

(2020) 01 DEL CK 0549

In the Delhi High Court

Case No : Criminal Writ Petition No. 3140 Of 2019

Amit Bhardwaj

APPELLANT

Vs

State & Anr

RESPONDENT

Date of Decision : 28-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Code of Criminal Procedure, 1973 — Section 155, 155(2), 156(1), 482, 483

Indian Penal Code, 1860 — Section 34, 120B, 323, 341, 406, 420, 506

Citation : (2020) 01 DEL CK 0549

Hon'ble Judges : Brijesh Sethi, J

Bench : Single Bench

Advocate : Puneet Mittal, Dinesh Yadav, Manoj Kumar, Suchita Kaintura, Sanjay Lao, Karanjeet Sharma, Shoeb Alam, Pallavi Pratap

Final Decision : Dismissed

Judgement

Brijesh Sethi, J

1. This is a writ petition under Article 226 & of the Constitution of India r/w. Section 482 & 483 Cr.P.C. filed by the petitioners for quashing and cancelling the FIR No.219/2019 u/s 341/323/506/34 IPC, PS Prashant Vihar, New Delhi.

2. While praying for quashing of FIR, the Ld. Counsel for the petitioner has submitted that petitioner among others have been named as accused in various FIRs in different States of India wherein the allegations are essentially of a civil nature, being given criminal colour, registered across Delhi, Chandigarh, Kolkata, Maharashtra and Bengaluru. The nature of allegations are common in all the FIRs that the petitioner, in conspiracy with other accused persons induced the complainant(s) to invest in Bitcoin (crypto currency), through the website <http://gainbitcoin.com> operated by the company Variabletech Pvt. Ltd., Singapore, which is owned by the petitioner and other accused persons. Petitioner represented to the complainant that the Return of Investments (ROI) in Bitcoin was very high. The complainant was promised that 10% of the total number of

Bitcoins purchased shall be transferred to the Bitcoin wallet of the complainant every month continuously for 18 months for the purpose of cloud mining of Bitcoins. The return as promised by the petitioner and other accused persons was credited to the complainant initially for some months but was stopped thereafter and on being contacted, the petitioner informed that due to some technical problems with Bitcoin mining in China and Singapore, they were unable to give the assured returns. It is further submitted that instead, the petitioner offered to give another crypto currency-M-cap. According to complainant the M-cap was not even worth 10 cents. It is alleged that in this manner petitioner and other accused persons cheated the complainant and committed offences under Sections 406/420 r/w. Section 120-B IPC. The petitioner was arrested by Pune police, in case related to alleged Bitcoin Fraud on 05.04.2018. Thereafter, police officials of other cities started obtaining custody of the petitioner and aggrieved thereof petitioner had filed Writ Petition (Crl.) no. 304/2018 before the Hon'ble Supreme Court and the Hon'ble Supreme Court granted conditional bail to the petitioner vide order dated 03.04.2019.

3. It is further submitted that the respondent no.2 knew very well that petitioner was granted conditional bail and in order to take advantage of conditional bail, the respondent no.2 got registered the present FIR in connivance with officials of Delhi police.

4. It is further submitted that the day of occurrence has not been mentioned in the FIR and information was received at police station on 28.08.2019 at about 23.41 hrs which is almost 2½ months of the alleged incident which renders its genuineness doubtful. It is further submitted that information noted vide DD no. 67A at about 23:41 hours and immediately the FIR was registered without inquiring into the facts and allegations made in the complaint, which clearly shows that some high-ranking officials from Delhi Police are also involved with the respondent no.2.

5. It is further submitted that no offence u/s. 341 of IPC is made out as alleged in the FIR by the respondent no.2 because as per the FIR, he was present there alongwith Mr. Dinesh Bhardwaj and Mr. Tarun Gupta and it is not possible for Gunmeet Dabas to stop his way. It is submitted that no offence u/s. 323 IPC is made out because no such incident of slapping and pushing was committed by the petitioner. Even no offence under Section 506 IPC is made out because petitioner was not present at the spot and, therefore, no question to threaten respondent no.2 arises. It is, therefore, prayed that FIR No.219/2019 u/s 341/323/506/34 IPC, PS Prashant Vihar, New Delhi be quashed, in the interest of justice.

6. On the other hand, Ld. APP for the state has opposed the petition and submitted that allegations levelled by the petitioner in the present petition are false and frivolous and prosecution has rightly registered the present FIR. It is, therefore, prayed for dismissal of the petition.

7. Ld. Counsel for respondent no.2 submitted that scope of writ was limited and the writ petition has become infructuous after the filing of the Charge-sheet by the police. There was no delay in approaching to the police. The informant promptly informed the police about the incident and even followed up the matter with the police. Even assuming there would have been a delay in lodging FIR, the same cannot be a ground for quashing of the same. The informant repeatedly requested the police to see the CCTV footage of the incident and take appropriate action, yet the police diluted the case and filed an NCR u/s. 155 CrPC. On 07.08.2019, the informant protested to this and sought addition of charges. Status report dated 24.11.2019, submitted in Court by the police during hearing on 25.11.2019 discloses that CCTV recording shows informant being slapped. It is disclosed by the investigating officer that charge sheet has been filed against the petitioner and the other accused seen in the CCTV. It is submitted that issues regarding imposition of defective Section in charge sheet, delay in lodging FIR or omission in police investigation etc. can only be raised as defences by the accused/ petitioner during the trial. It is submitted that quashing court will not be justified in examining the reliability or genuineness of the allegations. Hon'ble Supreme Court in "State of Haryana v. Bhajan Lal, 1992 Supp. (1) SCC 335" has held that the power to quash has to be exercised sparingly and in rarest of the rare cases. It is lastly submitted that no grounds are made out for interference in the matter and the present writ petition may be dismissed.

8. I have considered the rival submissions and also gone through the record. A case FIR No.219/2019 u/s 341/323/506/34 IPC was registered at PS Prashant Vihar, New Delhi on the basis of statement made by complainant Sh. Vipin Kohli S/o. Sh. Ashok Kumar Kohli R/o. House No.6, Road No.42, West Punjabi Bagh, New Delhi-110026.

9. The only question which is required to be examined is whether the FIR bearing no. 219/2019 does not prima facie show commission of any offence. The Hon'ble Supreme Court in State of Haryana v. Bhajan Lal, 1992 Supp. (1) SCC 335, has held that power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that to in the rarest of rare cases. Supreme Court in Bhajan Lal's case (Supra) has categorically laid down guidelines as to when a criminal proceedings should be quashed and it runs as follows:-

"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."

10. Perusal of the FIR in question prima facie reveals commission of offence under Sections 341/323/506/34 IPC by the petitioner. The complaint filed by the petitioner on the basis of which chargesheet has been filed runs as under;

To the SHO, Police Station Rohini, Sector-9, Prashant Vihar, Delhi-110085.
SUBJECT: COMPLAINT AGAINST AMIT BHARDWAJ S/O MAHENDRA KUMAR R/O. 44, SAHIPUR MARKET, SHALIMAR BAGH, NEW DELHI AND HIS GUNDAAS (HENCHMAN) TO BURRY ME TWO YARDS BELOW THE GROUND IF I ASK MONEY WHICH IS NOW RS. 90 CRORE LOOTED BY HIM THROUGH FRAUDULENT SCHEME OF BITCOIN. Dear Sir, I, Vipin Kohli S/o Mr. Ashok Kumar Kohli R/o H.No. 6, Road No. 42, West Punjabi Bagh, New Delhi - 110026 had made the investment of Rs. 4.45 crore. I bought 1350 BITCOINS which in return now is 1850 BITCOINS as per value now is above Rs. 90 Crore. From his documents related to investment

of Amit bhardwaj dated July 2016, to February 2017, which was a complete fraud and I filed a complaint to Cyber Cell, EOW on which an FIR was registered dated 15/05/2018 Case No. 0061. Amit Bhardwaj has been granted conditional bail by Hon'ble Supreme Court and he has to report on every Monday at Shalimar bagh, police station. Since last week Amit Bhardwaj sent a feeler to woe through a person that whether I can compromise if he makes good my wrong full losses. The Cyber Cell within special cell has not been able to make any recovery so far and I am going through extreme financial hardship. So I agreed to his offer. A meeting was fixed at hotel Crown Plaza where, I went with my well wisher and my friend Tarun Kumar who is also a complainant in Amit Bhardwaj case FIR No. 35/2018 to discuss with him the modalities of payment but unfortunately to my utter shock Amit Bhardwaj did not turn up himself but sent professional Gundas led by -1 Gurmeet Dabbas, Rasulpuriya alias Nishu whose photo I am attaching who is reputedly a contract killer mobile number 9212959530. The Dabas rather than talking about setting the losses straight away threatened me to burry two yards below the ground if I accept any money from Amit Bhardwaj and also said if I want any "salamati" of my own life and my family members. He also abused me in extremely vulgar manner and threatened me to forget my money and keep out of way of Amit Bhardwaj and associates. He mocked at me by registering an FIR what I have got other than few months of jail to Amit Bhardwaj that's it. It is submitted that complaint given by me in above said police station on 20/06/2019 some facts not mentioned in my first complaint because I am under tremendous fear and due to this I am not mentioned the proper facts of the case. It is submitted that Amit Bhardwaj's professional Gundas Gurmeet Dabas and Rasulpuriya @ Nishu threatened me and stated to me to forget your money instead you have to give double money to my boss Amit Bhardwaj otherwise I kill you and withdraw your complaint as this is a trailer today will show you complete picture in future. Sir the above incident happened at Coffee shop in Hotel Crown Plaza, Rohini, time 11:30 am will 2 pm, dated 10.06.2019. You can also get the camera recording of the same from the hotel itself where you can see the whole thing. That when we tried to leave the hotel premises they tried to stop our way. When we try to walk away as we were in fear of our lives they pushed me and my friend Tarun Kumar and punched me twice on my chest. And then they threatened us that we have pay double for our legal action and we should we stay away from any further complaints. It is requested to take legal action against Amit Bhardwaj and his associates and registered the FIR in appropriate, Section of Indian Penal Code'.

11. Perusal of the above complaint, thus, reveals that complainant was not only threatened that he would be killed but was also stopped from leaving the hotel. He was also punched twice on the chest and was also threatened that he should not file any further complaint. The allegations, thus, prima facie show commission of offences under Sections 341/323/506/34 IPC. A perusal of the FIR, thus, prima faice discloses commission of a cognizable offence and if the said FIR is read as a whole it cannot be said that it does not constitute any

offence at all. According to the prosecution, a chargesheet for the above offences has also been filed before the Ld. Trial Court.

12. In view of the above allegations appearing on record which prima facie shows commission of a cognizable offence and keeping in mind the law laid down by the Hon'ble Supreme Court in Bhajan Lal's case (Supra), no grounds are made out to quash the FIR No.219/2019 u/s 341/323/506/34 IPC, PS Prashant Vihar, New Delhi. The petition is, therefore, dismissed and stands disposed of accordingly.