 2020, when one Mr. Prakash Chand Sharma came to threaten

them and when the Police arrived, he apologized and left. There was also an allegation that the petitioner No.2 had sent one drunken man, namely Mr. Rajan Makkar, to the house when respondent No.2 was alone in the house and his vulgar actions had caused her much distress. Smt. Janak Dulari and her brother had also locked the main gate and abused her. On 20th August, 2020, Mr. Santosh Kapoor of Chattarpur alongwith a lady whose identity remained unknown, tried to forcibly open the main gate of the house and abused the respondent No.2 and her son, this time the intent being also that the respondent No.2 would be forced to withdraw the existing criminal cases under Sections 468, 467 and 420 IPC against Mr. Ashok Kanda (her brother-in-law) and the son-in-law of Smt. Janak Dulari and to accept a fabricated divorce decree.

18. If these allegations were to be taken at face value or they were to be treated as uncontroverted, they disclose the commission of various offences by the accused persons including the petitioners in cohort with each other. None of these allegations appear to be absurd or inherently improbable.

19. Even if the decision of the Supreme Court in *Anand Kumar Mohatta's* case (supra) was to be followed, in that the petition for quashing under Section 482 can be considered even after the filing of the charge-sheet, the facts distinguish that case from the present. In that case, there were several facts and circumstances which on the face of it disclosed a civil matter regarding refund of a payment of Rs.1,00,00,000/- by the complainant therein to the appellants therein, where the appellants were the owners of the immovable property in respect of which a Development

Agreement had been entered into by them with the respondent No.2 and it was noted that the FIR was based on the allegations of misappropriation though no actual demand had been made by the respondent No.2 and the appellants continued to have rights in their property which allowed the petitioner No.1 to transfer it to his wife without violating the law.

20. It is clear, therefore, that the facts of each case would determine the exercise of the discretion vested in the court to quash criminal proceedings in order to prevent abuse of process of court. As noticed hereinabove, there is no ground to exercise those powers in the present case. It would be open for the accused, being the petitioners, to make their submissions on the material placed before the learned Trial Court to seek discharge, if at all no offence was made out against them.

21. In the light of these discussions, no merit is found in the petition which is dismissed *in limine*.

22. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

MARCH 16, 2022
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