

(2020) 05 DEL CK 0037

In the Delhi High Court

Case No : Criminal Writ Petition No. 787 Of 2020, Criminal Miscellaneous (Bail) No. 5810 Of 2020, Criminal Miscellaneous Application No. 5896, 5897 Of 2020

Sunder Kumar & Ors

APPELLANT

Vs

State & Anr

RESPONDENT

Date of Decision : 06-05-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 320, 482
Indian Penal Code, 1860 — Section 34, 186, 188, 269, 332, 352, 506

Citation : (2020) 05 DEL CK 0037

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Varun Tyagi, R.S. Kundu

Final Decision : Dismissed/Disposed Of

Judgement

C.Hari Shankar, J

Crl. M.As. 5896-97/2020

Allowed, subject to all just exceptions. Applications are disposed of.

W.P.(Crl.) 787/2020

1. This matter has been taken up for hearing by video conferencing.
2. This writ petition, preferred under Section 482 of the Code of Criminal Procedure, 1973 read with Article 226 of the Constitution of India, seeks quashing of FIR 319/2020, dated 20th April, 2020, registered against the petitioners at PS Moti Nagar. The FIR alleges that the petitioners have committed offences under Sections 188/269/186/353/332/506 read with Section 34 IPC.
3. The recital of the facts in the FIR may be summarized thus. At 5 PM on 20th April, 2020, one Rahul (Petitioner No.2 herein), who was known to the

complainant Head Constable (HC) Rishi Kumar, and was a "bad character" of the area, was seen loitering in the area without wearing a mask, in violation of the Compliance Advisory issued by the Central Government in the wake of the COVID-19 pandemic. On the complainant intercepting Rahul and querying him in that regard, Rahul retorted that the complainant had no right to stop him from walking in the area without a mask. On the complainant attempting to control Rahul, with the assistance of Const. Pravin, Rahul caught hold of the collar of the shirt being worn by the complainant and tore the shirt. Rahul is also alleged to have assaulted Constable Pravin, by kicking him. During the melee, Rahul's brother Sunder (Petitioner No.1 herein) arrived at the spot, and joined Rahul in assaulting the complainant, by administering kicks and blows. It is further alleged that they also bit the complainant on his wrist, resulting in his bleeding profusely. Thereafter, it is stated that Rahul and Sunder were taken into custody and FIR was lodged as noted above.

4. Consequent on notice being issued in the present petition, a status report, dated 4th May, 2020, stands filed by the SHO, PS Moti Nagar. The Status Report reiterates the allegations in the FIR, in the following terms:

"That it is respectfully reiterated that the petitioner No. 1 Rahul was confronted by the police officials while he was roaming in the area unmasked and when the police officials asked for the reason for roaming unmasked and without and reason, he started quarrelling with the police officials and later on his brother Sunder also reached there and thereafter both the brothers torn the uniform of police officials, quarrelled with them and even bite on the hand of one of the police official. It is respectfully submitted that the FIR was registered on the basis of the complaint of the complainant police official and the allegations made therein were duly supported by medical evidence/MLC of the complainant. It is further respectfully submitted that the allegations made by the petitioners that they were picked up from their house, beaten up and thereafter were falsely implicated in this case, are absolutely wrong and are vehemently denied."

5. Learned counsel appearing for the petitioners submits that there are marked inconsistencies in the version of the Police, inasmuch as, though the FIR alleges that Petitioner no. 1 Sunder had returned to his home, the case of the prosecution is that he was apprehended from the spot. Mr. Tyagi draws my attention to the MLC of Petitioner No. 1, in which it is recorded, at 5:31 pm that, as per the version of Petitioner No. 1, he was bitten by policeman. As such, submits Mr. Tyagi, that case is of assault by the police on the petitioners, and not vice versa.

6. Mr. Tyagi also acknowledges that both the petitioners have been enlarged on bail yesterday, i.e. on 5th May, 2020.

7. Quashing of criminal proceedings by eviscerating them from their very inception, is an extreme step, to be taken with due circumspection. The powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 to quash

criminal proceedings, though extremely wide, are to be exercised with a great degree of caution. The progress of the criminal law, once legitimately set in motion, should not be halted by judicial dictat, save in exceptional circumstances and with due cause. The parameters governing such exercise, as authoritatively enumerated by the Supreme Court in *Parbatbhai Aahir v. State of Gujarat* (2017) 9 SCC 641, may be reproduced thus:

"16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

16.5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on

a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

8. In its recent decision in *Rajeev Kourav v Baisahab* 2020 SCC OnLine SC 168, the Supreme Court was even more emphatic:

"6. It is no more *res integra* that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any Court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a *prima facie* case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding."

(Italics and underscoring supplied)

9. The charges against the petitioners are unquestionably serious. Breach of the lockdown restrictions, imposed by the Government, which, if permitted unchecked, may result in loss of lives of millions, and cannot be tolerated for an instance. The acts of the petitioners, if true, are inherently inimical to public and societal interest as a whole. Acts, often innocuous, may have catastrophic consequences and courts, in cases such as these, cannot permit themselves to be carried away by the physical nature of the act as committed, unmindful of the results that would ensue, were such acts to be tolerated. While this sole factor

may, even by itself, be sufficient to have merited dismissal of this petition, the Status Report further states that the allegations in the FIR are supported by the MLC of the complainant.

9. Mr. Tyagi prays this Court to summon the CCTV footage of the area, which, according to him, would vouchsafe the innocence of his clients.

10. In a petition under Section 482 Cr.P.C. (though the writ petition has been styled as a petition under Article 226 of the Constitution of India alone), this Court cannot enter into detailed appreciation of evidence. Suffice it to state that, on the material on record, no case, for quashing of the FIR, and thereby eviscerating the proceedings against the petitioners, at this nascent stage, can be said to have been made out.

11. The petition is, therefore, dismissed.

12. It is clarified that the present order examines the issue only within the parameters of Section 482 Cr.P.C./Article 226 of the Constitution of India, and as to whether, within the said parameters, the petitioners can be said to have made out the case for quashing of the FIR against them. As opined by me hereinabove, no such case is made out.

13. A copy of this order shall be uploaded on the website positively within 24 hours and shall also be forwarded to the counsel for the parties via email.

CrI. M(BAIL) 5810/2020

In view of the order passed in the writ petition, this application is disposed of.