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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 20.10.2023

+ CRL.M.C. 5733/2023 & CRL.M.A.21584/2023 (stay)

SURENDRA NAYAR Petitioner

Through: Mr. Akshay Chowdhary, Adv.
versus

STATE & ANR. Respondent

Through: Mr. Aashneet Singh, APP for State
with SI Manisha, PS GK-1.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No. 182/2022 under Sections 354/354A/376 IPC registered at P.S. Greater Kailash-I, New Delhi along with all proceedings emanating therefrom, including the chargesheet filed under Section 173 Cr.P.C.
2. The case of the prosecution is that the prosecutrix had been working in the company M/s OIP Sensor Systems India Liaison Office (OIP India) as Secretary to the petitioner since 2003. It is alleged in the FIR that the petitioner would harass the prosecutrix often by touching the body of the prosecutrix from front and back in an inappropriate manner and tried to take physical favours from her since 7 – 8 years during her tenure there.
3. It is further alleged that the petitioner also tried to involve the prosecutrix with the petitioner's brother who was staying abroad, by asking



her for physical favours.

4. It is alleged that recently the respondent had quit the job due to the said reason without any notice period and when she asked for gratuity, the same was refused by the petitioner.

5. The prosecutrix was called to the office on 04.09.2022 for some official work and to collect her experience certificate, when she was again harassed by the petitioner. Accordingly, a complaint was made by the prosecutrix at 04.00 P.M. on 04.09.2022 on the basis of which the aforesaid FIR came to be registered on 05.09.2022.

6. Subsequently, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. on 13.09.2022 in which she made further allegations of oral sex against the petitioner. On the basis of the said statement recorded under Section 164 Cr.P.C., Section 376 IPC was also added in the FIR.

7. After completion of investigation, the chargesheet was filed against the petitioner under Sections 376/354/354A IPC, but neither the charges have been framed nor cognizance has been taken yet.

8. The learned counsel appearing on behalf of the petitioner invites the attention of the Court to the FIR wherein it has been alleged that the prosecutrix has been working as Office Secretary to the petitioner since 2003 and the allegation made is that the petitioner has tried to take physical favours from her since 7 – 8 years during prosecutrix's tenure in the aforesaid company of the petitioner.

9. He submits that it is also the case of the prosecution that the prosecutrix has worked with the petitioner till the year 2022. He submits that there is an inordinate and unexplained delay in the registration of FIR. He submits that the allegations in the FIR are completely vague, in as much as



no specific incident with details thereof has been mentioned in the FIR. The relevant part of the FIR reads as under:-

“Myself XX W/o Mr. XXX, R/o XXXXXX.

I had been working in the company O/P Sensor systems India liaison office as secretary to Mr. Surendra Nayar, Since 2003. I would like to bring to your notice that I was harassed by Mr. Surendra Nayar in this period. ‘He would like touched my body from front & back in an inappropriate manner and tried to take physical favour from me since 7-8 year. During this tenure he also tried to involve me with his brother staying abroad by asking to give physical favour.’

Recently I have quit the job due to this reason without any notice period. I have asked for gratuity with was refused by him. Today I was called to the office for some official work and to collect my experience certificate. As again I was harassed by Mr. Nayar. I request to you kindly take a strict and necessary action against Mr. Surendra Nayar.”

10. He submits that in the FIR, the time of receiving of information at the police station has been mentioned as 04.00 P.M. on 04.09.2022 whereas the prosecutrix had come to the office of the petitioner on the same day around 05.30 P.M. and left around 06.20 P.M.

11. He submits that after leaving the office on 04.09.2022, a PCR call was made by the prosecutrix at Women Helpline Number 181 from her mobile number and stated that “B-33, GK-I Office mai Sir Sexually pareshan karte hai”, which is recorded as GD No. 0040A dated 04.09.2022 timed at 18:52:19, PS Greater Kailash.

12. He submits that giving of information to the police before going to the office of the petitioner and then making a PCR call after leaving the office, shows that the prosecutrix staged the false implication of the petitioner.



13. He has invited the attention of the Court to the counselling report of the CIC Counsellor approved by DCW dated 04.09.2022, wherein the counsellor has categorically observed that the petitioner has not committed sexual assault. He also refers to the representation made by the prosecutrix to the Delhi Commission for Women on 04.09.2022 itself which is in her handwriting and is a part of the chargesheet, to contend that the prosecutrix has herself admitted that there was no molestation nor sexual assault done to her and also stated that she does not want to get the medical examination conducted and only wants her gratuity. Inviting the attention of the Court to the MLC, he further submits that during her medical examination conducted at AIIMS, the prosecutrix had again refused her internal medical examination. The relevant part of the letter dated 04.09.2022 addressed to the Delhi Commission for Women reads as under:-

*“My name is XX. I am aged XX. Today on 4.9.22 I visited my office for obtaining my Experience Certificate and pending Gratuity (Wages), over which I had an argument, due to which I made a call on helpline number 181, **but no molestation or sexual assault happened with me. I do not want to get conducted my medical examination and I do not want to take any legal action. I only want my Gratuity (Wages) to be given to me.**”*

14. He further submits that in her statement under Section 164 Cr.P.C., the prosecutrix has not only materially improved her original version but has claimed that since she was the only bread earner in the family and due to financial problems and immaturity, she continued to work in the office of the petitioner. He further submits that the statement of the prosecutrix that she is the only bread earner of the family is patently incorrect, in as much as



the husband of the prosecutrix in his statement under Section 161 CrP.C. has stated that he is working in Logistic Company Gurgaon for the last 20 years and is drawing a salary of Rs.40,000/-. He submits that the husband has also stated that the prosecutrix never told him that her boss had committed any wrong with her and he does not know anything about it, which itself shows that the allegations are made up.

15. The learned counsel further submits that no complaint whatsoever had ever been made by the prosecutrix and the FIR has been instituted only to blackmail, pressurize and harass the petitioner in his old age in order to extract money in the name of gratuity to which the prosecutrix is not legally entitled. He, therefore, urges the Court to quash the FIR and all proceedings arising therefrom.

16. *Per contra*, the learned APP has only submitted that the investigation of the matter is complete and the chargesheet has been filed. On a query put by the Court, he fairly concedes that there are too many contradictions in the original complaint made by the prosecutrix, the representation made by her to the Delhi Commission for Women, the counselling report and her statement recorded under Section 164 Cr.P.C.

17. I have heard the learned counsel for the petitioner as well as learned APP for the State supported by the learned counsel for the respondent no. 2 / prosecutrix.

18. Before advertng to the allegations made in the FIR and the evidence collected in support thereof, apt it would be to refer to the decision of Hon'ble Supreme Court in "***State of Haryana and Ors. Vs. Bhajanlal and Ors. [1992 SUPPL (1) SCC 335]***", wherein the Supreme Court had elaborately considered the scope and ambit of Section 482 CrP.C. and



Article 226 of the Constitution of India, in the context of quashing of criminal proceedings. The Supreme Court enumerated the following 07 circumstances under which the power can be exercised by the High Court for quashing the criminal proceedings:-

“(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.”

19. Likewise, in “*Vineet Kumar Vs. State of Uttar Pradesh*” [AIR 2017 SC 1884], it was held as under:-

“39. ...Apart from the bald assertions by the complainant that all accused have raped, there was nothing which could have led the Courts to form an opinion that present case is fit a case of prosecution which ought to be launched. We are conscious that statement given by the prosecutrix / complainant under section 164 CrPC is not to be lightly brushed away but the statement was required to be considered along with antecedents, facts and circumstance as noted above.”

20. In “*Prashant Bharti vs. State (NCT of Delhi)*”, (2013) 9 SCC 293, the Hon’ble Supreme Court quashed FIR No. 47/2007 under Sections 328/354/376 IPC registered at Police Station Lodhi Colony after adverting to the facts of that case and noting that the version of the complainant was not supported by medical evidence and was also marred with inconsistencies. The relevant paragraph of the judgment reads as under:-

“...19. Insofar as the instant aspect of the matter is concerned, the medical evidence discussed above reveals that the complaint made by the complainant/prosecutrix alleging a sexual relationship with her by Prashant Bharti, the appellant-accused, was made more than one month after the alleged occurrences. It was, therefore, that during the course of her medical examination at AIIMS, a vaginal smear was not taken. Her clothes were also not sent for forensic examination by AIIMS, because she had allegedly changed the clothes which she had worn at the time of occurrence. In the absence of any such scientific evidence, the proof of sexual intercourse between the complainant/prosecutrix and the appellant-accused would be based on an assertion made by the complainant/prosecutrix. And an unequivocal denial thereof, by the appellant-accused. One's word against the other. Based on the falsity of the statement made by the



complainant/prosecutrix noticed above (and other such like falsities, to be narrated hereafter), it is unlikely, that a factual assertion made by the complainant/prosecutrix, would be acceptable over that of the appellant-accused.”...

21. In the context of the present case, the following observations made by this Court in “*Vimlesh Agnihotri and Ors. Vs. State*” (CRL. M.C. 1524/2021 dated 16.08.2021) can also be advantageously referred to:

“...16..Court is pained to note that there is an alarming increase of false cases of rape and offences under Section 354, 354A, 354B, 354C & 354D only to arm twist the accused and make them succumb to the demands of the complainant.

18.False claims and allegations pertaining to cases of molestation and rape need to be dealt with an iron hand due to the serious nature of the offences. Such litigations are instituted by the unscrupulous litigants in the hope that the other party will capitulate to their demands out of fear or shame.”....

22. Now reverting to the facts of the case, a perusal of the chargesheet shows that the allegations pertained to the period 2003 – September 2022 but the complaint has been made by the prosecutrix for the first time only on 04.09.2022, on the basis of which the FIR came to be registered on 05.09.2022. Evidently, there is an inordinate delay for which there is no explanation in the FIR. The explanation has been given for the first time by the prosecutrix in her statement recorded under Section 164 Cr.P.C. wherein she has stated that she was the only bread earner in the family and due to financial problems and immaturity she continued to work in the office of the petitioner.

23. Even if this is taken as a justification for not lodging the FIR at the earliest, the same is false on the face of it, in as much as, the husband of the



prosecutrix in his statement under Section 161 CrP.C. has categorically stated that he is working with Logistic Company Gurgaon for the past 20 years and is drawing a salary of Rs.40,000/- per month. Thus evidently, the petitioner was not the sole bread earner of the family and the ostensible reason put forth by the prosecutrix for continuance in the office of the petitioner despite the alleged suffocating atmosphere, stands falsified.

24. A comparative reading of the FIR, as well as, the statement of the prosecutrix recorded under Section 164 Cr.P.C. clearly shows that the prosecutrix has made major and material improvements over her original version on the basis of which the FIR came to be registered.

25. The only allegation against the petitioner in the FIR is that the petitioner inappropriately touched her body from the front and the back whereas in the statement under Section 164 Cr.P.C., the allegations of oral sex have been made, which are conspicuously missing in the original version which is the basis of the FIR.

26. Both in the FIR, as well as, in the statement under Section 164 Cr.P.C. the allegations are absolutely vague. No date and time, nor details of any specific incident have been mentioned in either version. Even, taking the allegations made in the statement under Section 164 Cr.P.C. at face value, the period of the alleged offence committed is over a period of 18 years and it is highly improbable that during this period prosecutrix would not inform anyone about the alleged case of the petitioner, not even to her husband, let alone making a police complaint.

27. Intriguingly, the husband of the prosecutrix in his statement recorded under section 161 CrPC has feigned complete ignorance about any alleged act of the petitioner, rather he has stated that the prosecutrix had never told



him that her boss had committed any wrong act with her.

28. A complaint made by the prosecutrix to the Delhi Commission for Women (DCW) on 04.09.2022 is also part of the chargesheet. The said complaint is in the prosecutrix's handwriting wherein she has clearly stated that no molestation or sexual assault has been done to her and she only wants that her gratuity should be provided to her and does not want to pursue her case against the petitioner. She has further stated that she does not want to get her medical examination conducted.

29. Likewise, in the counselling report dated 04.09.2022, the CIC-approved counsellor, who interacted with the prosecutrix at PS Greater Kailash on 04.09.2022, it has categorically been recorded by the counsellor that the prosecutrix has not been sexually assaulted.

30. In so far as the prosecutrix's entitlement to gratuity is concerned, she admitted, in response to a query put by the learned ASJ, that there is no provision of gratuity in her employment with the petitioner. This has been so recorded by the learned ASJ in his order dated 15.09.2022, whereby the anticipatory bail was granted to the petitioner.

31. Clearly, the allegations made are bereft of details and when the same are examined in light of other material collected, it appears that the allegations of rape and sexual assault have been made by the prosecutrix against the petitioner solely due to non-payment of gratuity to her by the petitioner, to which she is not legally entitled as per her own admission. Plainly, the criminal proceedings have been maliciously instituted to arm-twist the petitioner with an ulterior motive to extort money in the name of gratuity.

32. The petitioner is admittedly an 85 years old senior citizen. The



allegations made are absurd and inherently improbable and on the basis of the same there does not appear to be sufficient ground to allow the continuation of criminal proceedings against the petitioner.

33. This Court thus, finds itself justified in allowing the present petition and quashing of the FIR.

34. Consequently, the petition is allowed and the FIR No. 182/2022 under Sections 354/354A/376 IPC registered at P.S. Greater Kailash-I, New Delhi along with all other proceedings emanating therefrom, is quashed.

35. The petition stands disposed of.

VIKAS MAHAJAN, J

OCTOBER 20, 2023

N.S. ASWAL