

**The High Court Of Madhya Pradesh****WP-8653-2021***(SUSHIL KUMAR CHANDEL Vs THE STATE OF MADHYA PRADESH AND OTHERS)***Jabalpur, Dated : 30-06-2021****Heard through Video Conferencing.**

Shri Sanjay Kumar Patel, learned counsel for the petitioner.

Shri Devendra Gangrade, learned P.L. for the respondent/ State.

Petitioner has filed this present writ petition making a prayer in this petition for quashing First Information Report registered against him dated 06.02.2021.

Counsel for the petitioner submitted that First Information Report was malafidely registered against him. It is submitted by him that petitioner has given an application to Police Station Dindori on 27.01.2021 showing his apprehension for false implication in a criminal case by complainant. Thereafter, again he has given an application to Police raising apprehension of false implication on 6.2.2021. Petitioner had gone to collect rent on 6.2.2021. On the said date, complainant did not pay the rent and started abusing the petitioner and also assaulted him. When petitioner came to Police Station to repeat the incident concerned Police Officer called complainant and thereafter, she had lodged false False Information Report against the petitioner under Sections 354, 7 and 8 of the Indian Penal Code. Counsel for the petitioner made a prayer to quash the First Information Report in the light of the judgments passed by the Apex Court in the case of *State of Haryana and others Vs. Ch. Bhajanlal and others reported in AIR 1992 SC 604*, para 108(7) and *Kapil Agarwal and others Vs. Sanjay Sharma and others* decided on 1.3.2021.

Learned counsel for the State has opposed the prayer of the petitioner. It is submitted by him that *prima-facie* case is made out against the petitioner, charges had been framed against him by the trial Court. Petitioner has already challenged the charges before this Court by filing criminal revision, however, this fact has been suppressed by him in writ petition. Since *prima-facie* case is made out against petitioner, therefore, this Court may not interfere in the writ petition.

Heard learned counsel for the parties.

Counsel for the petitioner has relied on judgment reported in ***AIR 1992 SC 604- State of Haryana and others Vs. Ch. Bhajanlal.***

Para 108(7) of the said judgment is quoted below:

"108(7) Where a criminal proceeding is manifestly attended with malafide and or where the proceeding is malaciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Counsel for the petitioner has also relied on judgment passed by the Apex Court in the matter of ***Kapil Agarwal and others vs. Sanjay Sharma and others*** deiced on 1.3.2021.

Apex Court in the matter of **Ch. Bhajanlal** has held that power of quashing criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. In guidelines issued under the said Act, it has been held that if a criminal proceeding is manifestly attended with malafide or proceedings is malaciously instituted with an ulterior motive for wreaking vengeance, same shall be quashed. **In case of Kapil Agarwal and others**, litigation under Section 138 of the Negotiable Instrument Act was pending between the parties and complainant has also filed an

application under Section 156 (3) of the Code of Criminal Procedure.

First Information Report has been lodged after delay of 3 years from filing complaint under Section 156(3) of the Code of Criminal Procedure. Considering the pending proceedings of civil nature and establish malafides between the parties, Apex Court has quashed the criminal proceedings under Section 402/406 of the Indian Penal Code.

In this case, petitioner has alleged that First Information Report has been lodged malafidely as petitioner was asking rent from complainant. Applications which were filed by the petitioner prior to lodging of First Information Report against him is available on record. Only application's filed at Police Station is not enough to show that First Information Report lodged against petitioner is manifested with malaciousness. Claim of the petitioner that there was dispute of rent is yet to be established. No civil litigation between the parties in respect of rent of accommodation is pending. Case of the petitioner is to prove malafide of fact. Malafide of fact cannot be examined by this Court in this writ petition under Article 226 of the Constitution of India. Petitioner may raise grounds available to him before the trial Court. On basis of First Information Report and statement of prosecutrix recorded under Section 164 of the Code of Criminal Procedure in the Court and also her statement before the Police under Section 161 of the Code of Criminal Procedure, *prima facie* make out a case against the petitioner.

In view of the aforesaid facts and circumstances of the case, writ petition filed by the petitioner is **dismissed**.

(VISHAL DHAGAT)  
JUDGE

**DUBEY/**

