

(2023) 05 RAJ CK 0028

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No. 1867 Of 2023

Mahavir And Others

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 03-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 397, 401, 482

Indian Penal Code, 1860 — Section 34, 323, 354, 451

Citation : (2023) 05 RAJ CK 0028

Hon'ble Judges : Manoj Kumar Garg, J

Bench : Single Bench

Advocate : O.P. Sangwa, Vikram Sharma

Final Decision : Dismissed

Judgement

Manoj Kumar Garg, J

The petitioners have preferred this petition under Section 482 of Cr.P.C. for quashing the FIR No.26/2023 registered at Mahila Police Station, District Nagaur for the offences under Sections 451, 323, 504, 354 and 34 of IPC.

Learned counsel for the petitioners submits that there is no intention of the petitioners to outrage the modesty of the complainant, therefore, offence under Section 354 IPC is not at all been made out against the petitioners. According to the FIR, it is nowhere mentioned that the petitioners intent to outrage the modesty of the complainant, therefore, the ingredient under Section 354 IPC is missing in the present case. Counsel further submits that there are cross-cases registered against the parties.

In these circumstances, since the FIR lodged against the petitioners is frivolous, it may be quashed.

Learned Public Prosecutor has opposed the prayer made by learned counsel for the petitioner.

I have considered the arguments and perused the case diary.

According to the statement of complainant – Smt. Madhu, a specific allegation for causing an injury to her has been leveled against the petitioners and another injured – Abhishek also received total six injuries and he also specifically mentioned that all the three petitioners caused injuries to him. A specific allegation has also been levelled that the present petitioners have torn the clothes of the complainant, this is covered under Section 354 IPC in which, it is clearly mentioned that these petitioners outraged the modesty of the complainant. In these circumstances, it cannot be said that the FIR is frivolous. Furthermore, FIR cannot be quashed.

Hon'ble Supreme Court in the case of State of Haryana & Ors. Vs. Choudhary Bhajanlal & Ors. : 1992 Suppl. (1) SCC 335], laid down guidelines for exercising inherent powers under Section 482 Cr.P.C. to quash FIR and criminal proceedings. The Court held:

"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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

Yet again, Supreme Court, in case of Janta Dal Vs. H.S. Choudhary : (1992) 4 SCC 305], while relying on Choudhary Bhajanlal's case (supra), held:

"This inherent power conferred by Section 482 of the Code should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a premature decision in a case wherein the entire facts are extremely incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved whether factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to the cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. This Court in State of Haryana v. Ch. Bhajan Lal and Ors., to which both of us were parties have dealt with this question at length and enunciated the law listing out the circumstances under which the High Court can exercise its jurisdiction in quashing proceedings. We do not, therefore, think it necessary in the present case to extensively deal with the import and intendment of the powers under Sections 397, 401 and 482 of the Code."

In another decision in the case of Pratibha Vs. Rameshwari Devi & Ors, JT 2007 (11) 122, the Hon'ble Apex Court held that while exercising the extraordinary jurisdiction under Section 482 Cr.P.C., the High Court cannot go beyond the allegations made in the F.I.R or rely upon extraneous consideration. For the purpose of finding out the commission of a cognizable offence, the High Court is only required to look into the allegations made in the complaint or the F.I.R.

In another case of N. Soundaram Vs. P.K. Pounraj & Anr. : (2014) 10 SCC 616], Supreme Court, while reiterating the principles laid down in Bhajan Lal (supra) on scope of exercise of powers under Section 482 Cr.P.C., held:

"It is well settled by this Court in a catena of cases that the power under Section 482 CrPC has to be exercised sparingly and cautiously to prevent the abuse of process of any Court and to secure the ends of justice [See State of Haryana v. Bhajanlal]. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482, CrPC [See MCD v. Ram Kishan Rohtagi]. An investigation should not be shut out at the threshold if the allegations have some substance. [See Vinod Raghuvanshi v. Ajay Arora]."

In the case of M/s. Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, 2021 CRILJ 2419, Hon'ble Apex Court, on scope of exercise of powers under Section 482 of Cr.P.C., in Para 23 (xii) & (xv) observed as under :-

"xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

(xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose the commission of a cognizable offence or not. The Court is not required to consider on merits whether the merits of the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

In the facts and circumstances of the case so also in the light of the judicial pronouncements of Hon'ble Apex Court, no case for quashing of FIR No.26/2023 registered at Mahila Police Station, District Nagaur is made out. Hence, this misc. petition is hereby dismissed. Stay petition is also dismissed.