

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M-12675-2014(O&M)

Date of decision : 06.01.2015

Sham Sunder @ Kala and another

... Petitioners

Versus

Saroj @ Shakuntla

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Mohan Lal Singla, Advocate
for the petitioners.

Mr.Suresh Kumar Aneja, Advocate
for the respondent.

REKHA MITTAL, J.(ORAL)

By invoking the provisions of Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.'), the petitioners have prayed for quashing complaint case No.160-I dated 03.01.2009 filed by the respondent (Annexure P1), order dated 26.10.2013 passed by the Additional Sessions Judge, Fazilka (Annexure P4) and proceedings emanating therefrom.

Saroj @ Shakuntla was married to Sham Sunder @ Kala petitioner No.1 on 19.02.2007. Out of the wedlock, a female child was born. As per allegations set up in the complaint, articles of istridhan detailed in para 1 of the complaint were entrusted to the accused. The complainant was maltreated and harassed on account of demand of dowry i.e motor cycle and Rs.50,000/-. She was turned out of the matrimonial home on 20.06.2008. The accused refused to return istridhan of the complainant, despite demand.

Counsel for the petitioners contends that after conducting preliminary inquiry, the complaint was dismissed by the Judicial Magistrate vide order dated 30.08.2013 (Annexure P2). The respondent/complainant filed revision against that order which was decided by the Additional Sessions Judge, Fazilka vide impugned order dated 26.10.2013 and the petitioners were ordered to be summoned to face trial for offence punishable under Sections 406, 498-A of the Indian Penal Code (in short 'IPC').

It is argued with vehemence that the complainant has raised general and vague allegations which cannot form the basis for summoning of the accused to face rigmarole of criminal proceedings. It is further argued that Chawa Ram, father-in-law of the complainant is more than 70 years old and suffering from serious ailments and therefore, it is extremely inconvenient for him to attend the proceedings at a distance of more than 300 kilometers. It is submitted that if prayer of the petitioners for quashing of petition is not accepted, personal appearance of Chawa Ram during trial may be exempted.

Counsel for the respondent, on the other hand, would contend that after securing presence of the petitioners, pre-charge evidence was recorded and thereafter the petitioners have already been charged for committing offence punishable under Section 406, 498-A IPC vide order dated 11.12.2014 which demolishes plea of the petitioners that there are no specific allegations against them to prima-facie prove their culpability for committing offence of mis-appropriation of istridhan articles and cruelty meted out to the complainant in connection with demand of dowry.

I have heard counsel for the parties and perused the records.

Perusal of the complaint (Annexure P1) would make it evident

that the complainant has levelled allegations against the petitioners in regard to entrustment of articles of istridhan, misappropriation thereof and she being subject to torture and harassment in connection with demand of motor cycle and Rs.50,000/-. The disputed questions of fact are not amenable to adjudication in proceedings under Section 482 Cr.P.C. more particularly in the circumstances when they require the parties to lead evidence. The Hon'ble Supreme Court of India in landmark judgment ***State of Haryana and Others Vs. Ch.Bhajan Lal others, 1992 AIR (SC), 604,*** has culled out certain principles to be examined while exercising jurisdiction under Section 482 Cr.P.C. for quashing criminal proceedings. The Hon'ble Court struck a word of caution that the Court cannot embark upon an inquiry to examine truth or falsity of the allegations set up by the complainant. This apart, after summoning of the petitioners, pre-charge evidence has been recorded and on appraisal of pre-charge evidence, charge under Sections 406, 498-A IPC has already been framed against the petitioners. The order framing charge is amenable to revisional jurisdiction under Section 397/401 Cr.P.C. The Hon'ble Apex Court in ***Minakshi Bala Vs. Sudhir Kumar, 1994(3) RCR (Criminal) 123*** has held that after framing of charge, the criminal proceedings in exercise of jurisdiction under Section 482 Cr.P.C. can be quashed in rarest of rare case. In this view of the matter, I do not find any merit in contention of the petitioners that the criminal proceedings against them are liable to be quashed.

Counsel for the petitioners has submitted that personal appearance of Chawa Ram may be exempted in view of his medical condition and physical distance between village Bainsi, Tehsil Meham,

District Rohtak and Fazilka the place where the criminal proceedings are pending. Petitioner Chawa Ram shall be at liberty to file an appropriate application before the trial Court supported by his medical records and the trial Court shall consider his prayer sympathetically in the light of age of the petitioner, his medical condition and long distance between place of residence of Chawa Ram and the place of trial proceedings.

For the reasons aforesaid, the petition is dismissed leaving the parties to bear their own costs. However, nothing stated in this order shall prejudice adjudication of the case by the trial Court on merits.

(REKHA MITTAL)
JUDGE

January 06, 2015.

Davinder Kumar