

Before S. S. Grewal, J.

KANTA DEVI,—Petitioner.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Criminal Misc. No. 3713-M of 1989.

5th October, 1989.

Code of Criminal Procedure, 1973—Ss. 164 and 482—Indian Penal Code—S. 376—Gang rape—F.I.R. lodged on statement of prosecutrix—Statement of prosecutrix under section 164 recorded before Magistrate—Prosecutrix for personal reasons seeking quashing of F.I.R. under section 482—Subsequent denial of allegation not sufficient to quash F.I.R. particularly when statement under section 164 recorded—Trial court to proceed with the trial.

Held, it is well settled that for the quashment of the F.I.R. at this stage, mainly allegations in the impugned F.I.R. are to be taken at their face value. In view of the specific allegations made in the impugned F.I.R., mere fact that at a later stage the prosecutrix has denied having made such allegations, would not be sufficient to order quashment of the said F.I.R., particularly, when the prosecutrix has made her statement under section 164 of the Code before the Judicial Magistrate, supporting her allegations made in the impugned F.I.R. It is true that the statement under Section 164 of the Code can only be used for contradicting the witness, and, not for the purpose of corroboration. At this stage it cannot be said that the allegations set out in the impugned F.I.R. against the petitioners, do not constitute, or, spell out any criminal offence, or that resort to criminal proceedings in the facts and circumstances of the present case, would amount to abuse of the process of the Court, nor, it would be desirable for this Court to conduct detailed inquiry into the truth of allegations contained in the complaint. The impugned F.I.R. is thus not liable to be quashed, and, this petition is, accordingly, dismissed. The trial Court would proceed with, and, dispose of the case on merits.

(Para 8 and 10)

Petition under Section 482 Cr. P.C. praying that the FIR No. 38, dated 9th April, 1989 Annexure P/1 may be quashed being not in the interest of justice, and an abuse of the process of the court.

It is further prayed that during the pendency of this petition, further proceedings in respect of FIR No. 38, dated 9th April, 1989 Annexure P/1 may be stayed in the interest of justice in order to save us from the police harassment, FIR No. 38, dated 9th April, 1980. Under Section 366/376/342/IPC.

H. S. Mann, Advocate, for the Petitioner.

S. S. Saron, A.A.G., Punjab, for the State.

ORDER

S. S. Grewal, J.

(1) This petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') relates to quashment of F.I.R. No. 38, dated 9th April, 1989, under Sections 366/376/342, Indian Penal Code, (Annexure P1), registered at Police Station City, Muktsar, District Faridkot.

(2) In brief, according to the allegations in the F.I.R., lodged on the basis of the statement of Smt. Kanta Devi prosecutrix (who is also the petitioner in the present petition), are, that on 7th April, 1989 at about 7 P.M. she along with her brothers Sunil and Rajesh went to the shop of Jagan Nath-Munshi Ram, for getting V.C.R. and T.V. on rent. At the shop Sukhbir Singh, son of Bhagwan Singh, Narinder Kumar, son of Ved Parkash, Kanwarbir Singh, son of Jagmohan Singh Fattanwala, Harbans Singh alias Bansi Tailor, Niraj alias Bittu, son of Verma Advocate, Jaswinder Singh alias Goli, son of Gurpreet Singh, were already present there, Kanta Devi and her brothers left for their house on a rickshaw. On the way, as they reached near Rajpaul Cinema, all the aforesaid six accused dragged her from the rickshaw, gave beating to her brothers and rickshaw wala who, ran away. Meanwhile, the accused took Smt. Kanta Devi in the box of that cinema. Thereafter, all the aforesaid six accused committed rape on her.

Kanta Devi v. State of Punjab and another (S. S. Grewal, J.)

(3) According to the allegations in the present petition, the occurrence detailed in the aforesaid F.I.R. (Annexure P1) has not taken place. The petitioner is being harassed by the Police, and, made to sit in the Police Station for days together, along with other members of her family. It is also pleaded that there is political rivalry between S. Harcharan Singh Brar, his wife Smt. Gurbinder Kaur on the one side, and S. Harchand Singh Fattanwala, Jagmohan Singh Fattanwala (his nephew), and, the petitioner, who is a poor lady, does not want to become an instrument in the hands of either of the two parties, for settling their scores, and, that the impugned F.I.R. may be quashed. This petition is supported by an affidavit of Smt. Kanta Devi.

(4) On behalf of the State it was asserted that the statement of the prosecutrix was got recorded on 11th April, 1989 in the Court of Sub-Divisional Judicial Magistrate, Muktsar, under Section 164 of the Code (Annexure R1), and, subsequently, on the basis of her statement, another case under Sections 368/342/506/147/149 Indian Penal Code, was registered against the accused party, including Jagmohan Singh father of Kanwarbir Singh accused.

(5) Counsel for the parties were heard.

(6) Learned counsel for the petitioner vehemently argued that since the petitioner (who is the first informant and the prosecutrix) herself has filed a petition for quashment of the F.I.R., it is extremely doubtful that the criminal case against the accused would, at all, result in their conviction, and, no useful purpose will be served by allowing the prosecution to continue. Reliance in this respect has been placed on the authority in *Rakesh Saxena v. State through C.B.I.*, (1), wherein "having regard to the nature of the dispute and the fact that the offences, if any, are alleged to have been committed more than six years ago and the appellant was merely a trader at the lowest rung of the hierarchy in the Foreign Exchange Division of the Bank and not a highly placed officer and the trial is bound to occupy the time of the court of first instance for not less than two or three years in view of the complicated nature of the case and even then, it is extremely doubtful whether it will at all result in conviction", it was in these circumstances observed that, "no useful purpose will be served by allowing the prosecutions to continue", and, the charges against the appellants were ordered to be quashed.

(1) A.I.R. 1987 S.C. 740.

(7) The facts of the case in hand are entirely different from the facts of the case in *Rakesh Saxena v. State through C.B.I.* (supra). The present petition for quashment has been filed within two months of the registration of the case, and the challan in respect of the impugned F.I.R. has already been presented in the committing Court, and the trial in the case would not take sufficiently long time, as in *Rakesh Saxena's* case (supra). The aforesaid authority in *Rakesh Saxena's* case is not applicable to the facts and circumstances of the case in hand, and the same is clearly distinguishable.

(8) It is well settled that for the quashment of the F.I.R. at this stage, mainly allegations in the impugned F.I.R. are to be taken at their face value. In view of the specific allegations made in the impugned F.I.R., mere fact that at a later stage the prosecutrix has denied having made such allegations, would not be sufficient to order quashment of the said F.I.R., particularly, when the prosecutrix had made her statement under Section 164 of the Code before the Judicial Magistrate, supporting her allegations made in the impugned F.I.R. It is true that the statement under Section 164 of the Code can only be used for contradicting the witness, and, not for the purpose of corroboration. At this stage it cannot be said that the allegations set out in the impugned F.I.R. against the petitioners, do not constitute, or, spell out any criminal offence, or, that resort to criminal proceedings in the facts and circumstances of the present case, would amount to abuse of the process of the Court, nor, it would be desirable for this Court to conduct detailed inquiry into the truth of allegations contained in the complaint.

(9) I am fortified in my view from the latest authority of the Apex Court in *State of Bihar v. Murad Ali Khan and others* (2), wherein, dealing with this aspect of the case it was observed that "jurisdiction under Section 482 Cr. P.C., which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the Trial Magistrate when the evidence comes before him.

Charanjit Singh and others v. Gursharan Kaur (S. S. Sodhi, J.)

Though it is neither possible, nor advisable to lay down any inflexible rules to regulate that jurisdiction one thing, however, appears clear that it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute, or, spell out any offence and that resort to criminal proceedings, would, in the circumstances, amount to an abuse of the process of the court or not."

"Proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint, as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482", as held in *Municipal Corporation of Delhi v. Ram Kishan Rohtagi and others* (3).

(10) For the foregoing reasons, the impugned F.I.R. is not liable to be quashed, and, this petition is, accordingly, dismissed. The trial Court would proceed with, and, dispose of the case on merits. It is, however, clarified that nothing observed herein for the disposal of this petition, shall, in any manner, be construed by the trial Court to affect the merits of the case.

(11) In case the petitioner finds any difficulty, or, has reasonable apprehension that undue influence would be exerted on her, in order to prevent her from making true application for transfer of the case.

R.N.R.

Before G. C. Mital & S. S. Sodhi, JJ.

CHARANJIT SINGH AND OTHERS,—Petitioners.

versus

GURSHARAN KAUR,—Respondent.

Criminal Misc. No. 8199-M of 1987.

6th October, 1989.

Code of Criminal Procedure, 1973 (2 of 1974)—Ss. 397(3) and 482—Inherent power of High Court under section 482—S. 397(3) of the Code does not bar High Court from exercising inherent jurisdiction.

(3) A.I.R. 1983 S.C. 67.