
(2018) 01 MP CK 0188
In the Madhya Pradesh High Court
Case No : 8773 of 2016

Kapil Valecha & Anr.

APPELLANT

Vs

The State of Madhya Pradesh & Ors.

RESPONDENT

Date of Decision : 04-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 420](#),
[Section 34](#), [Section 17](#)

Citation : (2018) 01 MP CK 0188

Hon'ble Judges : Rajendra Mahajan

Bench : Single Bench

Advocate : Vivek Kedar, Arpit Agarwal, Rajendra Singh Yadav, Awdhesh Singh Bhadoria

Judgement

1. The petitioners have filed this petition under Section 482 of the CrPC seeking quashment of the First Information Report registered at Crime

No.155 of 2016 in Police Station Maharajpura Gwalior against them and two other accused persons for the offences punishable under Sections

420, 406, 506, 294 and 34 of the I.P.C.

2. The brief facts leading to the filing of this petition as disclosed in the F.I.R are thus :- on 5.5.2016, complainant Yatendra Singh Chauhan, who is

respondent no.5 herein, lodged the written complaint with police station Maharajpura Gwalior stating that he is the owner of the M/s Yatendra

Chauhan Contractors and Suppliers. Jagdish Valecha and Dinesh Valecha are the Directors of the Valecha Engineering Pvt. Ltd Co. (for short ""the

company""). Kapil Valecha and Karan Valecha, who are petitioners no.1 and 2 respectively, are the sons of Jagdish Valecha. M.H.Mehta is the

General Manager of the company. On 10.10.2014, on behalf of the company M.H.Mehta had entered into a written agreement with him in his

residence at DH 89 DD Nagar Gwalior. According to the agreement, he had to supply 2,50,000/- metric tons ""crushed stones aggregate"" at the

work site of the company as it got the contract of construction of four lane road of Etawah-Mainpuri- Purawali. As per the agreement, he supplied

crushed stones worth Rs.68,00,000/- (sixty eight lac) during the period from November-December 2014 to January 2015. The company paid him

only 10,00,000/- (ten lac) rupees against the aforesaid amount. The company gave him two cheques bearing Nos.69999 and 993058. Both the

cheques were dishonored by the drawee bank of the company. The directors and the employees of the company fled away from the work site.

One Navin Bajaj also lodged an FIR at Police Station Jhansi Road Gwalior for the similar types of the offences having been committed by them. In

that case, the police arrested Dinesh Valecha from Mumbai. When he was being brought to Gwalior, he escaped from the custody of the police at

Railway-Station Bina. Now, the aforesaid persons would give him various kinds of filthy abuses and death threats through phones. Upon the

complaint, Police Mahajarpura Gwalior registered the FIR at Crime No.155 of 2016 and have made the petitioners, Dinesh Valecha and Jagdish

Valecha the accused persons of the case for committing the offences punishable under Sections 420, 406, 506, 294 and 34 of the I.P.C.

3. Let it be noted that accused Jagdish Valecha has also filed the petition under Section 482 Cr.P.C for quashing the F.I.R. His petition is

registered as M.Cr.C.No.9082 of 2016, which is also being decided by a separate order at this same time.

4. Learned Counsel for the petitioners submitted that the petitioners are neither the directors nor the employees of the company. He further

submitted that in support of the said contention, a letter dated 10.10.2017 issued by Vijay Kumar Mody, the Company Secretary and legal of the

company, supported by his sworn affidavit dated 11.10.2017 and sworn affidavits of the petitioners dated 11.10.2017 are on record. He further

submitted that the complainant has made omnibus allegations against the petitioners without mentioning in the FIR the dates, timings of telephone

calls, telephone number(s) through which they would give him abuses and death threats and the telephone number(s) on which he had received the

same. He further submitted that the complainant has made the petitioners the accused in the case with an ulterior motive to harass and torture their

father Jagdish Valecha, an accused of the case. He further submitted that if the FIR is accepted on the face value, despite that no offence has been

made out against the petitioners in the absence of prima facie evidence in the FIR against them. Thus, the complainant has abused the process of

law against the petitioners, therefore, the F.I.R be quashed insofar as the petitioners are concerned. In support of the arguments, he pressed into

service the decisions rendered in the case of State Of Haryana And Ors Vs Ch. Bhajan Lal And Ors, AIR 1992 SC 604.

5. In reply, learned counsel for the complainant-respondent No.5 submitted that in the case, the police have not so far begun the investigation in

earnest. In the course of investigation, the complainant would make a detailed statement with evidence before the investigating officer as to how the

petitioners are involved in the crime. Therefore, the petition moved on behalf of the petitioners is devoid of merits and substance and hence, it be

dismissed.

6. On behalf of respondent Nos. 1 to 4, learned Public Prosecutor supported the arguments raised by learned counsel for the complainant.

7. I have given careful consideration to the rival submissions made at the Bar and perused the entire material on record.

8. In the case of State of Haryana (supra), the Supreme Court has laid down the following propositions of law for quashment of the FIR and the

subsequent criminal proceedings thereto :

(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 F.I.R. do not disclose a cognizable offence,

justifying an investigation by police officers under Section 156 (1) CrPC except under an order of a Magistrate within the purview of Section

155(2) CrPC.

(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 F.I.R. 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) CrPC.

(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 CrPC (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 CrPC 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.

9. In *Amit Kapoor V. Ramesh Chander*, (2012) 9 SCC 460, in para 19 of the decision, the Supreme Court has expanded the aforestated

parameters by adding a few more. The guidelines given in that case were approved by the Supreme Court in *Taramani Parakh V. State of M.P.*

and *Ors .*, (2015) 11 SCC 260,. It is also pertinent to mention herein that in *Prashant Bharti V. State of NCT of Delhi*, AIR 2013 SC 275, the

Supreme Court in para 23 of the judgment has delineated the four steps to be followed in quashing an F.I.R or a criminal complaint in exercise of

the powers vested in the High Court under Section 482 CrPC.

10. On the touch-stone of the aforestated legal principles of law, I shall proceed to decide the petition.

11. Learned counsel for the complainant has not produced any document in the course of arguments to prove that both the petitioners are the

directors or the employees of the company. Therefore, I place implicit reliance upon the letter dated 10.10.2017 issued by Vijay Kumar Mody,

the Company Secretary and legal of the company, his affidavit and the affidavits of the petitioners. Whereupon, I hold that both the petitioners are

neither the directors nor the employees of the company. As per the FIR, the complainant had entered into the agreement with M.H.Mehta, the

General Manager of the company. It has not been mentioned in the FIR whether both the petitioners were present with him at the time of

agreement. In the light of these facts, it is not proved that both the petitioners had any role directly or indirectly in the execution of the agreement

with the complainant and subsequent-events. Therefore, there is no prima facie evidence in the F.I.R against the petitioners that they have

committed offences punishable under Sections 420 and 406 of the I.P.C.

12. Though the FIR lodged by the complainant is not an encyclopedia of the case, yet he should have mentioned therein, on what telephone

number (s) the petitioners would give him abuses and threats and on what telephone number(s), he received the same. Upon a bare reading of the

FIR, it appears to me that the complainant had made general allegations against the petitioners and remaining two accused persons regarding the

abuses and threats. Upon the said vague allegations no offence against the petitioners under Section 506 and 294 of the IPC are prima facie made

out.

13. It is an undisputed fact that the petitioners are the sons of Jagdish Valecha, the accused. Therefore, I find force in the contention of learned

counsel for the petitioners that the complainant has made the petitioners the accused in the case with an ulterior motive for wreaking vengeance on

their father Jagdish Valecha with whom he has dispute regarding non-payment of supplied crushed stones. Therefore, parameter No.7 laid down in

the case of State of Haryana (supra) will also be squarely applicable in the case for quashing the F.I.R, insofar as the petitioners are concerned.

14. For the aforesaid reasons and discussions, I find that this petition deserves to be allowed in respect of the petitioners and the same is

accordingly allowed. The FIR registered at Crime No.155 of 2016 at police station Maharajpura Gwalior is hereby quashed insofar as the

petitioners are concerned.