

(2025) 10 DEL CK 1271

In the Delhi High Court

Case No : Criminal Miscellaneous Petition No. 4852 Of 2025

Atharva Chaudhary & Anr.Vs State Nct Of Delhi & Ors.

Date of Decision : 14-10-2025

Acts Referred:

Constitution of India, 1950 — Article 226 Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 528

Code of Criminal procedure, 1973 — Section 91, 155(2), 156(1), 161, 164, 173, 239, 482

Indian Penal Code, 1860 — Section 34, 323, 341, 354, 354A, 506, 509

Transgender Persons Act, 2019 — Section 18(d)

Citation : (2025) 10 DEL CK 1271

Hon'ble Judges : Ravinder Dudeja, J

Bench : Single Bench

Advocate : Amritananda Chakravorty, Sitamsini Cherukumalli, Tavleen Kaur Saluja, Yudhvir Singh Chauhan

Final Decision : Disposed Of

Judgement

Ravinder Dudeja, J.

1. This is a petition under Section 482 of the code of Criminal procedure, 1973 ["Cr. PC"] read with section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 ["BNSS"], filed by the petitioners with the following reliefs:

a. Quash FIR No. 389 of 2023 dated 22.08.2023 at PS Maidan Garhi, and the charge sheet dated 21.11.2023, and all proceedings emanating therefrom;

b. Quash and set aside the Impugned Order dated 20.06.2022 passed by the Ld. Metropolitan Magistrate -04, South District, Saket Courts, Delhi summoning the Petitioners in Cr. Case No. 6594 of 2023 titled 'State v. Atharva Chaudhary & Anr'."

FACTUAL MATRIX

2. Petitioners are a young couple, residing in Flat No. 15, Hargovind Enclave, Chhatarpur, Delhi. Respondents No. 2 to 4, who reside in the same building on

the second floor, allegedly harassed and abused the petitioners, particularly, petitioner No. 1 on account of his transgender identity.

3. Cross FIRs have been lodged with respect to the same incident that occurred on 20.08.2023. As per allegations made in FIR No. 388/2023 dated 22.08.2023, registered at PS Maidangarhi, under Sections 323/341/506/354-A/34 IPC on the basis of the complaint made by petitioner No. 2, when the petitioners were returning to their home after dinner, a scuffle broke out and respondents No. 3 & 4 fought and slapped petitioner No.1 and inappropriately touched petitioner No. 2. Further, respondent No. 3 hit petitioner No. 1 on the head with a steel/iron bucket. Respondent No. 2 also assaulted petitioner No. 2. Petitioner No. 2 further alleged that petitioner No. 1, being a transgender, was frequently commented upon by respondents No. 2 to 4. Petitioner No. 2 was medically examined at AIIMS Trauma Centre and the MLC reflects that she has suffered lacerated injuries at the bridge of her nose.

4. Upon completion of investigation, charge sheet was filed against the respondents under Section 323/341/354-A/506/509 IPC and under Section 18 (d) of the Transgender Persons Act, 2019.

5. A cross FIR No. 389/2023 (hereinafter referred to as "Cross FIR") dated 22.08.2023, under Section 323/341/506/354-B IPC was registered at PS Maidangarhi on the basis of complaint filed by respondent No. 2, wherein, the petitioners herein were implicated. It was alleged that on 20.08.2023 while respondents No. 2 to 4 came out of the house due to power cut, the petitioners abused respondent No.

2. Petitioners also got into a fight with respondents No. 3 & 4.

6. On completion of investigation, charge sheet was filed in cross FIR No. 389/2023, under Section 323/341/506/34 IPC.

7. The trial court took cognizance of the offence in case FIR No. 389/2023 vide impugned order dated 20.06.2024, which reads as under:-

"20.06.2024

Present: Ms. Priyanka, Ld. APP for the State.

Accused persons are not summoned yet.

IO/ASI Radhey Shyam in person.

SHO/Inspt. Sanjay in person.

Matter is listed for consideration.

Reply of IO filed in compliance of order dated 02.04.2024. As per the report of the IO, the accused Atharva Chaudhary @ Sapna is still undergoing sex reassignment surgery and the same has not been completed yet as per the report of the concerned doctor.

In light of the same, it is submitted by the IO Section 354 IPC has not been invoked in the instant charge sheet as both the accused persons are female for the purposes of law as it now stands and accordingly the said section cannot be invoked.

I have perused the charge sheet u/s 173 Cr.PC as well as statement of the witnesses and all the other documents in support of it. On the basis of the same, I take cognizance of the offence against the accused persons.

Issue summons to accused persons through IO 14.10.2024."

8. Petitioners, by way of the present petition, have sought quashing of the cross FIR and the summoning order dated 20.06.2024.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

9. The learned counsel, who appears for the petitioners, submits that Criminal Case No. 6594/2023, which emanates from the cross FIR, is a summons triable case and in a summons case, the Code of Criminal Procedure does not contemplate the stage of discharge like Section 239 Cr. PC in a warrant case and therefore the only remedy available with the petitioners is to approach this Court under Section 482 Cr. PC for quashing of the FIR.

10. It is submitted that the learned MM, without application of mind, passed the impugned order. It is stated that the proceedings in Criminal Case No. 6594/2023 are a gross abuse of process and have been instituted by respondent No. 2 entirely to counter the proceedings of Criminal Case No. 6444/2023, which is borne out from the following:-

a. As per the complaint dated 21.08.2023 filed by respondent No. 2 against the Petitioners, it was stated that on the night of 20.08.2023, between 11 p.m. to 12 a.m., the electricity to the Respondent No. 2's flat was cut off and the Respondents No. 2- 4 had stepped outside and saw that the rest of the Building had electricity. Therefore, the Petitioners came to their gate and began to quarrel with her, and her sons, the Respondent Nos. 3-4. Then the Petitioners got into a fight with them, and during the fight, Petitioner No. 1 tore her clothes, which was not mentioned in the FIR, and then the neighbourers finally came and freed them. Pertinently, the Respondent No. 2 stated that she suffered from no visible injuries, owing to which her medical examination was not conducted. Further, the charge sheet dated 21.11.2023 in FIR No. 389/2023 records that the Respondent No. 2 does not have the clothes that were purportedly torn by the Petitioner No. 1 during the incident.

b. In her statement under Section 161, Cr. PC dated 22.08.2023, Respondent No. 2 improved upon her complaint and stated that during the fight, Petitioner No. 1 not only tore her clothes, but also grabbed her chest, and beat her and Respondent Nos. 3-4, which was not mentioned by her in the FIR.

c. On 25.08.2023, the statement of the Respondent No. 2, which was recorded

under Section 164 Cr. PC before the Ld. MM, contained a starkly different account of the incident. Respondent No. 2 stated that on 20.08.2023, there was an alleged dispute with the Petitioners over water, as the Respondents did not want a tanker. The Petitioners cut off the electricity to her flat, and that Respondent Nos. 2-4 had been sitting inside their flat having a discussion about the purported unmarried status of the Petitioners, when the Petitioners opened the gate, entered their house, and said "Kaise nahi doge tank ke paise?....", before starting to quarrel with Respondent No. 2. Then the Respondent No. 2, for the first time, alleged that the Petitioner No. 1 had punched her shoulder, pulled her chest, and tore her clothes. Then she shouted for help, and the Respondent Nos. 3-4 came to free her. While the younger son saved her, the older son made a video. Respondent No. 2 further acknowledged that the Petitioner No. 2 suffered from a nose injury during the incident, but conveniently stated that she did not know how that occurred. Respondent No. 2 further said that they had gone to AIIMS Trauma Centre for an MLC, but the doctors refused to conduct a medical examination in the absence of an investigating officer, though her son was injured.

d. The Respondent No. 2's statement under Section 164, Cr. PC is replete with inconsistencies and contradictions, solely made with an intention to falsely implicate the Petitioners. Whereas in her complaint, the incident was stated to have occurred outside the flat of the Respondent Nos. 2-4, Respondent No. 2 stated in her Section 164 Cr. PC statement that the incident occurred inside their flat and entirely in the dark. Respondent No. 2 further alleged for the first time that the Petitioner No. 1 punched her shoulder, pulled her chest, and tore her clothes, without explaining why the aforesaid allegation was not mentioned in FIR No. 389/2023. On one hand, Respondent No. 2 has stated that Respondent Nos. 2-4 were sitting together in the flat discussing about the Petitioners, and on the other, she alleged that the Respondent Nos. 3-4 were unaware that the Petitioners had entered their house and physically assaulted the Petitioner No. 2, until she shouted for help. Moreover, Respondent No. 2 stated that they had gone to the AIIMS Trauma Centre, but no medical examination was done, in complete contradiction to her complaint dated 21.08.2023, which stated that a medical examination was not conducted as she suffered from no visible injuries.

e. Furthermore, the Respondent No. 2 alleged in her statement under Section 164 Cr. PC that her elder son took a video of incident on 20.08.2023. However, when the Investigating Officer issued a notice dated 15.11.2023 under Section 91 Cr. PC for production of documents including CCTV footage or any other proof of the incident, Respondent No. 2 categorically stated that there was no video of the incident because there was no electricity inside their flat.

f. Whereas, in the complaint of Respondent No. 2 dated 21.08.2023, there is no mention of any threats issued by the Petitioners towards the Respondent No. 2, Respondent No. 2 in her subsequent statement under Section 164 Cr. PC alleged for the first time that the Petitioner No. 1 frequently threatened the eldest son of

Respondent No. 2 saying, "Mein UP Ka Jaat Hu Teri Job Kha Jaunga."

11. It is submitted that the learned MM failed to scrutinize charge sheet dated 21.11.2023 to establish whether there existed sufficient material to summon the petitioner with respect to offences under Section 323/341 & 509 IPC. It is stated that the statements of respondent No. 2 are contradictory and self-destructive and remain unsupported by any other evidence or any shred of evidence.

12. It is further submitted that summoning order has been passed in a mechanical manner without proper application of judicial mind, ignoring the contradictions/improvements and absence of corroborative evidence.

13. It has been argued that cross FIR is only a retaliatory and counter blast proceedings against the petitioners, which ought to be quashed under category 7 of the guidelines laid down in State of Haryana & Ors. Vs. Bhajan Lal, (1992) SUPP. (1) SCC 335.

SUBMISSIONS ON BEHALF OF THE STATE

14. Per contra, the learned APP for the State submitted that in a summoning order against the accused persons, only prima facie case has to be made out on the basis of the allegations in the complaint for the offences for which they were summoned. It is submitted that as per cross FIR and the statements recorded under Section 161 Cr. PC, there are sufficient grounds for summoning the petitioners.

15. It is urged that truthfulness or otherwise of allegations is to be tested only during the trial, and therefore, the FIR or charge sheet cannot be quashed, simply on the ground of inconsistency and contradictions in the prosecution version.

ANALYSIS & REASONING

16. It is the case of the petitioners that prosecution case bristles with serious inconsistencies, improvements and contradictions, more particularly, the cross FIR and 164 Cr. PC statement of respondent No. 2. The inconsistencies/improvements need to be considered during the trial while appreciating the evidence on record. At this stage, it cannot be said that no offence has been made out against the petitioners. The defence of the petitioners has to be tested during the course of the trial before the learned trial court.

17. Section 482 Cr. PC confers the High Court with an inherent power to quash the FIR or proceedings upon satisfaction of well established parameters. While considering a petition seeking quashing of an FIR/charge sheet, the Court must take into consideration the allegations made in the FIR or charge sheet taken at its face value, to find out whether the same does not prima facie constitute an offence or make out any case against the accused; if the allegations made in the FIR do not disclose any cognizable offence, which justifies a police investigation under Section 156 (1) Cr. PC, if the allegations made in the FIR/charge sheet and

the evidence collected during investigation do not disclose the commission of any offence and do not build any case against the accused and if a criminal proceeding is based on malafides, all the proceedings are maliciously instituted with an ulterior motive. The extraordinary or inherent powers do not confer arbitrary jurisdiction to the court to act according to its whims and caprice.

18. In *State of Haryana Vs. Bhajan Lal* (supra), a two Judge Bench of the Supreme Court considered the statutory provisions of the code and the earlier decisions of the court and held that in the following categories of cases the extraordinary power under Article 226 or the inherent powers under section 482 Cr. PC, can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it will 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 FIR 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 FIR 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."

19. Similarly, in Ramesh Chandra Gupta Vs. State of UP & Ors. 2022 SCC OnLine SC 1634, the Supreme Court reiterated that quashing is only appropriate when the FIR and the supporting evidence even if accepted as true, do not show that any offence has been committed.

20. The established legal principles laid down by the Supreme Court in Bhajan Lal and Ramesh Chandra Gupta (supra) clearly indicate that the power to quash an FIR should only be exercised in exceptional cases where the allegations on their face do not amount to any offence. The inherent power should not be exercised to stifle a legitimate prosecution.

21. The Hon'ble Supreme Court in the case of Aniruddha Khanwalkar Vs. Sharmila Das & Ors. SLP Criminal No. 10746/2023, has held that for summoning of an accused, a prima facie case has to be made out on the basis of the allegations in the complaint and the pre-summoning evidence led by the complainant is sufficient for a prima facie case to be made to issue process against the accused to face trial.

22. Thus, only prima facie case needs to be established for passing a summoning order. At this stage, the Court is not to look into the pros and cons of the material on record. Consequently, if on the face value prima facie no offence is made out, only then, the FIR and other criminal proceedings emanating therefrom can be quashed.

23. In the present case, from a bare perusal of the cross FIR and the charge sheet, prima facie, there is sufficient material for proceeding against the petitioners. At this stage, the Court is not to look into the contradictions and improvements in the statements of witnesses from the averments recorded in the FIR. They have to be considered in the light of the evidence led during the trial.

24. Since the trial is at a nascent stage, the Court does not find it appropriate to exercise its power under Section 482 Cr. PC to quash the FIR or the summoning order. There is no illegality or perversity in the impugned order dated 20.06.2024 passed by the learned trial court.

25. Accordingly, the present petition along with pending application (s) stand disposed of.