IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 20th OF MARCH, 2025

MISC. CRIMINAL CASE No. 24707 of 2024

GULWANI JITENDRA MULCHANDBAI (MALE) AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Bakul S. Panchal – Advocate through Video Conferencing and Shri Ravindra Sharma – Advocate for petitioner.

Shri Yogesh Parashar – Public Prosecutor for respondent/State.

Shri Rishikesh Bohare- Advocate for complainant/prosecutrix.

ORDER

This application, under Section 482 of Cr.P.C. has been filed for quashment of FIR in Crime No.100/2024 registered at Police Station Girwai, District Gwalior (M.P.) for offence under Sections 376-D, 354(C), 377, 328, 384 of IPC.

2. The facts, necessary for disposal of present application, in short, are that the aforesaid FIR was lodged by prosecutrix alleging that applicants are known to her. Applicant No.5 who is the wife of applicant No.1 is related to prosecutrix and she introduced her to applicants No.1 to 4. On 23.03.2023 at about 10 am, when she was in her rented house situated in Ahmedabad, she went to the washroom for having bath. After coming out, she found that applicant No.1 and applicant No.5 were

standing outside her bathroom and had prepared a video while she was taking bath and the aforesaid video was also shown to her. Applicant No.1 and applicant No.5 also extended a threat that they would make the video viral and otherwise she should pay an amount of Rs.50,000/-. At that time, she was having Rs.12,000/- for household expenses and therefore the said amount was given and out of shame and social indignation, she came back to Gwalior without disclosing the said incident to anybody. She was under belief that now she has got rid of that videograph and started residing peacefully. On 07.01.2024, at about 06:00 pm, applicants No.1 to 4 came to her house at Gwalior and demanded an amount of Rs.1,00,000/-. When she enquired as to why they were asking that much of amount, then applicant No.1 informed that the said demand was for not making the video viral and accordingly the prosecutrix threatened that she would call the police. Thereafter, all the four applicants said that the dispute may be decided amicably. They had brought one cold-drink which was given to her. After consuming that cold-drink, she fell unconscious. When she regained consciousness, she found that there were no clothes on her body and all the four persons had already left. She was having pain in her vagina and anus. On 08.01.2024 at about 11 am again all the four persons came to her house. They were having a video in their mobile which was shown to her, according to which all the four persons were taking off her clothes and they inserted their fingers in her vagina as well as anus and they were laughing. After seeing the video, she started crying and also felt ashamed. All the four persons extended a threat that they would upload the video and in lieu of that they demanded an amount of Rs.Three Lacs. She pleaded that at present she does not have that much of amount and she would give the same after coming to Ahmedabad. She went back to Ahmedabad and informed the entire incident to her friend Pooja Dawar and she requested for giving Rs.Three Lacs so that she can pay the same to applicants. She was persuaded by her friend not to do so because otherwise applicants would blackmail her for the entire life and accordingly she suggested that she would also

accompany the prosecutrix to Gwalior where the FIR be lodged and accordingly, the FIR was lodged.

3. Challenging the FIR lodged by the prsoecutrix, it is submitted by counsel for applicants that in fact the FIR was lodged by way of counter-blast. Furthermore, at the time of incident, applicant No.4 was at the flower show at riverfront of Ahmedabad (Gujarat). The incident took place in Ahmedabad whereas the FIR was lodged at Gwalior and that too after a considerably long time. It is submitted that on 24.03.2024 applicant No.5 had also lodged an FIR against prosecutrix, her friend Pooja and Rajesh Bhai Dawar for offence under Sections 328 384, 114, 506(1) of IPC which has been registered as FIR in Crime No.11191040240 at Police Station Sardar Nagar, District Ahmedabad. It is submitted that in the FIR which was lodged by applicant No.5, it was alleged that since Pooja Bahan, Rajesh Bhai Dawar and prosecutrix were frequently visiting her house for getting the loan sanctioned, therefore, from 2015 good relations were developed and these persons were visiting her house frequently. It was further alleged that applicant No.5 was tying Rakhi to co-accused Rajesh Bhai Dawar. In the month of July-August, 2022, as the prosecutrix who is the friend of Pooja was in need of loan, therefore, applicant No.5 went to the house of Pooja on three to four occasions for the purpose of settlement of their loan account. Pooja also used to come along with Rakesh Mahendra Bhai Bharwad. On one day, Rakesh was sitting on the bed of Pooja in her house. Then Pooja offered cold drink to applicant No.5 and Rakesh Bhai. After consuming the cold-drink she fell unconscious and could not recollect as to what happened thereafter. On 22.10.2022, Pooja sent a photograph on a whatsapp account in which applicant No.5 and Rakesh bhai were shown sleeping but they were wearing full clothes. A caption was also sent that it is a trailer and picture is to come. After seeing the whatsapp message, she got afraid and could not recollect that how said photograph was clicked. Then Rakeshbhai informed her that she should meet Pooja and they should give money to Pooja as per her demand otherwise she would defame

them. Accordingly, on Diwali festival of the year 2022, she went to the house of Pooja where she met with prosecutrix also. Pooja and prosecutrix demanded an amount of Rs.Two Lacs, failing which the video would be uploaded on You Tube. After hearing her threat, she got apprehensive and replied that she does not have that much of amount. Thereafter, prosecutrix and her friend (Pooja) insisted that applicant No.5 should sell her gold or may do whatever she may do but she has to give Rs.Two lacs. Thereafter, she came back to her house. On 22.12.2022, she mortgaged her gold with Ambika Jwellers and gave Rs.One Lac Five Thousand to Pooja. Thereafter, on various occasions, Rakesh Bhai called her and informed that the Pooja is again and again calling him and therefore he has blocked her mobile. He also stated that Pooja was saying that an amount of Rs.One lac is still outstanding which should be paid otherwise she would make the video viral. Accordingly, she demanded an amount of Rs.One Lac from Rajesh Bhai Tejwani. Since he was having only Rs.90,000/-, therefore, she added Rs.10,000/- from her house and gave that amount to Pooja and prosecutrix who assured that they would delete the video. In the month of March, 2023, again Pooja called her and demanded a further amount of Rs.One Lac and assured that she would delete the video in front of applicant No.5 and accordingly on 02.03.2023 she mortgaged the remaining gold for Rs.67,000/- and by adding the remaining amount of Rs.33,000/- from her house, she gave Rs.One Lac to Pooja and Rajesh Bhai and at that time they had deleted the photographs and videos. About 20 days prior to lodging of FIR, applicant No.5 received a phone call from Pooja and invited her to her house. There she was informed by prosecutrix that video and photographs are still saved in the mobile and again demanded Rs.3,50,000/- with a threat that otherwise the same would be forwarded to her husband. She started crying and was apprehensive and she also thought of committing suicide but considering the future of her three daughters she left the thought of committing suicide and informed the entire incident to her relatives including her husband and accordingly, the FIR was lodged. It is submitted

that the aforesaid FIR was lodged by applicant No.5 on 24.03.2024 and only by way of counter-blast prosecutrix has lodged the FIR on 27.04.2024. Thus, it is alleged that the FIR is the product of mala fides. It is further submitted that since the FIR was lodged belatedly, therefore, it is liable to be quashed. It is further submitted that DNA test report which has been filed along with the charge-sheet does not support the prosecution case and accordingly, it is prayed that the entire FIR as well as charge-sheet be quashed.

4. *Per contra*, the application is vehemently opposed by counsel for the State.

5. Heard learned counsel for the parties.

Whether delay in lodging the FIR can be a ground to quash the FIR and the criminal proceedings or not?

6. The question is no more *res integra*.

7. The Supreme Court in the case of **Skoda Auto Volkswagen (India) Private Limited. Vs. State of U.P. and others,** reported in **(2021) 5 SCC 795** has held that in a petition for quashing the FIR, the Court cannot go into disputed question of fact. The mere delay on the part of complainant in lodging the complaint, cannot by itself be a ground to quash the FIR. The Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in FIR or in complaint and criminal proceedings ought not to be scuttled at initial stage.

8. The Supreme Court in the case of **Ravinder Kumar and another Vs. State of Punjab**, reported in **(2001) 7 SCC 690** has held that attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course, a prompt and

immediate lodging of FIR is ideal as that would give the prosecution a twin advantage i.e. firstly it affords commencement of the investigation without any time lapse and secondly that it expels the opportunity for any possible concoction of a false version. Even otherwise promptly lodged FIR is also not an unreserved guarantee for the genuineness of the version incorporated therein. There may be variety of genuine causes for FIR lodgement to get delayed.

9. The Supreme Court in the case of **Mohammad Wajid and another Vs. State of U.P. and others**, reported in **AIR 2023 SC 3784** has held that delay in registration of FIR, by itself cannot be a ground for quashing of FIR. Thus, it is clear that merely because according to applicants there is delay in lodging the FIR by itself is not sufficient to quash the same.

Whether the FIR dated 27.04.2024 lodged by prosecutrix can be quashed on the basis of counter-blast or not?

10. Whether FIR lodged by prosecutrix is false or the FIR lodged by applicant No.5 is false is a highly disputed question of fact but one thing is clear that the parties are known to each other. The allegation made by applicant No.5 is that a video of her sleeping with Rajesh with full clothes on their body was clicked/prepared by prosecutrix whereas it is the case of prosecutrix that a video in a naked condition of the prosecutrix was prepared and applicants No.1 to 4 were inserting their fingers in the vagina and rectum of prosecutrix.

11. So far as mala fides are concerned, it is suffice to mention here that if the FIR discloses the commission of cognizable offence, then the mala fides of the informant become secondary.

The Supreme Court in the case of **RenuKumari Vs. Sanjay Kumar and others** reported in **(2008) 12 SCC 346** has held as under:-

> **9.** "*8*. Exercise of power under Section 482 CrPC in a case of this nature is the exception and not the rule. The section

does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of CrPC. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under CrPC, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle of *quandolexaliquidalicuiconcedit, concederevidetur et id sine quo res ipsaeesse non potest* (when the law gives a person anything, it gives him that without which it cannot exist). While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debitojustitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that

initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. In *R.P. Kapur* v. *State of Punjab* [AIR 1960 SC 866 : (1960) 3 SCR 388] this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings:

(*i*) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(*ii*) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(*iii*) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. (AIR p. 869)

10. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an

instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 CrPC and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana* v. *BhajanLal* [1992 Supp (1) SCC335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] . A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by this Court are as follows : (SCC pp. 378-79, para 102)

'(*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 Act concerned (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 Act concerned, 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. As noted above, the powers possessed by the High Court under Section 482 CrPC are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision, in exercise of this power, is based on sound principles. The inherent power 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 prima facie decision in a case where the entire facts are 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 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 cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See *Janata Dal* v. *H.S. Chowdhary* [(1992) 4 SCC305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and *Raghubir Saran (Dr.)* v. *State of Bihar* [AIR 1964 SC 1 : (1964) 1 Cri LJ 1].] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information

> is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. [See *Dhanalakshmi* v. *R. Prasanna Kumar* [1990 SuppSCC 686 : 1991 SCC (Cri) 142] , *State of Bihar* v. *P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , *RupanDeol Bajaj* v. *Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , *State of Kerala* v. *O.C. Kuttan* [(1999) 2 SCC 651 : 1999 SCC (Cri) 304] , *State of U.P.* v. *O.P. Sharma* [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] , *Rashmi Kumar* v. *Mahesh Kumar Bhada* [(1997) 2 SCC 397 : 1997 SCC (Cri) 415], *SatvinderKaur* v. *State (Govt. of NCT of Delhi)* [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503] and *Rajesh Bajaj* v. *State NCT of Delhi* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] .]”
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> The above position was again reiterated in *State of Karnataka* v. *M. Devendrappa* [(2002) 3 SCC89 : 2002 SCC (Cri) 539] , *State of M.P.* v. *Awadh Kishore Gupta* [(2004) 1 SCC 691 : 2004 SCC (Cri) 353] and *State of Orissa* v. *Saroj Kumar Sahoo* [(2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272] , SCC pp. 547-50, paras 8-11."

12. Even otherwise, if the FIR lodged by applicant No.5 is considered, it is also clear that she had alleged that on multiple occasions they have fulfilled the demand of prosecutrix. Why applicant No.5 also did not lodge the FIR immediately after the demand was made for the first time or when the video was sent on her whatsapp account.

13. Be that whatever it may be.

14. Since the FIR which has been lodged by prosecutrix discloses the commission of cognizable offence and the question as to whether FIR lodged by applicant No.5

was with an intention to create a defence in anticipation or whether the FIR lodged by prosecutrix is by way of counter-blast to the FIR lodged by applicant No.5 is a highly disputed question of fact which can be decided by the trial court after marshalling the evidence. This Court is of considered opinion that FIR cannot be quashed on the ground that it was lodged by way of counter-blast.

Whether the negative DNA test report falsifies the FIR lodged by prosecutrix or not?

15. The allegations made in the FIR have already been reproduced. It is not the case of prosecutrix that male organ was inserted inside the vagina or rectum of prosecutrix. The allegations are that applicants No.1 to 4 had inserted their fingers. Under these circumstances, if the DNA profile was not found, then it cannot be said that the FIR is false.

16. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that no case is made out warranting interference. Application fails and is hereby ***dismissed***.

(G.S. Ahluwalia)
Judge

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