

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No.1126/2021

Kumbha Ram Godara S/o Shri Moola Ram Godara, Aged About 62 Years, resident of Village Gaju, Tehsil Mundva, District Nagaur.

----Petitioner

Versus

1. State Of Rajasthan-State
2. Maya W/o Seva Ram, By Caste Chowkidar (Bavari), R/o Bavariyo Ka Bas, Gaju, Tehsil Mundva, District Nagaur.

----Respondents

For Petitioner(s) : Mr.R.S.Choudhary, Adv.
Mr.J.K.Suthar, Adv.

For Respondent(s) : Mr.Vikram sharma, PP
Mr.Bhanwar Singh Rathore, Adv.
Mr.Nem Singh, Add. S.P., CID-CB,
Ajmer.

HON'BLE MR. JUSTICE MANOJ KUMAR GARG

Order

Order Reserved on : 21/04/2023

Order Pronounced on : 28/04/2023

The present misc. petition has been filed by the petitioner for quashing of FIR No.216/2020, registered at Police Station Kuchera, Distt. Nagaur for offence under Sections 450, 354, 384, 376, 504 of IPC and Sections 3(1)(r), 3(1)(s), 3(1)(w)(ii), 3(2)(v) & 3(2)(Va) of SC/ST (Prevention of Atrocities), Act.

Brief facts of the case are that the respondent No.2 submitted a written report before the SHO, Police Station Kuchera stating inter alia therein that she and her husband-Sewa Ram are residing in the field of one Shripal Manda at village *Dhadhariya Khurd* in a hut and they do agricultural work there. She stated

that on 16.11.2020 around 7.30 to 9.00 pm, Kumbha Ram (petitioner) came to her *dhani*. At that time, she was alone and when she asked him the reason of coming, he told her that since her husband is out of town, he has come to have sex with her. She objected the same but the accused had torn her cloths and committed rape with her. Accused also abused her by using filthy caste oriented language. It was further alleged that accused also threatened her for dire consequences if she would disclose the incident to anyone. It was also stated in the complaint that the delay in submitting the report was because the accused was threatening to kill her and her family members and therefore, she was scared. On the basis of this report, the police registered an FIR for offence under Sections 450, 354, 384, 376, 504 IPC and Sections 3(1)(r), 3(1)(s), 3(1)(w)(ii), 3(2)(v) & 3(2)(Va) of SC/ST Act.

Learned counsel for the petitioner submits that earlier, on three occasions, the police investigated the case thoroughly and had come to a conclusion that no offence was made out against the petitioner. Now, the investigation has been handed over to CID (CB) under the pressure of political person and the fourth Investigating Officer is investigating the matter. It is argued that the Department of Home, Government of Rajasthan has issued a Circular dated 06.01.2019, in which, the repeated change of investigation has been disapproved and it has been stipulated in the said Circular that investigation of one case shall not be transferred more than three times under any circumstances. Learned counsel further argued that there is delay in lodging the FIR. The occurrence, as alleged by the prosecutrix, took place on

16.11.2020, whereas the FIR was lodged on 01.12.2020 i.e. after about 14 days of the incident. This delay has not at all been explained satisfactorily by the prosecutrix. In these circumstances, the impugned FIR registered against the petitioner may be quashed. In support of his arguments, learned counsel for the petitioner has placed reliance on the order passed by coordinate Bench of this Court in the case of *Shishpal Vs. State of Raj. & Anr.* [S.B.Criminal Misc. Petition No.4966/2022], decided on 14.09.2022.

Learned Public Prosecutor and learned counsel for the complainant have vehemently opposed the prayer of the petitioner and submitted that earlier, the investigation was not conducted in proper manner and for a just decision in the matter, the Director General of Police has directed for re-investigation. Looking to the nature of offence, the FIR may not be quashed.

I have considered the arguments advanced before me and carefully gone through material available on record as well as case-diary and impugned notice.

The prosecutrix specifically mentioned in the FIR as well as the statements under Sections 161 & 164 Cr.P.C. that the petitioner committed rape with her and he also abused her by using filthy caste oriented language. According to the perusal of factual report of the police, there are 13 cases registered against the petitioner. The first investigation was changed on the request of the petitioner. Now, the police after thorough investigation has found the offence under Section 354-B IPC and Sections 3(1)(r)(s) (w)(ii), 3(2)(v)(va) of SC/ST Act prima facie proved against the petitioner. The Home Department, Government of Rajasthan has

issued a Circular No.23(60)Grah-5/2012 on 18.08.2022 wherein it is mentioned that change of Investigating Officer by a competent authority cannot be done more than 3 times, in which investigation of the first Investigating Officer will not be included. Thus, apart from the first Investigating Officer, the Investigating Officer can be changed thrice. In the instant case, the investigation has been conducted four times, which is permissible as per Circular dt. 18.08.2022.

Hon'ble Supreme Court in the case of **State of Haryana & Ors. Vs. Choudhary Bhajanlal & Ors.** : [1992 Suppl. (1) SCC 335], laid down guidelines for exercising inherent powers under Section 482 Cr.P.C. to quash FIR and criminal proceedings. The Court held:

"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 uncontested 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.

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."

Yet again, Supreme Court, in case of **Janta Dal Vs. H.S. Choudhary** : [(1992) 4 SCC 305], while relying on Choudhary

Bhajanlal's case (supra), held:

"This inherent power conferred by Section 482 of the Code should not be exercised to stifle a legitimate

prosecution. The High Court being the highest Court of a State should normally refrain from giving a premature decision in a case wherein the entire facts are extremely incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved whether factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to the cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. This Court in State of Haryana v. Ch. Bhajan Lal and Ors., to which both of us were parties have dealt with this question at length and enunciated the law listing out the circumstances under which the High Court can exercise its jurisdiction in quashing proceedings. We do not, therefore, think it necessary in the present case to extensively deal with the import and intendment of the powers under Sections 397, 401 and 482 of the Code."

In another decision in the case of **Pratibha Vs. Rameshwari Devi & Ors**, reported in JT 2007 (11) 122, the Hon'ble Apex Court held that while exercising the extraordinary jurisdiction under Section 482 Cr.P.C., the High Court cannot go beyond the allegations made in the F.I.R or rely upon extraneous consideration. For the purpose of finding out the commission of a cognizable offence, the High Court is only required to look into the allegations made in the complaint or the F.I.R.

In another case of **N. Soundaram Vs. P.K. Pounraj & Anr.** : [(2014) 10 SCC 616], Supreme Court, while reiterating the principles laid down in Bhajan Lal (supra) on scope of exercise of powers under Section 482 Cr.P.C., held:

"It is well settled by this Court in a catena of cases that the power under Section 482 CrPC has to be exercised sparingly and cautiously to prevent the abuse of process of any Court and to secure the ends of justice [See State of Haryana v. Bhajanlal]. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a *prima facie* decision unless there are

compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482, CrPC [See MCD v. Ram Kishan Rohtagi]. An investigation should not be shut out at the threshold if the allegations have some substance. [See Vinod Raghuvanshi v. Ajay Arora]."

In the case of **M/s. Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra**, reported in 2021 CRILJ 2419, Hon'ble Apex Court, on scope of exercise of powers under Section 482 of Cr.P.C., in Para 23 (xii) & (xv) observed as under :-

"xii) 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. 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;

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 the allegations in the FIR disclose the commission of a cognizable offence or not. The Court is not required to consider on merits whether the merits of 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."

The order cited by learned counsel for the petitioner in the case of Shishpal (supra) is altogether different from the facts of the present case and is not applicable to this case. In the said case, there were photographs and videos recovered by the

Investigating Officer during investigation which left no room for doubt that the prosecutrix was having consensual physical relation with the petitioners therein.

In the facts and circumstances of the case so also in the light of the judicial pronouncements of Hon'ble Apex Court, since the FIR prima facie discloses commission of the offence, therefore, no case for quashing the FIR is made out.

Accordingly, the criminal misc. petition is hereby dismissed. Stay petition also stands dismissed.

(MANOJ KUMAR GARG),J

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