

(2025) 09 DEL CK 0705

In the Delhi High Court

Case No : Writ Petition (Crl) 883 Of 2025, Criminal Miscellaneous Application
Nos. 8295, 14996 Of 2025

Dharmender Kumar

APPELLANT

Vs

State And Anr

RESPONDENT

Date of Decision : 27-09-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 528
Code of Criminal Procedure, 1973 — Section 164, 173(2), 227, 397, 482
Indian Penal Code, 1860 — Section 354A, 354C, 354D, 376, 376(2)(n), 384

Citation : (2025) 09 DEL CK 0705

Hon'ble Judges : Ajay Digpaul, J

Bench : Single Bench

Advocate : Suhail Shah, Rahul Tyagi

Final Decision : Allowed

Judgement

Ajay Digpaul, J

1. The petitioner, Dharmender Kumar, has filed the present criminal writ petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 "BNSS" read with Article 226 of the Constitution of India, seeking quashing of FIR No. 934/2016, Police Station Govind Puri, registered under Sections 376/384/354A/354C/354D of the Indian Penal Code, 1860 "IPC".

Factual Matrix

2. On 24.12.2016, FIR No. 934/2016 was registered at P.S. Govind Puri under Sections 376/384/354A/354C/354D of the IPC on the complaint of respondent no. 2.

3. On 26.12.2016, the petitioner was arrested in connection with the said FIR. On the same date, the statement of the prosecutrix under Section 164 of the Code of Criminal Procedure, 1973 "CrPC" was recorded before the learned

Metropolitan Magistrate at Saket Courts.

4. Thereafter, the petitioner was granted regular bail by the learned Sessions Court on 12.01.2017.

5. Subsequently, on 18.09.2018, the investigating agency filed a chargesheet under Sections 376/384/354A/354C/354D of the IPC and thereafter, on 25.10.2018, the learned Trial Court summoned the petitioner.

6. As per the prosecution case in the chargesheet, the complainant/prosecutrix, who was engaged in computer related work, came in contact with the petitioner. After initial work-related interactions, the petitioner allegedly began insisting on meeting her. In May 2016, he is stated to have gone to her office-cum-residence, held her hand, spoke obscenely, took her into a room and had sexual intercourse with her against her will. He allegedly recorded nude photographs/videos on his mobile phone and threatened to disclose them to her husband. On this footing, he allegedly continued sexual relations under threat, demanded money on different occasions, asked her to send photographs of her "upper and lower" body, and sent obscene messages and his own video.

7. Subsequently in 2024, the petitioner filed an application under Section 227 of the CrPC seeking discharge.

8. By order dated 25.09.2024, the learned Additional Sessions Judge "ASJ", South-East District, Saket Courts, in SC No. 519/2018, discharged the petitioner of offences under Sections 384/354A/354C/354D of the IPC, and directed framing of charge under Sections 376/376(2)(n) of the IPC.

9. In January 2025, the present criminal writ petition was filed by the petitioner challenging the FIR and the order on charge.

10. This Court vide order dated 19.03.2025, observed that the learned counsel for the petitioner withdrew the second prayer of the present writ petition, and the petition would now be confined to the first prayer. The second prayer was as follows:

"Set aside the order Dated 25.09.2024 passed by Hon'ble court of Sh. Dheeraj Mittal Ld. ASJ, SE District, Saket Courts Delhi in above said FIR vide SC No. 519/2018 consequently Discharge the petitioner/ accused from the above said offences mentioned in the impugned order by allowing the application filed by petitioner/ accused under section 227 of Cr.PC before Ld. Trial courts."

11. Thereafter, a criminal revision petition bearing No. 150/2025 was also pending before this Court which challenged the said order dated 25.09.2024. On 15.05.2025, the learned Counsel for the petitioner withdrew the said revision petition, thereby deciding to pursue the present criminal writ petition.

12. Learned ASC for State has objected the present petition on the ground of maintainability. This Court will restrict the adjudication in this judgment solely to that particular issue and refrains from making any observations on the merits of

the case.

Submissions on the issue of maintainability

13. Mr. Rahul Tyagi, learned ASC for the State contends that the chargesheet in the present matter has already been filed, and the charges have been framed by the learned Trial Court. The case is now at the stage of recording prosecution evidence, and therefore, the petitioner cannot seek to quash the FIR at this juncture.

14. Learned ASC submits that once cognizance has been taken, the ensuing proceedings flow from a judicial order. Such proceedings can be brought to an end only if the order taking cognizance is itself set aside. An order of cognizance is not amenable to challenge under Article 226 of the Constitution. Reliance is placed on *Neeta Singh and Ors. v. State of Uttar Pradesh & Ors.* 2024 (4) MWN (CR.) 337 where the Hon'ble Supreme Court held that if, during the pendency of a writ petition challenging an FIR, investigation culminates in a chargesheet and the competent court takes cognizance, the High Court is disabled from proceeding with the writ on account of the intervening judicial order. The Court also explained that judicial orders are ordinarily not correctable in writ jurisdiction because any infringement resulting from such orders is to be tested before the statutory appellate or revisional fora.

15. Applying the above to the present case, it is submitted that not only has cognizance intervened, the learned Trial Court has also passed an order framing charge. The ongoing trial is a direct consequence of that order. Unless the order directing framing of charge is set aside before the forum ordained by law, the proceedings cannot be quashed indirectly by targeting the FIR or the chargesheet. Put differently, without first challenging the orders of cognizance and charge, quashing of the FIR or the chargesheet cannot be used as a collateral route to nullify subsisting judicial orders.

16. It is further argued that the only recourse available to the petitioner was to file a criminal revision petition, which the petitioner did file but subsequently withdrew. This revision petition, challenging the order framing charges, was withdrawn by the petitioner on 15.05.2025. According to the learned ASC, the withdrawal of the revision petition precludes the petitioner from now seeking the quashing of the FIR in the present proceedings.

17. Additionally, learned ASC highlights that the petitioner had previously filed a discharge application under Section 227 of the CrPC before the learned ASJ. In the order dated 25.09.2024, the learned ASJ discharged the petitioner from the offences under Sections 384/354A/354C/354D of the IPC, but directed the framing of charges under Sections 376/376(2)(n) of the IPC. It is the contention of the learned ASC that, having decided not to allow the discharge from the charges under Sections 376/376(2)(n) of the IPC, the petitioner cannot now approach this Court seeking to quash the FIR, especially after the discharge application has been decided by the learned Trial Court.

18. As noted earlier, the learned ASC submits that the proper course of action for the petitioner was to pursue the revision petition against the order dated 25.09.2024 and Section 482 of the CrPC cannot be invoked to bypass the specific remedy of criminal revision against an order framing charge. Placing reliance on the judgment passed by the Hon'ble Supreme Court in *Amit Kapoor v. Ramesh Chander* Criminal Appeal No. 1407/2012, it is submitted that the inherent power under Section 482 is extraordinary and residuary in nature and is inapplicable where the Code provides a specific remedy. Normally the High Court ought not to exercise Section 482 where a party could have availed the remedy under Section 397. However, since the petitioner chose to withdraw the revision petition, he is barred from seeking any further relief in the form of quashing the FIR through the present writ petition.

19. To substantiate this position, learned ASC for the State places 6 reliance on the judgment of the Hon'ble Supreme Court in *Iqbal alias Bala & Ors. v. State of Uttar Pradesh & Ors.* (2023) 8 SCC 734. The learned ASC emphasizes that the appropriate recourse for the petitioner was to file a discharge application under Section 227 of the CrPC before the concerned Trial Court. The Trial Court should be allowed to examine the materials collected by the investigating officer that form part of the chargesheet and then assess these materials and determine whether there is a case for discharge. It is submitted that the petitioner took the aforementioned step, and the learned Trial Court has passed a final order in this regard.

20. In light of this, learned ASC submits that even if jurisdiction under Article 226 is invoked, the Court has clear parameters to follow. These parameters include considering the available recourse, such as the criminal revision petition, which the petitioner chose not to pursue and ultimately withdrew. Therefore, the learned ASC argues that the petitioner cannot now seek quashing of the FIR in these circumstances.

21. In reply, Mr. Suhail Shah, learned counsel for the petitioner, submits that the present writ petition is maintainable. He draws attention to paragraph 11 of the judgment in *Iqbal alias Bala* (Supra), which was also relied upon by the learned ASC for the State. The paragraph reads as follows:

"11. In frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or

personal grudge as alleged.”

22. Learned counsel argues that, in light of these principles, the present case should not be dismissed merely because charges have been framed. It is pointed out that the investigating officer failed to conduct a proper investigation, and as a result, the petitioner did not challenge the registration of the FIR.

23. Learned counsel for the petitioner further submits that the circumstances surrounding the case and the manner in which the FIR was registered raise significant issues of abuse of process. It is contended that the allegations made in the FIR and the statement recorded under Section 164 of the CrPC are absurd and inherently improbable, such that no prudent person could reasonably conclude that there exists sufficient ground for proceeding against the petitioner. The proceedings, according to the petitioner, are manifestly attended with mala fide intentions, and the criminal prosecution is maliciously instituted with an ulterior motive to wreak vengeance on the petitioner due to personal grudge. It is further argued that the complaint was lodged after the petitioner had already approached the competent authority and served a legal notice to the complainant. These actions, learned counsel submits, show that the FIR was filed with an improper purpose and should be quashed in the interests of justice.

24. Learned counsel for the petitioner places reliance on the judgment of the Hon’ble Supreme Court in *Mukesh & Ors. v. State of Uttar Pradesh SLP (Crl.) 12354/2024*. The Court therein, acknowledged that while the petitioner can seek discharge under Section 227 of the CrPC, the scope of a discharge application is distinct from a petition for quashing criminal proceedings. The Court observed that in a discharge application, the petitioner would be restricted to relying on documents that are part of the chargesheet. The ground of abuse of process of law is not available in a discharge application. However, the Court clarified that in a petition for quashing, whether under Section 482 of the CrPC or Article 226, a wider challenge is permissible. In such proceedings, the petitioner can rely on materials that are not part of the chargesheet and raise the issue of abuse of process of law, which forms the basis of the present petition.

25. The petitioner also relies on the judgment of the Hon’ble Supreme Court in *Shaileshbhai Ranchhodbhai Patel & Anr. v. State of Gujarat & Ors Criminal Appeal No. 1884/2013*. In this case, the Court held that Section 482 of the CrPC empowers the High Court to quash an FIR, even after the filing of the chargesheet under Section 173(2) of the CrPC, provided the Court is satisfied that the FIR and the chargesheet, even if accepted as true, do not disclose the commission of any offence, or if continuing the proceedings would amount to an abuse of process of law. The Court emphasized that the High Court can intervene in cases where continuing the criminal proceedings would be an abuse of the process, especially in light of the peculiar circumstances of each case. This principle, according to the learned counsel for the petitioner, supports the maintainability of the present writ petition, as the petitioner seeks to challenge the FIR and chargesheet on the grounds of abuse of process, which warrants

judicial intervention under the powers vested in Article 226 and Section 482 of the CrPC.

Analysis and Conclusion

26. It is settled law that the quashing of an FIR following the stage of framing of charges is generally not permissible and is allowed only in the most exceptional and rare cases. In the present case, after the chargesheet was filed, the petitioner filed an application under Section 227 of the CrPC seeking discharge from the charges. However, by the order dated 25.09.2024, the learned ASJ discharged the petitioner from the offences under Sections 384/354A/354C/354D of the IPC but directed the framing of charges under Sections 376/376(2)(n) of the IPC. This decision was not challenged at the time, and subsequently, the present criminal writ petition was filed with two prayers. The petitioner withdrew the second prayer, which sought to challenge the order of 25.09.2024, and confined the petition solely to the first prayer, which seeks quashing of the FIR.

27. It is also important to note that a revision petition was initially filed before this Court, challenging the order dated 25.09.2024, but it was withdrawn by the petitioner, who was granted liberty to file a fresh petition if required. Thus, the ultimate decision was to continue with this writ petition, where the sole relief now sought is the quashing of the FIR.

28. Accordingly, it could be concluded that the petitioner initially filed the present writ petition with two prayers and vide order dated 19.03.2025, the second prayer was permitted to be withdrawn, confining the petition to the first prayer. Thereafter, the petitioner instituted the criminal revision petition, which too was withdrawn on 15.05.2025.

29. This Court finds that quashing of the FIR cannot be granted at this juncture, as the stage of framing charges has already been crossed, and this is not a situation where such a remedy is available. The procedure clearly restricts the quashing of the FIR once the charges have been framed, and no exceptional circumstances have been presented to justify a departure from this settled legal position.

30. This Court also finds the reliance placed on the decisions of the Hon'ble Supreme Court in *Neeta Singh (Supra)* and *Amit Kapoor (Supra)* to be well founded. *Neeta Singh* clarifies that once investigation has culminated in a chargesheet and cognizance has been taken, a writ petition under Article 226 is not the forum to interdict the ensuing proceedings and the proper course is to assail the judicial orders before the forum contemplated by the Code. *Amit Kapoor* reiterates that the inherent power under Section 482 of the CrPC is residual in nature and should not be invoked where the Code provides a specific remedy such as revision against an order on charge. When these two decisions are read together, they support the conclusion that a post-framing of charge plea to quash the FIR or the criminal proceedings is ordinarily impermissible and that the appropriate remedy lies in challenging the orders of cognizance and charge

before the competent court, under the relevant provision of law.

31. Further, the judgments relied upon by the learned counsel for the petitioner, namely Mukesh (Supra) and Shaileshbhai Ranchhodbhai Patel (Supra) were also considered. In both of these cases, the central issue revolved around the quashing of criminal proceedings after the filing of the chargesheet. It is not in dispute that the FIR and/or criminal proceedings can be quashed even after the chargesheet has been filed, but the facts of the present case differ significantly, and makes it impermissible as in the present case the charges have already been framed, and the quashing of the FIR at this stage is not permissible.

32. The best course of action for the petitioner would have been to challenge the order framing charges and avail the efficacious remedy. However, the petitioner chose to withdraw the revision petition against the order dated 25.09.2024, for reasons best known to him. It was his decision to proceed with the present writ petition seeking quashing of the FIR. Consequently, the judgments relied upon by the petitioner are distinguishable on facts, as they deal with situations where the charges were not framed, and the quashing was sought at an earlier stage.

33. For the reasons stated above, this Court confines its adjudication to the issue of maintainability of the writ petition. It holds that the writ petition is not maintainable.

34. No opinion is expressed on the merits of the parties' rival claims. The petitioner is at liberty to pursue the appropriate remedy and approach the concerned Court, should they choose to do so.

35. The petition, along with all pending applications, is disposed of.

36. The judgment be uploaded on the website forthwith.