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

+ W.P.(CRL) 842/2024 & CRL.M.A. 7874/2024

PAWAN PANDEY Petitioner
Through: Mr. Shivam Sharma & Mr.
Ranjeet Kumar, Advs.

Versus

STATE OF NCT OF DELHI Respondent
Through: Mr. Amol Sinha, ASC for
the State (Crl.) for the
State with Mr. Kshitiz
Garg, Mr. Ashvini Kumar
& Ms. Chavi Lazarus,
Advs.
SI Naveen Dahiya, PS-
CI/Special Cell
SI Mahesh Kumar, PS-
IFSO/ Special Cell

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
13.03.2024

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1. The present petition is filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeking quashing of FIR No. 248/2023 dated 23.09.2023, registered at Police Station Special Cell for offences under Sections 419/420 of the Indian Penal Code, 1860 ('IPC').

2. Briefly stated, the facts relevant for adjudication of the present petition, are as under:

2.1 The FIR was registered on a complaint made by

Deputy Secretary, Ministry of Home Affairs alleging that the petitioner is running an NGO in the name of Modi Charitable Trust (hereafter “**the Trust**”) and misrepresenting in the name of the Hon’ble Prime Minister of India, Shri Narendra Modi. It is also alleged that the petitioner is using the picture of the Hon’ble Prime Minister of India along with his own picture on National News Channel for deceiving the public at large which was evidenced by an advertisement broadcasting the picture of the petitioner along with Hon’ble Prime Minister of India, Shri Narendra Modi, with the name of the Trust run by the petitioner.

2.2 It is alleged that, since the Trust is an NGO which receives donations/ funds from general public, the applicant is gaining donations/ funds by using the surname and picture of the Hon’ble Prime Minister of India.

2.3 This led to registration of the present FIR.

2.4 The petitioner was arrested on 09.02.2024 when in compliance of notice under Section 41 of the CrPC, he appeared before the Investigating Officer, Special Cell, Delhi.

2.5 The petitioner was granted bail on 26.02.2024.

3. The learned counsel for the petitioner submits that a trust in the name of ‘Modi Charitable Trust’ was registered with different social objectives such as education, establishment of schools, providing hostels, library etc. He submits that the Trust Deed specifically mentions objective for taking grants. The same is reproduced as under:

“7. To take grant from Central Government and State Government, concerned department, receive donations, contribution, and subscription, assistant in cash or in kind

from semi Govt. Authorities, public undertaking, banks, Financial Institution, Board, Public and private institution, enterprise, Individuals, trust, Firms, companies, Corporation, Cooperative Societies, National or International Agencies, foreign Government, Foreign trust in India, or abroad, for the welfare of citizen and to make self oriented and give easy training i.e. Sewing, knitting. Sculpture and wooden art, Dari, Kalin and drawing, painting, ART training and Typing Centre, steno learning centre and computer training so they should prepare theirs eyes and yield the selfness less for the fulfillment of the said work, the trust.”

4. The main ground taken by the petitioner is that the complaint/ FIR does not disclose any criminal offence at all, much less any offence under Section 420/419 of the IPC. He submits that the FIR has been registered only with the intention to harass and humiliate the petitioner and, therefore, the present FIR deserves to be quashed.

5. *Per contra*, the learned Additional Standing Counsel for the State submits that the petitioner has cheated and dishonestly induced the public at large by running an NGO – ‘Modi Charitable Trust’, which in itself reflects the usage of the surname of the Hon’ble Prime Minister of India, Shri Narendra Modi. The petitioner’s name is ‘PAWAN PANDEY’ and his surname, that is, ‘PANDEY’ is not in any way connected with the surname ‘MODI’ and, therefore, the usage of the surname ‘MODI’ shows *mala fide* on the part of the petitioner.

6. It is trite law that the inherent powers under Section 482 of the CrPC are to be exercised sparingly and only where the allegations made in the complaint/FIR, even if taken at the face value, do not *prima facie* disclose the commission of offence.

7. The Hon’ble Apex Court in *Neeharika Infrastructure v. state of Maharashtra : 2021 SCC OnLine 315*, has culled out the principles that govern the law on quashing of FIR under Section 482 of the CrPC and held as under

“13. From the aforesaid decisions of this Court, right from the decision of the Privy Council in *Khwaja Nazir Ahmad [King Emperor v. Khwaja Nazir Ahmad, 1944 SCC OnLine PC 29 : (1943-44) 71 IA 203 : AIR 1945 PC 18]* , the following principles of law emerge:

13.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences.

13.2. Courts would not thwart any investigation into the cognizable offences.

13.3. However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on.

13.4. The power of quashing should be exercised sparingly with circumspection, in the “rarest of rare cases”. (The rarest of rare cases standard in its application for quashing under Section 482CrPC is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court.)

13.5. While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

13.6. Criminal proceedings ought not to be scuttled at the initial stage.

13.7. Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule.

13.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482CrPC.

13.9. The functions of the judiciary and the police are complementary, not overlapping.

13.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

13.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

13.12. *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.*

13.13. *The power under Section 482CrPC is very wide, but conferment of wide power requires the Court to be cautious. It casts an onerous and more diligent duty on the Court.*

13.14. *However, at the same time, the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , has the jurisdiction to quash the FIR/complaint.*

13.15. *When a prayer for quashing the FIR is made by the alleged accused, the Court when it exercises the power under Section 482CrPC, only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”*

8. Recently, the Hon’ble Apex Court in the case of ***Enforcement Directorate v. Niraj Tyagi : 2024 SCC OnLine***

SC 134, has emphasized that the quashing of an FIR should be an exception rather than an ordinary rule and held as under :

“20. In our opinion, it's a matter of serious concern that despite the legal position settled by this Court in catena of decisions, the High Court has passed the impugned orders staying the investigations of the FIRs and ECIR in question in utter disregard of the said settled legal position. Without undermining the powers of the High Court under Section 482 of Cr. P.C. to quash the proceedings if the allegations made in the FIR or complaint prima facie do not constitute any offence against the accused, or if the criminal proceedings are found to be manifestly malafide or malicious, instituted with ulterior motive etc., we are of the opinion that the High Court could not have stayed the investigations and restrained the investigating agencies from investigating into the cognizable offences as alleged in the FIRs and the ECIR, particularly when the investigations were at a very nascent stage. It hardly needs to be reiterated that the inherent powers under Section 482 of Cr. P.C. do not confer any arbitrary jurisdiction on the High Court to act according to whims or caprice. The statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. In a way, by passing such orders of staying the investigations and restraining the investigating agencies from taking any coercive measure against the accused pending the petitions under Section 482 Cr. P.C., the High Court has granted blanket orders restraining the arrest without the accused applying for the anticipatory bail under Section 438 of Cr. P.C.”

(Emphasis Supplied)

9. In order to ascertain the veracity of contentions made by the learned counsel for the petitioner, it is imperative to firstly examine whether the relevant ingredients of the alleged offences, are *prima facie* made out. The relevant sections read as follows :

“419. Punishment for cheating by personation.

Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property.

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may

extend to seven years, and shall also be liable to fine.”

10. Therefore, to constitute offences under Sections 420/419 of the IPC, the necessary ingredient required to be proved is the dishonest inducement by an accused, and that too, by personating to be someone else, for obtaining wrongful gain at the expense of others.

11. The specific allegations have been made that the petitioner is collecting donations/ funds by using the surname of Hon'ble Prime Minister of India. The picture of the Hon'ble Prime Minister has also been used whereas admittedly, the petitioner's surname is not 'MODI'. The advertisements have been broadcasted on YouTube and other National News channels with the picture of the Hon'ble Prime Minister. The allegations, therefore, are that the petitioner is dishonestly inducing people to deliver the property in the form of donations. The FIR, therefore, discloses commission of cognizable offences.

12. The Police has statutory right and duty to investigate into all aspects of the cognizable offence as alleged. The investigation is at a nascent stage and the Court while exercising power under Section 482 of the CrPC ought not to thwart an investigation.

13. When the allegations as noted in the FIR, discloses the commission of cognizable offence, the Court is not required to consider on merits, whether the allegations make out a cognizable offence or not at the initial stage and the Court has to permit the investigating agency to investigate.

14. In view of the above facts and discussions and the material placed on record, this Court does not find it a fit case for quashing of the FIR No. 248/2023.

15. Needless to say, the petitioner will be at liberty to raise all these contentions as raised before this Court, before the learned Trial Court which shall be dealt with as per law.

16. In view of the above, the present petition stands dismissed along with pending application.

AMIT MAHAJAN, J

MARCH 13, 2024

“SS”/UG