

(2013) 01 DEL CK 0171

In the Delhi High Court

Case No : Writ Petition (Criminal) 75 of 2013

Ravi Nigam

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Citation : (2013) 2 AD 617 : (2013) 2 ILR Delhi 827

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Chetan Sharma with Mr. Aman Vachher and Mr. Ashutosh Dubey, for the Appellant; Saleem Ahmed, ASC with Ms. Charu Dalal, APP for the State ASI Bhupender, PS Hauz Qazi, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.

CRL MA. 458/2013 (Exemption)

Exemption allowed, subject to all just exceptions.

The Application is allowed.

WRIT PET. (CRL.) 75/2013 & CRL MA. 457/2013 (stay)

1. By virtue of this Writ Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (Cr. P.C.), the Petitioner seeks quashing of FIR No. 164/2012 dated 07.10.2012 u/s 506 /34 /380 /448 IPC, registered in Police Station Hauz Qazi. The FIR was lodged on the complaint made by one Abhinav Krishan Aggarwal alleging that his father Shri Gopal Krishan Aggarwal was inducted as a tenant in the property No. 1923, Gali Leshwan, Mohalla Imli, Bazar Sitaram, Delhi-110006 sometime in the year 1974 and was in continuous possession thereof till the lodging of the report. Abhinav Kumar Aggarwal informed that his father had been running the business of printing in the name and style of M/s. M.G. Printers & Stationery and was being

assessed to income tax and sales tax. For some reasons the business could not be continued since the year 2007 and the property was locked. Valuable goods including some machinery and raw material was stored in the property. One Ravi Nigam (the Petitioner herein) had been extending threats to them to forcibly dispossess them from the property. On 07.10.2012 the complainant received a call from one person, namely, Munshi that his father's office had been demolished and the articles have been stolen. The complainant made a call to the PCR and then reached the PS and lodged the report stated above.

2. In the Petition, the Petitioner alleges that in fact property No. 1922-1923 Gali Leshwan, Mohalla Imli, Bazar Sitaram, Delhi-110006 was owned by Anand Swaroop Goel, Prem Prakash Goel, Santosh Kumar Goel and M.D. Goel. The Petitioner purchased the property from them on the basis of a Agreement to Sell dated 22.08.2012 and an earnest money of Rs. 60 lacs was paid by way of different cheques/cash against receipt. The Petitioner claims that after receipt of earnest money, the peaceful and vacant possession of the property was given to the Petitioner in August, 2012. According to him (the Petitioner) he was not aware of any tenant in the property. On inquiry from the erstwhile owner, the Petitioner came to know that one Gopal Krishan Aggarwal was the tenant in the ground floor portion of the property but he handed over the peaceful and vacant possession to the erstwhile owner in the year 2008 when he was involved in a murder case and was convicted.

3. The Petitioner states that by a letter dated 24.08.2012 he applied to the Municipal Corporation for carrying out certain repairs. In the last week of August, 2012 the Petitioner demolished the property and started construction thereon. According to the Petitioner Vinit Aggarwal started threatening the erstwhile owner (Prem Prakash Goel) with an illegal demand of Rs. 30 lacs lest he would be falsely implicated on the allegation of dispossession and stealing valuable articles from the property. A complaint in this regard was made against Vinit Aggarwal to the police. The police failed to take any action in respect of the complaint made against Vinit Aggarwal whereupon, the Petitioner filed a complaint u/s 200 read with Section 156(3) Cr.P.C. in the Court of learned Metropolitan Magistrate (MM). Another complaint dated 08.11.2012 was made by the Petitioner against complainant Abhinav Krishan Aggarwal for threat and extortion.

4. It is averred that the Petitioner was granted anticipatory bail by order dated 17.11.2012 passed by the learned ASJ. Thus, according to the Petitioner, the FIR lodged is false and is, therefore, liable to be quashed.

5. I have heard Mr. Chetan Sharma, learned senior counsel for the Petitioner and have perused the record.

6. It is important to note that the FIR was registered in the Police Station only on 07.11.2012 and the date of occurrence is given as 06.10.2012 to 17.11.2012. Admittedly, a DD No. 16-A was also recorded on the basis of the information

given to the PCR.

7. It is well settled that the power of quashing of FIR or a criminal proceeding should be exercised very sparingly with circumspection and in rare cases. The Court is not justified in embarking upon an inquiry as to the reliability, genuineness or otherwise of the allegations made in the FIR.

8. In *State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others*, , it was held that where the investigation was not complete, it was impermissible for the High Court to look into the materials the acceptability of which is essentially a matter for trial. The Supreme Court observed that the Court should not go into annexures of the Petition u/s 482 of the Code which cannot be termed as evidence without being tested and proved. Para 13 of the report is extracted hereunder:-

13. It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction u/s 482 of the Code, it is not permissible for the Court to act as if it was a trial Judge. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. In *Smt. Chand Dhawan Vs. Jawahar Lal and others*, it was observed that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions u/s 482 of the Code, which cannot be termed as evidence without being tested and proved. When the factual position of the case at hand is considered in the light of principles of law highlighted, the inevitable conclusion is that the High Court was not justified in quashing the investigation and proceedings in the connected case (Crime No. 116 of 1994) registered by the Special Police Establishment, Lokayukta, Gwalior....

9. In a recent report of the Supreme Court in *State of Orissa and Others Vs. Ujjal Kumar Burdhan*, , the investigation initiated by the Vigilance Department of the State Govt. of Orissa into allegations of irregularities in receipt of excess quota, recycling of rice and distress sale of paddy by one M/s. Haldipada Rice Mill, Proprietorship concern of the Respondent was quashed by the High Court. The Supreme Court reversed the order passed by the High Court and observed that extraordinary power u/s 482 of the Code has to be exercised sparingly with circumspection and as far as possible for extraordinary cases where allegations in the complaint or the FIR taken on its face value and accepted in their entirety do not constitute the offence alleged. The Supreme Court relying on its earlier decision in *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, held that the Court will not normally interfere with the investigation and

will permit an inquiry into the alleged offence to be completed. Paras 8 and 9 of the report are extracted hereunder:-

8. It is true that the inherent powers vested in the High Court u/s 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation.

9. In *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, , emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: (Paras 65-66)

65. ... An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed. ...

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. ... If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence.

10. In *State of Haryana and others Vs. Ch. Bhajan Lal and others*, the Supreme Court considered its earlier decision on quashing of the FIR and observed that it would not be possible to lay down any precise, clearly defined, sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. Some of the cases where the powers to quash FIR could be exercised were enumerated as

under:-

(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 u/s 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 u/s 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.

11. On the basis of the averments made in the FIR, it cannot be said that they do not prima facie constitute any offence or make out a case against the Petitioner. The Petitioner's defence and veracity of the allegations made by the Complainant is to be gone into by the police during the course of investigation. It is not a case where the FIR should be quashed at this stage. Consequently, the Petition is dismissed. Pending application also stands disposed of.