

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

W.P(CrL.) 1557/2011

Date of decision: 02.08.2013

SURAJ BHAN & ORS. Appellant

Through: Mr. J.N.Singh, Advocate.

versus

STATE & ANR. Respondent

Through: Mr. Nikhil A. Menon, Advocate for
Mr. Dayan Krishnan, ASC with ASI
Beg Raj Kapoor.
Mr. Sanjeev Singh, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This is a petition under Article 226/227 of the Constitution of India for quashing FIR No.90/2011 u/s 498/406/34 IPC P.S. Crime (Women Cell) Nanakpura, New Delhi.

2. Before coming to the grounds alleged in the writ petition for quashing of FIR, it will be relevant to refer the averments made in the FIR.

3. Manju Kumari, daughter of Shri Mehar Chand lodged a complaint with Special Police Unit for Women and Children, Nanakpura, New Delhi alleging that she got married to Jitender, son

of Sh. Suraj Bhan on 23.11.2005 according to Hindu rites and rituals at Surya Garden Farm House, Vasant Kunj, New Delhi. A sum of Rs.24,44,818/- was spent in the marriage. A sum of Rs.1,75,000/- was spent in engagement ceremony which took place at Athithi Banquet Hall, Vasant Kunj. During engagement ceremony, her husband and father-in-law told her elder brother that engagement has not been done according to their status and they have been let down in the society. In case he wanted to get his sister married, then marriage should be performed at Surya Garden Farm House, Vasant Kunj and a sum of Rs.25 lakhs, ½ kg gold and a Honda City car has to be given in marriage. Since wedding cards had been distributed, as such under compulsion, her parents and brothers arranged to give a Maruti Zen car, Rs. 5 lakhs cash and jewellery worth Rs. 8 lakhs. On 24.11.2005, when she went to her matrimonial home, her mother-in-law started taunting that Maruti Zen car has been given which is not upto their standard. Her mother-in-law, brother-in-laws Rajender, Narender and their wives Sunita and Manju also taunted and insulted her. Her husband took her to a hotel and told her that he is a Software engineer and he has been deceived in this marriage. He was receiving various proposals and they were ready to give him Honda City, 25 lakhs and ½ kg gold. She felt mentally tortured and tried to make her husband understand but he kept on repeating that marriage has not been done upto their standard.

4. On 26.11.2005, she went along with her husband to Darjeeling, Gangtok from where they came to the house of her parents at 107/3, Lane No.5, Krishna Nagar, Safdarjung Enclave, New Delhi. On

reaching there, her husband told her parents and brothers that he will not take her back till the time Honda City, Rs.25 lakhs cash and ½ kg gold is given. She tried to persuade her husband but he got annoyed and started abusing her in front of her parents and brothers and also slapped her and left her at her parent's house. Thereafter also, she requested her husband on telephone to take her to her matrimonial home on which he told her that he will not take her to his house but she can stay with him in a rented house.

5. From 15.12.2005, she started living with her husband at Startling Apartment at Faridabad where again the demands of the said articles were repeated. In April, 2006, the rented accommodation was vacated by them. Thereafter, she along with her husband started residing at the house of her brother at D-341, Sarojini Nagar, New Delhi-110029. During the stay in the said house, she requested her in-laws to allow her to stay in the matrimonial home. Her mother-in-law, father-in-law and brother-in-laws and their wives told her that she will not be allowed to enter the house till the demands are fulfilled. Her father-in-law and mother-in-law came to House No.D-341, Sarojini Nagar, New Delhi where she was abused and commented upon her status and on their instigation, she was beaten by her husband. When she objected, then her mother-in-law and father-in-law also started hitting her with legs and hands. Her husband left the house along with his parents. On 17.08.2006, she took her brother Kanhaiya to the matrimonial home at House No.1458, Sector 17C, Gurgaon, where her in-laws did not allow her to enter the house and pushed her, as a result of which she became

unconscious and was taken to hospital where she was given treatment. She also requested her husband to allow her to live at the matrimonial home. However, a sum of Rs. 10 lakhs was demanded as her husband was to go to Australia on Permanent Resident Visa. Somehow her parents arranged for that amount. On 11.09.2009 she went along with her husband to Australia. However atrocities upon her continued. She was forced to come back to India on 07.10.2009. After one month, her husband telephoned her saying that he is coming back to India and his parents need money to build a house and in case she wants to live with him in the matrimonial home, then her parents have to arrange a sum of Rs. 10 lakhs and that they will stay on the 2nd floor after he comes back from Australia. She expressed her inability to pay so much amount on which her in-laws told her that in case she is not able to pay the amount, then she cannot stay in their house. Ultimately, a sum of Rs. 8 lakhs was paid by her parents in three instalments. In between she used to visit her matrimonial home and could see that the building was under construction. However, on 06.06.2011 she received a copy of the divorce from her husband. Her husband and in-laws conspired against her and deceived her and have ruined her life. All her Stridhan and jewellery have been retained by her mother-in-law and father-in-law.

6. The writ petition has been filed by the father-in-law, mother-in-law, brother-in-laws and their wives for quashing of FIR against them on the ground that the complaint is a glaring example of abuse of process of law. It is alleged that the marriage was a very simple marriage without any dowry or gift articles, except for few customary

gifts given by the family members and relatives of both the parties. It was alleged that father of respondent no.2 had given cash of Rs.1,10,000/- at the time of Sagai ceremony for purchasing gifts for respondent no.2 and son of petitioner nos. 1 and 2. However, petitioners did not purchase anything and instead requested father of respondent No. 2 to give account No. of respondent No. 2 so that said amount could be deposited in her account. However, son of petitioner asked for a sum of Rs.37,000/- out of said amount and balance sum of Rs.73,000/- was deposited in the joint account of respondent no.2 and her husband. After the marriage, respondent no.2 and her husband did not come to the matrimonial home and preferred to stay in a guest house at night on 24.11.2005 and thereafter they went to Darjeeling for their honeymoon. Thereafter they stayed for 45 days at Suraj Kund, Haryana and then shifted to the house of father of respondent no.2 at House No. 107/3, Lane No.5, Krishna Nagar, Safdarjung Enclave, New Delhi. Then respondent no.2 and her husband shifted to staff quarters at Safdarjung hospital allotted to the wife of her brother Kanhaiya. On 07.06.2001, brother of respondent no.2 along with others came and informed that respondent no.2 has come back from Australia. Subsequently, her husband filed a petition for dissolution of marriage in a Court in Australia. The petitioners were threatened that Jitender Kumar be asked to withdraw the divorce petition and in case the petitioners are not able to persuade him to withdraw the divorce petition, then all the petitioners including Jitender Kumar shall be implicated in false matrimonial cases.

7. Apprehending false implication, petitioner no.1 filed complaints before various authorities that petitioners 1 and 2 have no control over their son Jitender Kumar; that respondent no.2 and her husband got their marriage registered before the Registrar of Marriage at Kapashera, New Delhi wherein they gave their address as House No. 107/3, Lane No.5, Krishna Nagar, Safdarjung Enclave, New Delhi. Petitioner no.1 and 2 got the name of their son struck off from the ration card. They also disowned and disinherited him from their properties vide publication in newspaper dated 26.06.2011 and that the complaint is baseless, fabricated, as such the proceedings be quashed qua the petitioners.

8. In the status report filed by respondent no.1 it is alleged that during the proceedings before CAW Cell, the husband did not join the reconciliation proceedings. The relevant documents filed by the complainant have been verified. One of the petitioners, Suraj Bhan has expired due to an accident on 02.12.2011.

9. Respondent no.2 has filed her reply wherein she has controverted the averments made in the petition.

10. Learned counsel for the petitioner has relied upon *Amit Sharma vs. State & Ors* 2010 (4) JCC 2507; *Mohammad Majeenuddin Ahmed & Ors v. State of Andhra Pradesh & Anr.*, 2007 CrI.L.J 3361; *Kapil Gautam & Ors. v. State of Haryana & Anr.*, 2007 CrI.L.J (NOC) 526 (P.&H.); *Surender & Ors. v. Smt. Om Prabha*, 2007 CrI.L.J.(NOC) 450 (P. & H.); *Smt. Sangeeta Kara v. State*, 2007 CrI.L.J (NOC) 575 (Delh.); *Kapil Kumar Goyal & Ors v.*

State of U.P & Anr., 2007 CrI.L.J (NOC) 409(All.) where the FIR was quashed.

11. On the other hand respondent no.2 relied upon a judgment titled as *Satvinder Kaur v. State (Govt. of NCT of Delhi) & Another*, AIR 1999 SC 3596 where it was held:

“It is a well settled that if an offence is disclosed the Court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR prima facie, discloses the commission of an offence, the court normally does not stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. It is also settled by a long course of decision of this Court that for the purpose of exercising its powers under Sec. 482, Cr.P.C to quash an FIR or a complaint, the High Court will have to proceed entirely on the basis of allegations made in a complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations.”

12. As per the report, the complaint is still being investigated by the concerned authorities and while exercising its power u/s 482 Cr.P.C, this Court will have to proceed entirely on the basis of allegations made in the complaint and cannot examine the correctness or otherwise of the allegations. In the petition itself, reliance has been placed on a judgment of the Supreme Court and the guidelines given therein in the case of *State of Haryana vs. Choudhary Bhajan Lal & Ors* reported in JT 1990(4) SC 650 where the following guidelines were given:-

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 F.I.R. 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 F.I.R. 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.

13. A bare perusal of these guidelines goes to show that quashing of FIR can be done only if the allegations made in the complaint, even if taken at their face value, do not *prima facie* constitute any offence and the uncontroverted allegations made in the FIR or complaint do not disclose the commission of any offence. As narrated above, the allegations made in the complaint are still at the stage of investigation and it cannot be said that the uncontroverted allegations made in the FIR or complaint do not disclose the commission of any offence against the petitioners. In fact the averments made in the petition are required to be adjudicated upon at the stage of trial. It is settled law that disputed questions of fact cannot be adjudicated while exercising writ jurisdiction.

14. None of the authorities relied upon by learned counsel for the petitioner has application to the facts of the case in hand, inasmuch as ***Amit Sharma*** (supra) was a case where the jurisdiction itself was challenged inasmuch as neither the complainant lived at Delhi nor the

accused persons lived at Delhi nor any part of alleged offence had taken place in Delhi. Only father of the complainant was living in Delhi, as such, the petition was allowed by quashing the FIR.

15. *Mohammad Makinuddin* (supra) was a case where the allegations were made against the husband and there were no specific allegations against their family members. As such prosecution against other family members was quashed. Similar was the case with *Kapil Gautam*(supra), *Surender*(supra), *Sangeeta Kalra*(supra) and *Kapil Kumar Goyal*(supra). In the instant case there are specific allegations against all the petitioners.

16. Under the facts and circumstances, it is not a fit case for exercising discretion for quashing the FIR. The petition, being meritless, is dismissed.

**SUNITA GUPTA
(JUDGE)**

AUGUST 02, 2013
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