



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 2343 OF 2023
(Arising out of S.L.P. (Criminal) No. 2988 of 2023)

**HAJI IQBAL @ BALA
THROUGH S.P.O.A.**

...APPELLANT(S)

VERSUS

STATE OF U.P. & ORS.

...RESPONDENT(S)

J U D G M E N T

J.B. PARDIWALA, J. :

1. Leave granted.
2. This appeal is at the instance of the original accused No. 2 in the First Information Report (FIR) No. 195 of 2022 dated 25.08.2022 registered with the Mirzapur Police Station, District Saharanpur, State of U.P. for the offences punishable under Sections 376-D and 506 resply of the Indian Penal Code (for short, "IPC") and is directed against the order passed by the High Court of Judicature at Allahabad dated 17.10.2022 in the Criminal Miscellaneous Writ Petition No. 15172 of 2022 filed by the appellant by which the High Court rejected the Writ

Petition and thereby declined to quash the FIR referred to above for the enumerated offences therein.

3. The FIR lodged by the one "X" reads thus:-

"Copy of the Complaint - - To the Incharge Inspector Sir. P.S. Mirzapur, District- Saharanpur. Sir, it is humbly requested that my name is X wife of Y, Residence of : Village Kot Mustarka, P.S. Chachrauli, District Yamuna Nagar, Haryana. It is in the year 2011 one of my relatives told to me that one plot of land situated at Village Safipur vide land Khasra No. 145/1 area 0.461 Hectare belonged to Arnit Kumar Joshi son of Surendra Joshi residence of Mani Majara Road, Chandigarh was then decided by said owner for sale of the said land plot. It is in view of the same, I executed sale deed for purchase of present land on 25.11.2011. The present land in the year 2012 forcefully captured by Javed son of Iqbal @ Bala, Hazi Iqbal@ Bala son of Abdul Wahid and Mahmud son of Abdul Wahid residence of Kaswa & P.S. - Mirzapur, District- Saharanpur. I then requested these people to vacate my land when these people started to threaten me. I have made many more requests to these people. It is however, these people did not budge. It is in the Month of November, 2018 said Javed, his brother Alishan and their Advocate Jishan sol! of Jamil residence of Padli Grant, P.S. Mirzapur, District Saharanpur called me for communication near to Tubewell at Glocal University. It is then these people for vacating my land, they compelled me to make physical relation with them. It is then Javed sent Alishan to bring some food items from the market. It is thereafter, the then present Javed and his Advocate Jishan after bringing me before the Tube well room; they separately made forceful rape with me. They thereafter threatened that if I communicate to any one, they will take my life. It is sometimes later Alishan after taking goods from the market came before there It is then Javed and Jishan leave that place on the excuse that they are going toward Badshahi Bag. It is thereafter, Alishan after finding me alone; he also raped me after taking me inside the tube well room. He threatened to kill me in case I open mouth.

It is thereafter I returned to my home. It is on next week, I returned to see my field. It is then I met Afjal and his advocate Jishan. They called me before the Tubewell for making communication. It is on the excuse of vacating the forceful possession of my land, Afjan son of Iqbal and his Advocate Jishan again raped me forcefully. It is still these people did not vacate my land. It is for many times it is Javes and his brother Alishan, Afjal and Jishan on the excuse of vacating my land, they separately blackmailed and committed the crime of rape with me. These people after threatening me, they told that I should forget about the land. I want to state that these people are very powerful people. It was earlier due to threat to my life, I then unable to state anything at the point of time. It is, therefore, you are requested to lodge my report and take necessary legal action. It will be humble justice for me.”

4. Thus, a plain reading of the aforesaid FIR reveals that the victim “X” is a resident of Village Kot Mustarka, P.S. Chachrauli, District Yamuna Nagar, Haryana. She had purchased a land bearing Khasra No. 145/1 admeasuring 0.461 hectares situated at Village Safipur, Behat, Saharanpur from one Amit Kumar Joshi on 25.11.2011. The victim has alleged that in the year 2012 the appellant along with two other accused persons named in the FIR forcibly took over the possession of the said land and when the victim begged before them to vacate the land, they started threatening her. In November 2018, the other co-accused namely Javed, Alishan and their Advocate Jishan asked the victim to meet them near a tube well at the Glocal University and when the victim went to meet them, they all forced her to have physical

relations with them in lieu of vacating her land. It is alleged that despite exploiting her sexually, they did not vacate her land. It is further alleged that the co-accused Afjal, Jishan, Javed and Alishan had also on several occasions blackmailed her and committed rape on her.

5. Although the appellant herein is named in the FIR as accused No. 2, yet no particular allegation has been levelled against him. He went before the High Court with a prayer that the FIR be quashed so far as he is concerned. The High Court by the impugned order dated 17.10.2022 rejected the Criminal Miscellaneous Writ Petition No. 15172 of 2022 and thereby declined to quash the FIR against the appellant.

6. The impugned order passed by the High Court reads thus:-

“Heard Shri Ravi Shankar Prasad, learned Senior Counsel, assisted by Shri I.B. Yadav, learned counsel for the petitioner and learned A.G.A for the State respondents.

The relief sought in this petition is for quashing of the F.I.R. dated 25.08.2022 registered as Case Crime No. 0195 of 2022 under Sections 376-D, 506 IPC, Police Station Mirzapur, District Saharanpur.

Learned A.G.A., at the outset, submits that petitioner has long criminal antecedent of 30 cases. This fact is not being disputed by learned counsel for the petitioner.

Perusal of the impugned first information report prima facie reveals commission of cognizable offence. Therefore, in view of the law laid down by Hon'ble Supreme Court

in the case of State of Haryana and others vs. Bhajan Lal and others, 1992 Supp. (1) SCC 335 and M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra, AIR 2021 SC 1918 and in Special Leave to Appeal (Crl.) No.3262/2021 (Leelavati Devi @ Leelawati & another vs. the State of Uttar Pradesh) decided on 07.10.2021, no case has been made out for interference with the impugned first information report.

Therefore, the writ petition is dismissed leaving it open for the petitioner to apply before the competent court for anticipatory bail/bail as permissible under law.”

7. In such circumstances referred to above, the appellant is here before this Court with the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

8. Mr. Siddhartha Dave, the learned senior counsel appearing for the appellant herein in his written submissions has stated as under:-

“a) It is respectfully submitted that the alleged First Information Report is absolutely false and frivolous, and on a reading of the said FIR, the offence under Section 376-D and 506 IPC is clearly not made out against the Petitioner herein inasmuch as apart from the omnibus allegation that the Petitioner along with the co-accused person had forcibly taken possession of the land of the Complainant and that they use to threaten her, there is neither any allegation that the Petitioner had committed rape on the Complainant or that he even made any sexual advances towards the Complainant or that he had threatened the Complainant at any point of time in any manner.

b) The allegations in the First Information Report are not only vague but also highly improbable given that except for the bald allegation that the incident occurred in November 2018, there is no mention of the date and time of incident in the FIR. The said incident allegedly

occurred in November 2018 while the FIR has been lodged after an inordinate delay of 4 years, that is, on 25.08.2022. On a reading of the FIR it is evident that the dispute is with respect to the land situated at Khasra No. 145/1, Village Shafipur, Behat, District Saharanpur and the Petitioner is a bona fide purchaser of the said land by virtue of a registered sale deed dated 10.10.2012 for a sale consideration of Rs. 12 lakh and there was therefore no question of the Petitioner taking forceful possession of his own land from the Complainant particularly when there is no evidence to show that she in fact is the owner of the said land. If at all the Complainant had any grievance against the Petitioner she could have approached the Court instead of lodging a false FIR against the Petitioner and that too after an inordinate delay of 4 years for which there is no explanation.

c) It is submitted that although the Respondents have alleged that the Petitioner is a mining mafia in western Uttar Pradesh but there is not even a single case registered against the Petitioner with respect to illegal mining. Further the Petitioner has not been declared as a mining mafia by any authority or court of law.

d) The Respondents are maliciously attempting to project the Petitioner, who is a Chancellor of Glocal University, as a hardened criminal when the fact is that every time the Petitioner and his family members were granted protection by the Courts, the Police immediately registered new FIRs against them, It is submitted that the State of Uttar Pradesh is misusing its administrative as well as police machinery to harass the Petitioner and his family members by registering false cases against them. Further the State authorities have not only illegally demolished three residential houses of the Petitioner but has also registered false criminal cases against even those persons who stand surety for the Petitioner and his family members in cases where bail or anticipatory bail has been granted to them.

e) It is submitted that after the change of Government in the State of Uttar Pradesh in the year 2017, the ruling party came to power and immediately after the change of Government the Petitioner along with his family

members were falsely implicated in more than 30 criminal cases at the behest of the ruling party. Although the Respondent State is heavily relying upon the criminal cases registered against the Petitioner and his family members to show that they are habitual offenders but till date the Petitioner has not been convicted by any Court of law and moreover every time the Petitioner or his family members gets protection (anticipatory bail or stay of arrest) from either this Hon'ble Court or the Hon'ble High Court, the local Police immediately registers false cases against them.

f) It is submitted that the alleged Look Out Notice dated 10.05.2022 was issued much prior to the registration of the present FIR No. 195 of 2022 which was registered on 25.08.2022 and as such is inconsequential.

g) It is respectfully submitted that the alleged First Information Report has been maliciously instituted at the behest of the present ruling party in the State of Uttar Pradesh to wreak vengeance and to settle political scores with the Petitioner as he belongs to a rival political party and he was also a Member of Legislative Council from the period 2011 to 2016. The Petitioner belongs to a respectable family of Saharanpur and he is running several Charitable Institutions.

h) The allegations made in the First Information Report do not prima facie constitute any offence or make out a case under Sections 376-D and 506 IPC against the Petitioner and thus, the FIR is liable to be quashed. It is pertinent to mention that even after the charge sheet has been filed, the petition for quashing of a FIR is well within the powers of a Court of law [Please see: **ANAND KUMAR MOHATTA & ANOTHER VS. STATE (NCT OF DELHI), DEPARTMENT OF HOME & ANOTHER** (2019) 11 SCC 706 at paragraph 14 & 16].

i) For the reasons mentioned above, the Special Leave Petition may be allowed and the order of the Hon'ble High Court refusing to quash the FIR No. 195 of 2022 dated 25.08.2022 be set aside.”

SUBMISSIONS ON BEHALF OF THE STATE

9. Ms. Garima Prasad, the learned Additional Advocate General appearing for the State of U.P. in her written submissions has stated as under:-

“a) That in the above FIR, there are total 6 accused persons namely Zaved, Haji Iqbal @ Bala, Mahmood, Afjal, Alishan, Zishan, out of the above accused person, only Accused Iqbal @ Bala has filed the present petition for quashing the said FIR before this Hon’ble Court.

b) During investigation, the statement of Complainant was recorded under section 161 Cr.P.C. as well as 164 Cr.P.C., wherein the complainant has supported the version of the complaint.

c) The Investigation has been completed and chargesheet is ready to file against the Petitioners but due to stay order of this Hon’ble Court, the chargesheet could not be submitted.

d) It is pertinent to mention that the chargesheet has been filed against the other accused Persons and the trial was commenced.

e) It is correct and admitted that with the change of dispensation/Government, complainants/terrified peoples/aggrieved persons, who are poor persons, poor farmers, small contractors, have been able to come forward to register or lodge criminal complaints against the Gangster Iqbal @ Bala and his family members as well as associates. Due to illegal support by the earlier dispensation/Government to these criminals, actions were not taken.

f) It is submitted that in number of cases, this Hon’ble Court has held that any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the Courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and, therefore, ordinarily a look for corroboration of her

testimony is unnecessary and uncalled for. Therefore, the delay in lodging the criminal case in rape cases is not fatal the case of prosecution.

In view of the aforementioned factual & legal submissions, it is most respectfully submitted that the present special leave petition of the Petitioners is liable to be dismissed with exemplary cost and the impugned order 17.10.2022 passed by the Hon'ble High Court in Criminal Misc. Writ Petition No. 15172 of 2022 is liable to be upheld."

ANALYSIS

10. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the FIR bearing No. 195 of 2022 lodged against the appellant herein should be quashed?

11. We take notice of the fact that in the entire FIR there is not a whisper of any allegation of rape or criminal intimidation against the appellant herein. All that appears on a plain reading of the FIR is that the appellant has been named as the accused No. 2. The other co-accused persons are directly or indirectly related to the appellant. The appellant is a Vice Chancellor of the Glocal University. We may not go into the serious allegations of political bias, etc. levelled by the learned senior counsel appearing for the appellant, but at the same time we should also not overlook the fact that for some reason or the other, the appellant is

being targeted. The appellant has been shown as a history sheeter. If the FIR does not disclose anything against the appellant and even at the end of the investigation, if nothing incriminating has surfaced against the appellant herein, then the continuation of the criminal proceedings against the appellant herein would be nothing but gross abuse of the process of law. It appears that so far as the other co-accused are concerned, the investigation has been completed and charge sheet has also been filed. It further appears that the trial is in progress.

12. We are of the view that in the absence of any particular allegation in the FIR against the appellant herein, the High Court should not have declined to quash the FIR by way of a cryptic order saying that the appellant has criminal antecedents and the FIR *prima facie* reveals commission of cognizable offences. The High Court should have first inquired as to what type of allegations have been levelled against the appellant. By just naming the appellant in the FIR, offence cannot be said to have been committed by him. If any particular role is attributed or some kind of active participation is alleged in relation to the alleged offence, then it would be a different scenario.

13. There is something more to add to the aforesaid and the same goes to the root of the matter. We take notice of the fact that for the alleged act of gang rape of 2018, the FIR came to be lodged sometime in the year 2022 i.e. after almost a period of four years. We do not propose to say anything in regard to delay in lodging the FIR as the trial against the other accused persons is in progress. The Trial Court on its own will examine this aspect. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.[See : **Raju & Ors. v. State of Madhya Pradesh**, (2008) 15 SCC 133]

14. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into

many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

15. In the overall view of the matter, we are convinced that no case is made out to put the appellant herein to trial for the alleged offence.

16. We have also looked into the counter affidavit filed on behalf of the respondents Nos. 1, 2 and 3 respily. In their counter affidavit also, there is nothing to indicate that the appellant herein as one of the accused persons had committed the offence as alleged. All that has been stated in

the counter affidavit is that the appellant is a hardened criminal and against him multiple FIRs have been registered over a period of time for different offences.

17. For the aforesaid reasons, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court of Judicature at Allahabad is hereby set aside. The criminal proceedings arising from FIR No. 195 of 2022 dated 25.08.2022 registered at Police Station Mirzapur, Saharanpur, State of U.P. are hereby quashed so far as the appellant herein is concerned.

18. It is needless to clarify that the observations made in this judgment are relevant only for the purpose of the FIR in question and the consequential criminal proceedings. None of the observations shall have any bearing on any of the pending criminal prosecutions or any other proceedings.

.....**J.**
(B.R. GAVAI)

.....**J.**
(J.B. PARDIWALA)

NEW DELHI;
AUGUST 08, 2023