

(2020) 05 DEL CK 0134

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 1476 Of 2020, Criminal
Miscellaneous Application No. 6451, 6541 Of 2020

Naresh Tyagi

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 30-05-2020

Acts Referred:

Indian Penal Code, 1860 — Section 323, 506

Code Of Criminal Procedure, 1973 — Section 438, 482

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section
3(1)(r), 3(1)(s), 18, 18A

Citation : (2020) 05 DEL CK 0134

Hon'ble Judges : Asha Menon, J

Bench : Single Bench

Advocate : Saket Sikri, Pradyuman Kaistha, Gautam Khazanchi, Amit Gupta,
Ramesh Gupta, Bharat Sharma

Final Decision : Disposed Of

Judgement

Asha Menon, J

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.', for short) seeking quashing of FIR No.395/2020, registered at Police Station Mehrauli, under Sections 323 and 506 of the IPC and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('Act', for short) and all proceedings arising therefrom. Advance notices were issued to the State and the complainant and they have been duly represented and heard.

2. Briefly put, the contention of the learned counsel for the petitioner Sh. Saket Sikri is that the FIR was prompted by enmity as the complainant was annoyed with the petitioner for having complained against him for diverting food meant for the poor to the Mittal Gardens for consumption by animals. According to learned counsel, on 04.05.2020, the petitioner had informed the DM (South) on

WhatsApp about this illegal and clandestine transport of food by the complainant Ajay Kumar who was known to him as Ajay Mathur. A video that had been taken at Mittal Gardens was also circulated to the DM (South) through WhatsApp.

3. The distribution centre at Gali No.9, 60 Foota Road, Chattarpur, where the complainant was allocated the duty of distributing food amongst the poor, was shut as a consequence. On the next day, i.e. 05.05.2020, the petitioner went to MCD Primary School Chattarpur and assisted in the distribution of food when, according to him, the complainant, who was present there, publicly insulted and abused him for having filed the complaint and a verbal altercation occurred during the course of which, the complainant allegedly threatened to teach the petitioner a lesson. The PCR was also called after which the petitioner left.

4. It was much later that the petitioner was informed by his well-wishers that the complainant Ajay Mathur was attempting to implicate him in a false case and he made a representation to the ACP, Mehrauli Division, Hauz Khas. Despite this representation of the petitioner, the FIR No.395/2020 was registered at Police Station Mehrauli on 11.05.2020. According to the learned counsel for the petitioner, this sequence firmly established the mala fide intentions of the complainant to take revenge. Moreover, no copy of the FIR was supplied to the petitioner and till the filing of the petition, he was clueless about the allegations against him.

5. That apart, the learned counsel for the petitioner also submitted that the petitioner was not at all aware that the complainant belonged to SC community as in public notices/posters, the complainant was described as "Ajay Mathur" though in the FIR he had given his name as "Ajay Kumar". Moreover, no witness had made a statement to the police that they had witnessed the incident where the complainant was publicly insulted using caste aspersions. According to learned counsel, therefore, this was a fit case in which this Court exercised its inherent powers to quash the FIR or at the very least, to grant anticipatory bail to the petitioner.

6. The learned Senior Counsel for the complainant Sh. Ramesh Gupta submitted that the defence raised by the petitioner that he did not know the caste of the complainant is irrelevant for the purposes of this petition as the Supreme Court has held in numerous cases that it is only when the FIR failed to disclose a prima facie case that it could be quashed. It was also submitted by the learned Senior Counsel that since birth, the complainant and the petitioner were living in the same area/locality and it was impossible to believe that the petitioner was unaware of the caste of the complainant. The records of the PCR calls further established that there was an incident that had occurred in the evening of 5th May, 2020 and CCTV footage of the incident was available. According to the learned Senior Counsel therefore, the petition was liable to be dismissed and since offences under the Act were exempted from the applicability of Section 438 Cr.P.C., no relief could be granted to the petitioner.

7. The learned APP for the State Sh. Amit Gupta assured the learned counsel for the petitioner that the copy of the FIR would be supplied to him through e-mail. He also sought time to place on record the Status Report which he has done on 21.05.2020, through e-mail to the Court Master. The Status Report is directed to be taken on record. Copy be supplied to the learned counsel for the petitioner, if not already supplied. The learned APP for the State further submitted that investigations were on and the statements of witnesses were to be recorded. In the Status Report, it has been informed that three witnesses had given their statements, namely, Mintu Sharma, Rajan Thakur and Diviya Jyoti, and others were yet to be examined and a request for CCTV footage of the incident has been submitted to the Education Department, South Zone, SDMC, which was yet to be received, though the footage provided by the complainant showed the petitioner using some gestures at the complainant. So, there was no occasion to doubt the presence of the petitioner at the relevant time and no prima facie conclusion of the falsity of the complaint could be drawn. The learned APP for the State also thus prayed for dismissal of the petition.

8. The Supreme Court in *State of Haryana & Ors. V. Bhajan Lal & Ors.* (1992) Supp (1) SCC 335 cautioned the High Courts while exercising their inherent powers to use them sparingly, either to prevent abuse of process of any court or otherwise to secure the ends of justice. It set about listing seven categories indicative of situations where inherent or extraordinary powers of the court could be exercised. In the words of the Supreme Court:

"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."

9. Clearly, therefore, this Court would not be justified in embarking upon an inquiry as to the truthfulness of the contents of the FIR. Only a prima facie view must suffice to record satisfaction that a case is made out. If the allegations in the FIR disclose the commission of an offence that is cognizable, the court would be slow to doubt the veracity and would be reluctant to quash the FIR. In fact, the learned counsel for the petitioner did not suggest that the present case fell in the categories (1) to (6) listed by the Supreme Court in *Bhajan Lal* (supra), but his arguments were an attempt to fit it into category (7), which is reproduced for ready reference below:

"102. xxx xxx xxx

(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."

10. As noticed above, the petitioner claims to have been falsely implicated as he had complained against the actions of the complainant and therefore, false allegations of caste aspersions have been levelled against him to wreak vengeance. But the matter is still under investigation. While it is no doubt true that the CCTV footage showing the petitioner gesticulating would not be enough for the prosecution to establish that caste aspersions were thrown at the complainant, the Status Report refers to the presence of several others at the spot at the time of the alleged incident, some of whom have been examined and others are yet to be examined. It is not possible for this Court to come to a conclusion on the mere word of the petitioner that the complaint/FIR was bereft of truth. Without a complete investigation, it may not be possible for the Court to come to any conclusion that the FIR was indeed false. Even if the complaint of the petitioner had resulted in the altercation with the complainant, suggesting a possibility of embellishments in the FIR to make it more serious than simple hurt and criminal intimidation, that will not be enough reason to quash it. It is also to be noted that it is only the defence of the petitioner that he was not aware of the caste of the complainant and that by knowing the complainant only as "Ajay Mathur", no occasion would have arisen for the petitioner to abuse his caste status. In any event, the case of the complainant cannot be thrown out at the threshold.

11. While no case has been made out for quashing the FIR No. 395/2020 at this juncture, when investigations are yet to be completed, it needs to be seen whether, the petitioner would be entitled to anticipatory bail. Section 18 and 18A of the Act provide that the provisions of Section 438 Cr.P.C. will not be available in cases under the Act. Nevertheless, the Supreme Court while dealing with the validity of these provisions in *Prithvi Raj Chauhan v Union of India and Others*, 2020 SCC Online SC 159, held that the court continued to have inherent powers to grant pre-arrest bail in appropriate cases. This was the reiteration of the view taken by the Supreme Court in *Dr. Subhash Kashinath Mahajan v The State of Maharashtra* (2018) 6 SCC 454, and the judgment in the Review Petition filed by the Union of India. While disposing of the Review Petition, the Supreme Court set aside the conclusions in *Dr. Subhash* (supra), but limited to the need for a preliminary inquiry by the D.S.P. and approval of the S.S.P. before arrest, but upheld the following conclusion:

"Para 83.(i) xxx xxx xxx

(ii) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie malafide....."

In the Review Petition the Supreme Court reiterated this position in the following words:

"Para 49. There may be cases which may be false that can be a ground

for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care in proceeding under section 482 of the CrPC."

The consistent view taken by the Supreme Court has thus been that where no prima facie case is made out, or it appears that the complaint is malicious or mala fide or a person apprehends false implication and arrest, pre-arrest bail can be granted under Section 482 Cr.P.C. Of course, the power has to be used sparingly and in exceptional cases where not exercising such inherent powers could lead to miscarriage of justice or abuse of process of law.

12. There are some peculiar facts in the present case. There is no dispute that the petitioner and the complainant are party workers engaged in executing the welfare measures of the GNCTD meant for the poor. The complainant claims to have been so authorised by the Government whereas, the petitioner seeks to supervise the activities as a social watch-dog. Thus, it is not a case of power imbalance. In a manner, it is, as of now, the word of the complainant pitted against the word of the petitioner, as investigations are still pending. Secondly, both the sides affirm that in the evening of 05.05.2020, there was an altercation between both of them. Significantly, the FIR has been registered only on 11.05.2020. Moreover, a fair investigation would also include the verification of the fact whether the petitioner had complained against Ajay Mathur to the DM for diverting food meant for the poor to the Mittal Farms on 04.05.2020, and whether some action was initiated by the senior government officials thereupon, resulting in strained relationship between the complainant and the petitioner. Since the investigations are not complete, as held hereinabove, this Court is not inclined to quash the FIR. At the same time, where possibility of embellishments in the FIR to enhance the seriousness of the allegations cannot be discounted at this stage, due to the sequence of events of a complaint being filed by the petitioner against the complainant and a quarrel taking place between the two the next day and the FIR being lodged almost a week thereafter, in the totality of the facts and circumstances of the case, this Court considers it appropriate in the interest of justice, to grant anticipatory bail to the petitioner.

13. Thus, while rejecting the prayer for quashing of the FIR, the petitioner is admitted to anticipatory bail till the filing of the charge-sheet, on the petitioner furnishing a personal bond and a surety bond in the sum of Rs.25,000/- each in the event of his arrest and to the satisfaction of the SHO concerned, with the further conditions that the petitioner shall join the investigations as and when called upon so to do and shall not approach the witnesses in this case or tamper with evidence or stall investigations and further, shall not leave the jurisdiction of the Delhi Courts without intimation to the SHO concerned. Upon filing of the charge-sheet, the Designated Court would be at liberty to consider the application for regular bail, if placed before it, without being influenced by any observation made by this Court in this order, and shall deal with the application as per law and on merits.

14. The petition and the pending applications are accordingly disposed of.