

(2021) 10 DEL CK 0059

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 1362 Of 2021

Dharamveer Sharma And Ors

APPELLANT

Vs

State And Anr

RESPONDENT

Date of Decision : 12-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 107, 151, 155(2), 156(1), 161, 164, 482

Indian Penal Code, 1860 — Section 34, 120B, 323, 341, 354, 354B, 354BB, 354D, 377, 451, 452, 498A, 506, 509

Protection of Children from Sexual Offences Act, 2012 — Section 10

Citation : (2021) 10 DEL CK 0059

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Tanmay Mehta, Jatin Sehgal, Ashish Garg, Devna Soni, Siddharth Shekhar, Panna Lal Sharma, Rakesh Malhotra

Final Decision : Dismissed

Judgement

Manoj Kumar Ohri, J

1. The petitioners have preferred the present petition under Section 482 Cr.P.C. seeking quashing of FIR No. 218/2018 registered under Sections 498A/323/354D/506/509/34 IPC at Police Station New Friends Colony, Delhi and the proceedings emanating therefrom, as well as stay of the proceedings pending before the Trial Court in SC No. 351/2019.

2. Briefly stated, the facts as narrated in the petition are:-

(i) Petitioner No. 3 (Sunny Sharma) got married to respondent No. 2 (Vipra Sharma) in the year 2007 and two children-one daughter, namely 'AA', and one son, namely 'AD', were born out of the marriage. Petitioner No. 1 (Dharamveer Sharma) & petitioner No. 2 (Nishi Sharma) are the parents of petitioner No. 3 (Sunny Sharma).

(ii) On 18.08.2018, respondent No. 2 filed a complaint with the SHO, Police Station New Friends Colony, Delhi, alleging harassment and torture. It was stated in the complaint that she has been facing physical, mental, financial and emotional abuse for last 11 years. It was further alleged that she was beaten by her husband for not obeying the instructions of her father-in-law. It was also alleged that her husband forced her to do unnatural sex and on refusal she was beaten by him. It was further alleged that petitioner No. 1 (Dharamveer Sharma), i.e. the father-in-law, had made advances at her and offered Rs.20,000/- to become his friend and not to treat him as her father-in-law. It was further stated that he used to send her late-night messages, mentioning 'Love you soulmate'. When she informed her husband, she was physically beaten. She suspected her husband's character and when she complained to her in-laws, they ignored.

(iii) It was further stated that the husband touches the private part of the son 'AD' (aged 6 years) and that she never liked the way he hugged and kissed the daughter 'AA' (aged 10 years). It was also stated that the mother asked her son to give lip to lip kiss.

3. On this complaint, initially the present FIR came to be registered on 21.08.2018 under Sections 323/354(D)/498A/509/506/34 IPC. On 26.08.2018 & 30.08.2018, the statements of the minor son and daughter were recorded under Section 161 Cr.P.C., wherein allegations relating to offence punishable under Section 10 of the POCSO Act were made. Further, the statements of the complainant and the two minor children under Section 164 Cr.P.C. were recorded on 27.08.2018 & 31.08.2018 respectively. The minor daughter stated that her father used to touch her inappropriately. He used to put his hand on her waist and also inside her pant. Even on her refusal, he used to do it. When her mother tried to stop him, he used to claim that they were his children as well. It was further stated that despite her refusal, he installed a camera in the changing/dressing room, the footage of which not only come on the TV screen but also in the mobile phones of petitioners No. 1 to 3. The minor son stated that his father used to do wrong acts with him. He further stated that petitioner No. 3 used to kiss on his cheeks with such a force that the cheeks would turn black. When he used to come out after taking a bath, his father would touch his body parts like penis and bums. It was also alleged that when he was younger and used to sleep in between his parents, his father used to put his (i.e. the child victim's) leg in his panty.

4. On the basis of the aforesaid statements, Section 377 IPC and Section 10 of the POCSO Act were added to FIR No. 218/2018.

5. During investigation, petitioner No. 3 (Sunny Sharma) handed over two pen drives alongwith transcripts and other documents claiming false implication by respondent No. 2 and her family members. One of these pen drives was sent to the FSL for examination.

6. It is worthwhile to note that on a complaint dated 21.08.2018 given by petitioner No. 2 (Nishi Sharma), who is mother of Sunny Sharma, FIR No. 34/2019 came to be registered on 01.02.2019 under Sections 354/323/341/506/509/34 IPC at Police Station New Friends Colony, Delhi against the complainant and her family members. After investigation, a charge sheet was filed under Sections 354/354B/323/354BB/341/506/509/34/451/452/120B IPC against the complainant and others.

7. Mr. Tanmay Mehta, learned counsel for the petitioners, has contended that the present case squarely falls in condition Nos. 5 & 7 as enumerated by the Supreme Court in *State of Haryana and Others v. Bhajan Lal and Others* reported as 1992 Supp (1) SCC 335. He further contended that the entire case is false and fabricated to implicate the petitioners. It is submitted that respondent No. 2 and her family members conspired against the petitioners and the same is evident from the transcripts of conversations between respondent No. 2 and her parents. It is also submitted that while respondent No. 2 was living in her matrimonial home, the petitioners came across audio recordings of conversations between respondent No. 2 and her parents, which were stored in her mobile phone.

8. While laying great emphasis on the transcripts of the conversations which have been placed on record, learned counsel for the petitioners contended that 16 out of 31 allegations made in the FIR were concocted as they were dictated by family members of respondent No. 2 to her. It was submitted that during investigation, pursuant to the FIR lodged at the behest of petitioner No. 2, respondent No. 2 and her family members during their interrogation had initially denied the contents of the pen drive containing conversations. However, on being sent to FSL, the audio recordings were found to be genuine. It is further contended that a perusal of the allegations levelled in the FIR would show that no offence under the provisions of the POCSO Act are made out. It is submitted that the minor children were tutored to level false allegations at the time of recording of their statements under Sections 161 & 164 Cr.P.C. It is stated that in the year 2014, respondent No. 2 had filed a complaint under the DV Act, where no such allegations were made. It is also stated that on 18.08.2018, respondent No. 2 being in her matrimonial home, had slit her wrist and made a call on 100 number. The family members of both the sides had gathered at the matrimonial home and an altercation also took place. With the intervention of the police personnel, it was agreed between the parties that respondent No. 2 with her children and personal belongings would go to her paternal home. A Kalandra under Sections 107/151 Cr.P.C. was also registered. Learned counsel for the petitioners submits that even at the aforesaid moment, no allegation under Section 10 of the POCSO Act was levelled. In support of his submissions, he has relied on the decision of the Supreme Court in *Ahmad Ali Quraishi and Another v. State of Uttar Pradesh and Another* reported as AIR 2020 SC 788.

9. On the other hand, Mr. Panna Lal Sharma, learned APP for the State, duly

assisted by Mr. Rakesh Malhotra, learned counsel for the complainant, has vehemently opposed the prayers made in the petition. It was stated that prior to receipt of FSL Report in FIR No. 34/2019, the petitioners had preferred similar petition being W.P.(CRL) 3298/2018, seeking quashing of the present FIR, which however was dismissed as withdrawn vide order dated 02.12.2019. It has been pointed out that after filing of the charge sheet, both the petitioners as well as respondent No. 2 have filed their respective applications before the concerned Court seeking further investigation. The aforesaid applications are stated to be pending. It is also stated that insofar as the allegation with respect to the father-in-law sending inappropriate messages is concerned, his mobile phone has already been seized and sent to FSL for examination, the result of which is still awaited. On the aspect of non-recording of statements of the children under Section 164 Cr.P.C. on the day of their medical examination, learned APP for the State has referred to the statement of W/Ct. Rinku who has stated that as the medical examination consumed a lot of time, the statement under Section 164 Cr.P.C. could not be recorded on that day.

10. Mr. Rakesh Malhotra, learned counsel for the complainant, has further invited the attention of this Court to the transcripts, wherein the parents of the complainant are stated to have voiced that only the real facts have to be stated in the complaint. It is submitted that the petitioners have forwarded only selective transcripts, as only 9 out of 18 conversations have been stated to be placed on record. In response to the petitioners' contention made with respect to filing of charge sheet in FIR No. 34/2019, it is submitted that the Investigating Officer while filing the charge sheet has filed the same on his own opinion after reading the transcripts and hearing the recordings. In support of his submissions, learned counsel has placed reliance on the decisions in *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others* reported as 2021 SCC OnLine SC 315 and *State of Karnataka v. M. Devendrappa & Another* reported as 2002 SCC OnLine SC 83 to submit that the exercise of powers by the High Court under Section 482 Cr.P.C. has to be in the rarest of rare case.

11. In rebuttal, learned counsel for the petitioners submitted that before filing charge sheet in FIR No. 34/2019, the Investigating Officer had not only read the transcripts but also heard the aforesaid audio recordings. It is also submitted that without prejudice to the submissions made on behalf of the petitioners and in the alternative, the FIR be quashed partially with respect to the offences for which no allegations are discernible from the reading of the FIR.

12. I have learned counsels for the parties and also gone through the material placed on record.

13. Before I proceed further, I deem it profitable to capture the law on the subject. The Supreme Court in *Bhajan Lal (Supra)* summarized the legal position by laying down the following guidelines that are to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:-

"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."

14. Later, in *R. Kalyani v. Janak C. Mehta and Others* reported as (2009) 1 SCC 516, the Supreme Court while considering the law in case of quashing of criminal complaints, laid down the following principles:-

"15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

15. In *Rishipal Singh v. State of Uttar Pradesh and Another* reported as (2014) 2 SCC 215, the Supreme Court again enunciated the scope of exercise of powers under Section 482 Cr.P.C. in the following terms:-

"13. What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the court can exercise the power under Section 482 CrPC. While exercising the power under the provision, the courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial court and dwell into the disputed questions of fact."

16. Recently, in *Neeharika Infrastructure Pvt. Ltd. (Supra)*, the Supreme Court again propounded that while exercising the inherent jurisdiction under Section 482 Cr.P.C., the High Court would not embark upon an enquiry on the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

17. When the present case is viewed in the backdrop of the aforementioned principles of law laid down by the Supreme Court time and again, it becomes apparent that the present proceedings are initiated in respect of FIR No. 218/2018 lodged at the instance of respondent No. 2/Vipra Shrama. The import of submissions of learned counsel for the petitioners is on the premise that it is unbelievable that petitioner No. 3, who is the father of the child victims, would indulge himself in offences under the POCSO Act with his own children, especially when no such allegation has ever been alleged in the past and is not mentioned in Kalandra dated 19.08.2018. In the opinion of this Court, the submission overlooks the fact that on 19.08.2018, the police had reached the spot and while

they were in the process of taking the complainant to hospital as she had slit her wrist, her family members had also reached the spot resulting in a quarrel between the two sides. The FIR was initially registered under Sections 323/354(D)/498A/509/506/34 IPC and it was only when all three victims were examined and their statements were recorded under Sections 161 and 164 Cr.P.C. that Section 10 of the POCSO Act and Section 377 IPC came to be added. The submission that the children were tutored between the time while they were in exclusive custody of respondent No. 2, from the time of her leaving the house on 19.08.2021 and recording of their statements, cannot be appreciated at this stage and would need to be tested in the trial.

18. Insofar as reliance placed on the transcript of conversations between respondent No. 2 and her parents is concerned, on prima facie reading of the same, it cannot be said that respondent No. 2 had manufactured the allegations at the asking of her parents inasmuch as in the same transcript, on two occasions, the parents of respondent No. 2 are stating that only truth has to be stated.

19. Further, investigation in the case is still stated to be pending in relation to allegations against petitioner No. 1, as the mobile phone seized has been sent to the FSL and Report is awaited. Both the parties are stated to have also filed their applications seeking further investigation, which are pending consideration before the concerned Court.

20. On a careful reading of the entire material placed on the record, this Court is of the opinion that the case does not fall in the parameters laid down in paras

5 and 7 of Bhajan Lal (Supra). Further, reliance placed on the decision in Ahmad Ali Quraishi (Supra) is also entirely misplaced as in the captioned case, the parties in proceedings were neighbors and there was an underlying property dispute between them.

21. Keeping in view the facts and circumstances of the case, in light of the position of law extracted hereinabove, this Court finds no merit in the submissions made on behalf of the petitioners. Consequently, the petition being devoid of merit is dismissed.