

Iqbal @ Bala Vs. State Of U. P.

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Court : Supreme Court of India

Decided On : Aug-08-2023

Judge : Hon'Ble Mr. Justice J.B. Pardiwala Hon'Ble Mr. Justice S.V.N. Bhatti

Appeal No. : Crl.A. No.-002342-002342 - 2023

Appellant : Iqbal @ Bala

Respondent : State Of U. P.

Advocate for Pet/Ap. : MOHD. ZAHID HUSSAIN __

Judgement :

2023 INSC685NON-REPORTABLE IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL No.2342
OF2023(Arising out of S.L.P. (Criminal) No.50 of 2023) IQBAL @ BALA & ORS.
APPELLANT(S) VERSUS STATE OF U.P. & ORS. RESPONDENT(S)

JUDGMENT

J.B. PARDIWALA, J.

:

1. Leave granted.

2. This appeal arises from an order passed by the High Court of Judicature at Allahabad dated 13.07.2022 in the Criminal Miscellaneous Writ Petition No.8905 of 2022 filed by the appellants herein (original accused Nos. 1, 2 and 6 respectively) by which the High Court rejected the Writ Petition and thereby declined to quash the First Information Report (FIR) No.122 of 2022 dated 21.06.2022 for the offences punishable under Sections 376, 323 and 354(A) of the Indian Penal Code (IPC) and Sections 7 and 8 of the Protection of 1 Children from Sexual Offences Act, 2012 registered at Womens Police Station, Mirzapur, District Saharanpur for the above enumerated offences. FACTUAL MATRIX3 The FIR dated 21.06.2022 reads thus:- Copy of the complaint written in Hindi Language- To the Senior Superintendent of Police, District - Saharanpur. Sir, I want to request that my name is X wife of Y residence of Kaswa & P.S. Mirjapur, District - Saharanpur. The complainant 3 years earlier used to work before the house of Haji Iqbal @ Balla son of Abdul Wahid residence of Kaswa Mirjapur, Saharanpur. I want to state that said Iqbal @ Balla is very much influential person having huge approach. For some days it is for some days, everything went smoothly. Then Iqbal stopped me from going outside of his house. In his house he has given one room for my living purpose. Then one day during night hours after finding good opportunity, said Iqbal raped me. It is however; it is due to public shame and due to influence of said Iqbal, I could not speak anything at that time. It is thereafter; both Iqbal and his brother Mehmood after finding opportunity, they used to rape me on every day. I wanted to disclose the present fact before my husband. It is however, the people there did not allow to come out from there. It is sometimes; my daughter Saliya and my son Akmal used to come there to meet. Then, Javed, Alishan and Afjal sons of Iqbal used to keep bad eyes on my daughter. They after taking her to different room, used to do vulgar acts with my daughter. It is then the age of my daughter was 14-15 years. It is at that time; after making courage, I wanted to oppose it. It is however; Javed and Dilshad (Bahanoi of Iqbal) mercilessly beaten me and caused fracture to my head. It is at that time 12 stitches were made before my head. I had then tried to make information of the same before the police station. It is however, I became unable to give the information of the same. It is after residing 4-5 months before there; it is on 2 one day after getting opportunity, I run away from there. It is thereafter after taking my

children; I started to live before my relatives. It is now; I got to know that it is against Iqbal, some of the people raised their voice. It is hence; it is for seeking justice from the injustice done to me, I have come down before you after hoping to get justice before you. It is thus, I request you to lodge my report and take necessary legal action.

4. Thus it appears from the aforesaid that the victim X (respondent No.4 herein), a resident of Kaswa, Mirjapur, Saharanpur, used to work for the appellant No.1 namely Iqbal alias Bala and also used to stay at his residence in a separate room. It is alleged by the victim that the appellants Nos. 1 and 2 respectively used to regularly rape her and whenever her daughter (who was about 14 to 15 years) used to visit the residence of the appellant No.1 to meet her, Javed, Alishan and Afjal (sons of the appellant No.1 i.e. Accused No.3, 4 and 5 respectively) used to misbehave and outrage her modesty. It is further alleged that once when the victim offered resistance, the co-accused Javed (accused No.3) and Dilshad (appellant No.3) hit her resulting in a fracture on her head. SUBMISSIONS ON BEHALF OF THE APPELLANTS5 Mr. Siddhartha Dave, the learned senior counsel appearing for the appellants herein in his written submissions has stated thus:- 3 a) It is respectfully submitted that the alleged First Information Report is mala fide and inherently improbable since, on a plain reading of the said FIR, the offence under Sections 376, 323, 354 (A) of the Indian Penal Code and Sections 7 and 8 of POCSO Act, 2012 is clearly not made out against the Petitioners. The allegations in the FIR are vague as there is no mention of time, date, place of the incident in the FIR. Even otherwise, there is an inordinate delay of more than 3 years in lodging the said complaint, reason for which has been vaguely left unexplained in the FIR. b) The allegations in the FIR are all concocted and unjustified since they do not meet the requirement of the sections which the Petitioners are alleged to have committed. This is for the reason that the allegation that Petitioner No.1 and 2 raped the Complainant on several occasions is completely vague given that the Medico Legal Cause (MLC) where the description of the incident as narrated to the doctor merely states that the said Petitioners attempted sexual violence. Moreover, the only allegation against Petitioner No.3 is that he had beaten the Complainant, causing fracture on her head resulting in 12 stitches is completely baseless since the MLC of the Complainant do not support any such allegation.

Lastly, with regard to the allegations under Sections 7 and 8 of POCSO Act said to have committed against the daughter of the Complainant, it is submitted that this allegation is against the Accused No.3, 4 and 5 as stipulated under the FIR and not against the present Petitioners. Even otherwise, it is submitted that in this regard there is no medical record/MLC of the daughter of the Complainant against whom the said offences under the POCSO Act are alleged to have been committed. c) The allegation put forth by the Respondents that there are several cases already pending against the Petitioners is misleading and lack any justification since there is no mention of the present status of the said cases. 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 Petitioners along 4 with their family members were falsely implicated in more than 30 criminal cases at the behest of the ruling party. The Petitioners are being unnecessarily harassed by the Respondent State by misusing its administrative and police machinery. It is pertinent to mention that the State authorities have illegally demolished three residential houses of the Petitioners and the Respondent State is heavily relying upon the criminal cases registered against the Petitioners to show that they are habitual offenders and every time the Petitioners or their family members get protection (anticipatory bail or stay of arrest) from either this Honble Court or the Honble High Court, the local Police immediately registers false cases against them. d) It is respectfully submitted that the Honble High Court has committed grave error while refusing to quash the FIR by holding that there exist no grounds for quashing and a cognizable offence is made out. It is submitted that the allegations made in the First Information Report do not prima facie constitute any offence or make out a case under Sections 376, 323, 354(A) of the Indian Penal Code and Sections 7 and 8 of POCSO Act, 2012 against the Petitioners and hence, the Honble High Court ought to have quashed the FIR. It is pertinent to mention that even after the charge sheet has been filed, the petition for quashing of an 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 SCC706at paragraph 14 & 16].. e) That this Honble Court has held that there arises no need to warrant prosecution in a case (like the present one) where the

allegations levelled are general and omnibus rather than specific and distinct [Please see: KAHKASHAN KAUSAR & OTHERS VS. STATE OF BIHAR AND OTHERS (2022) 6 SCC599at paragraph 18].. f) It is further submitted that the alleged Look Out Notice dated 10.05.2022 was issued much prior to the 5 registration of the present FIR No.122 of 2022 which was registered on 21.06.2022. g) For the reasons mentioned above, the Special Leave Petition may be allowed and the order of the Honble High Court refusing to quash the FIR No.122 of 2022 dated 21.06.2022 be set aside. SUBMISSIONS ON BEHALF OF THE STATE:

6. On the other hand, Ms. Garima Prasad, the learned Additional Advocate General appearing for the State of U.P. in her written submissions has stated thus:- a) The in the above FIR/Crime No.122/2022 U/s 376, 323, 354(ka) IPC & Section 7, 8 of POCSO Act, 2012, registered at P.S. Mahila Thana, District Saharanpur, there are total six (6) accused persons namely Iqbal @ Bala, Mehmood, Javed, Alishan, Afjal, Dilshad but only three accused (Petitioners) have come before this Honble Court to quash the said FIR. b) Further, the Investigation Officer also recorded the statement of the independent witnesses to know that the complainant used to go in the house of Petitioners or not, the independent witnesses have revealed the truth that the complainant used to go in the house of Petitioners for odd jobs, after some time, she used to live there. The witnesses heard that the complainant and victim was tortured and beaten by the Petitioners and his family members. c) The Investigation has been completed and chargesheet is ready to file against the Petitioners but due to stay order dated 02.01.2023 of this Honble Court, the chargesheet could not be submitted. d) The chargesheet has been filed against the other accused Persons and the trial was commenced. During trial, the statement of Complainant and Victim were recorded as PW- 1 & PW- 2, wherein the Complainant specifically states that the Petitioner Iqbal @ Bala used 6 to rape in the house and thereafter, the other accused used to rape the complainant and molested the daughter of the complainant. (Copy of statement of PW-1 & PW-2 is attached in IA No.127360/2023 dated 07.07.2023 @ Page No.13 & 101 respectively). e) During investigation, the statement of Complainant/ Victim under section 161 Cr.P.C. was recorded, wherein the victim has revealed that she was pressurized to make settlement in the aforementioned

FIR No.122 of 2022 by the Gang members of the Petitioner No.1 Mohd. Iqbal. Further, it was also informed that Khurshid S/o Asgar, Farooq S/o Mutaq, Mehraj S/o Farooq and Suleman Kabadi S/o Khurfan has threaten the victim and Suleman Kabadi has shown the pistol and warned that if she has not settled the issues, she would have to face the consequences. f) It is submitted that the Petitioner No.1 is Ex-MLC and powerful persons and he is having all sources in the previous Government(s), due to fear & threat given by the Petitioner, the complainant did not raise his voice against the Petitioner No.1 and his family members. 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 dated 13.07.2022 passed by the Honble High Court in Criminal Misc. Writ Petition No.8905 of 2022 is liable to be upheld. ANALYSIS⁷ 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 we should quash the FIR?. 7 8. It is relevant to note that the victim has not furnished any information in regard to the date and time of the commission of the alleged offence. At the same time, we also take notice of the fact that the investigation has been completed and charge sheet is ready to be filed. Although the allegations levelled in the FIR do not inspire any confidence more particularly in the absence of any specific date, time, etc. of the alleged offences, yet we are of the view that the appellants should prefer discharge application before the Trial Court under Section 227 of the Code of Criminal Procedure (Cr PC). We say so because even according to the State, the investigation is over and charge sheet is ready to be filed before the competent court. In such circumstances, the Trial Court should be allowed to look into the materials which the investigation officer might have collected forming part of the charge sheet. If any such discharge application is filed, the Trial Court shall look into the materials and take a call whether any case for discharge is made out or not.

9. At this stage, we express no final opinion as regards the truthfulness of the allegations levelled in the FIR.

10. At this stage, we would like to observe something important. Whenever an accused comes before the Court 8 invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (Cr PC) 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 9 due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the Cr PC 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.

11. In the aforesaid view, we dispose of this appeal with liberty to the appellants to prefer discharge application under Section 227 of the Code of Criminal Procedure before the Trial Court. ..J.

(B.R. GAVAI) ..J.

(J.B. PARDIWALA) NEW DELHI; AUGUST08 2023 10

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