

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Crl. Misc. No.M- 12769 of 2014(O&M)

Date of Decision: April 10 , 2015.

Manish Tandon and another

..... PETITIONER (s)

Versus

State of Haryana and another

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Petitioner No.1 in person
 and for petitioner No.2.

Mr. Vivek Saini, AAG, Haryana.

Mr. Harkesh Manuja, Advocate
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Petitioners pray for quashing of FIR No.6 dated 12.02.2012, under Sections 498A/406/420/323/506/34 IPC registered at Police Station Women Police Station, Sonipat alongwith all consequential proceedings arising therefrom.

Petitioners are the accused in the abovementioned FIR which has

been registered on the basis of a statement of respondent No.2 – Nikita wife of petitioner No.1 and sister-in-law of petitioner No.2.

As per the allegations in the FIR, respondent No.2 and petitioner No.1 were married on 06.03.2011 at Sonapat. Marriage was contracted pursuant to an advertisement in the matrimonial section by the complainant's mother. Petitioner No.1 wrongly projected his date of birth to be 23.09.1980. He sent a copy of matriculation certificate through email to the complainant at Sonapat and portrayed himself to be working as Legal Adviser, permanently employed with Health and Welfare Department with the Government of India. He further informed the complainant that he has only one sibling i.e., another brother. After marriage, complainant came to know that actual date of birth of her husband (petitioner No.1) is 23.09.1975 and he also had an elder sister, 38-39 years of age. It is averred that his sister (petitioner No.2) is a lady of doubtful character who alongwith the complainant's husband extracted money from people after raising allegations of rape. It is further alleged that the petitioners started harassing the complainant after about ten days of her marriage and started beating her as well. She was pressurized to bring jewellery and money from her mother. On two occasions, she brought ₹50,000/-, two gold chains and rings. Whenever she refused to fulfill their demands, she was given a beating. Her mother was forced to part with a sum of ₹35,000/- on 30.08.2011 on the occasion of Raksha Bandhan on the pretext that in case complainant had a brother he would be given gold. Complainant and her husband were at Sonapat on the occasion of Raksha Bandhan. Her father-in-law suffered a paralytic attack on 15.10.2011. After his admission at

Safdarjang Hospital, New Delhi the petitioners told her to ask her mother to sell her house and shop to provide money for her father-in-law's treatment. When the complainant protested that the said house and shop were her mother's only source of livelihood, she was inflicted fist and leg blows by the petitioners. She was dragged to the floor by her sister-in-law and she was inflicted fist and leg blows by her husband while he sat on her stomach. Complainant's mother came to meet her on 07.11.2011 and on seeing her condition, she brought her to Sonapat for treatment where complainant was treated by Dr. Manju Khurana. On intervention of respectable persons, complainant was taken back to her matrimonial home but still she was threatened and tortured. Complainant's mother-in-law abused her and said that in case her mother did not fulfill their demands, she would be killed and her son would be married in some rich family. Petitioners quarreled with her on 08.12.2011 at about 8.00/9.00 p.m., inflicted injuries upon which blood came out from her mouth and they tried to strangle the complainant. She however fled and saved her life. PCR was called by a passerby and the police reached the spot. Complainant took shelter for the night at her aunt's house in Faridabad. She was taken to Sonapat by her mother on the next day for treatment. On these allegations, the FIR in question was registered.

In this case, an attempt for conciliation was made but the same did not fructify. Complainant went back to her matrimonial home on 19.08.2012 to salvage her marriage but the petitioners allegedly did not mend their ways and she was beaten again in February, 2013 on which she was brought to Sonapat by her mother.

Petitioner No.1 submits that the FIR deserves to be quashed as no cause of action has arisen to the complainant at Sonapat. Matrimonial home is admittedly at Faridabad. Though marriage took place at Sonapat they have never stayed at Sonapat. None of the allegations raised in the FIR emanated at Sonapat. Only one allegation in respect to giving of ₹35,000/- on the occasion of Raksha Bandhan arises at Sonapat. The same is not relevant as it is not a demand of dowry. Any payment or gift made at the time of Raksha Bandhan will be termed as a customary payment and cannot be included in definition or ambit of 'dowry'. Therefore, no cause of action arises at Sonapat. FIR deserves to be quashed on this ground.

He further argues while referring to Section 4 of the Dowry Act that if a demand of dowry is not coupled with cruelty, it is not covered covered under Section 498A IPC.

It is vehemently urged that once respondent No.2-complainant has rejoined her matrimonial home after the registration of the FIR, the offence stands condoned. On conciliation, respondent No.2 had rejoined the matrimonial home in August, 2012. However, she again left the matrimonial home on 06.02.2013. Therefore, any allegation of cruelty etc. made earlier would be set at naught and allegations in the FIR do not survive having been condoned by the complainant. In this respect, he refers to **Dr. N.G.Dastane v. Mrs. S.Dastane, AIR 1975 SC 1534.**

Petitioner argues that no offence punishable under Section 406 IPC is made out qua the petitioners. Respondent No.2 has never ever raised any demand for return of Istridhan and, in fact, neither has any occasion

arisen/being given for returning the articles.

It is argued that the petitioner's arrest was illegal and not as per Sections 41(1)(a) and 41(1)(b) Cr.P.C. Therefore, no offence whatsoever is made out against petitioners. It is submitted that respondent No.2 raises vague and general allegations of harassment by the petitioners which do not constitute an offence. On the other hand critical problems are being faced by the petitioners inasmuch as there are three family members, who are suffering from acute illness i.e., petitioners' father is schizophrenic, mother diabetic and younger brother schizophrenic. Petitioner is the sole bread winner of the family. In the facts and circumstances of the case, no useful purpose would be served by continuing the proceedings against him.

Learned counsel for the State and respondent No.2-complainant, on the other hand, submit that no ground whatsoever is made out for quashing of the FIR. Respondent No.2 has been subjected to extreme cruelty and harassment on account of demand of dowry by the petitioners. There is specific evidence on record in the shape of medical records to show the ill-treatment meted out to her. Furthermore, entrustment of dowry articles is there and there is evidence to show that the petitioners have cheated the complainant by projecting falsehoods at the time of marriage.

On the question of jurisdiction, learned counsel for respondent No.2-complainant submits that marriage undoubtedly took place at Sonapat. Complainant is residing at Sonapat with her mother. She has been forced to leave the matrimonial home on such circumstances being created by the petitioners that she could no longer continue to live in her matrimonial home.

Furthermore, as per the averments in the FIR, matriculation certificate had been sent by petitioner at Sonapat. In such a situation, it cannot be said that the courts at Sonapat do not have the jurisdiction to try the offence. Learned counsel also contends that notice of motion was issued by this Court on 11.04.2014 solely on the contention of the petitioners that no cause of action has accrued within the jurisdiction of courts at Sonapat, thus petitioners are not entitled to raise any other argument. It is further submitted that challan/report under Section 173 Cr.P.C. has already been presented and it is only due to interim order by this Court, that the charge has not been framed.

I have heard petitioner No.1/learned counsel for the parties and gone through the file.

It is an admitted fact that marriage between petitioner No.1 and respondent No.2-complainant was solemnized at Sonapat. Doubtlessly, respondent No.2 resided with her husband (petitioner No.1) at Faridabad at her matrimonial home and various incidents alleging cruelty and harassment took place at Faridabad. It is also borne out from the record that respondent No.2 was driven out of her matrimonial home on 08.11.2011. As per allegations in the FIR, she was beaten, blood was oozing from her mouth and the petitioners attempted to strangulate her. She managed to flee her matrimonial home and took shelter with a relative in Faridabad after the people in the vicinity called the police. Next day she was taken to Sonapat by her mother where she was got treated. As per the allegations, such circumstances were created by the petitioners themselves so that she could no longer continue to reside at her matrimonial home. Per force she had to live with her mother at Sonapat.

Marriage was solemnized at Sonapat. Articles at the time of marriage were entrusted at Sonapat. A sum of ₹35,000/- was handed over to petitioner No.1 at Sonapat. Valient effort has been made by the petitioner to submit that the said amount of ₹35,000/- would not fall within the ambit of 'dowry' but is a customary gift. It should be treated as a customary gift being an amount handed over on the occasion of Raksha Bandha. Said argument is fallacious and misconceived, hence rejected.

Hon'ble Supreme Court in **Sunita Kumari Kashyap v. State of Bihar and another**, *AIR 2011 SC 1674* has held that where the wife per force had to stay at her parental home the local court where her parental home is situated would have the jurisdiction to proceed with the criminal case instituted therein. In **Sunita Kumari Kashyap's** case (supra) matrimonial home was at Ranchi and the wife's parental home was at Gaya. Institution of the criminal proceedings at Gaya were upheld in that case.

Hon'ble Supreme Court in **Satvinder Kaur v. State (Govt. of NCT of Delhi)**, *1994(4) RCR(Criminal) 503* has held that an FIR cannot be quashed simply on the ground that police in question did not have territorial jurisdiction to investigate the offence.

A Division Bench of this Court in **Gaganpreet Kuar v. Senior Superintendent of Police, U.T. Chandigarh and others**, *20069(1) RCR (Criminal) 394* has held that Section 181(4) of the Code of Criminal Procedure confers jurisdiction on the court with goods entrusted are to be returned. In **Gaganpreet Kaur's** case (supra) marriage between the parties had been solemnized at Delhi, dowry articles were entrusted at Delhi and allegations of

maltreatment or torture on account of demand of dowry were relatable to Delhi. Wife in that case was thrown out of her matrimonial home by her husband and she was residing at Chandigarh with her minor child thereafter. Complaint was lodged by her before the Senior Superintendent of Police, U.T. Chandigarh and the same was transferred to Delhi. The said action was challenged by the wife before this Court. Division Bench of this Court allowed the wife's petition and set aside the order transferring the proceedings to Delhi.

At this juncture, it is noted that the petitioners had filed a Transfer Petition (Crl.) No.350 of 2013 for transfer of the present proceedings in FIR No.6 dated 12.02.2012 from the court of Judicial Magistrate First Class, Sonapat, Haryana to any other place out of the State of Haryana. The said petition was dismissed on 13.12.2013. Review Petition was also dismissed on 13.02.2014. Present petition for quashing of the abovesaid FIR had been filed on 09.04.2014. Thus the contention that this FIR should be quashed due to lack of territorial jurisdiction is rejected.

Another ground vehemently urged by the petitioners is that in view of respondent No.2 having rejoined the matrimonial home on 19.08.2012, any cruelty whatsoever as mentioned in the FIR, stood condoned and no criminal proceedings can continue on the basis of the said FIR. Such a proposition is fraught with inherent danger. It is an admitted fact that respondent No.2 had made an effort at rehabilitation with petitioner No.1. It is duly explained on record that this effort at cohabiting in the matrimonial home failed because the petitioners did not mend their ways. Respondent No.2 was yet again beaten in February, 2013 when she was brought back to Sonapat by her mother. She was

medico-legally examined on 06.02.2013. In case the interpretation as sought by the petitioners is accepted there would never be any effort or steps towards rehabilitation in these matters. Reliance upon the judgment in Dastane v. Dastane's case (supra) is clearly misplaced as it deals with proceedings under the Hindu Marriage Act. It cannot have any applicability in the present criminal proceedings. The abovesaid contention is thus rejected being misconceived.

Similarly, contention of petitioner No.1 that no offence punishable under Section 406, 420 IPC etc. is made out against the petitioners is untenable in the light of the facts and circumstances of the case.

No other point has been raised/argued by petitioner No.1.

Specific allegations have been raised in the FIR by respondent No.2 against the petitioners. It cannot be said at this stage that no *prima facie* offence is reflected against the petitioners or there is any abuse of process of law which would warrant interference by this Court in exercise of jurisdiction under Section 482 Cr.P.C.

In view of the above, this petition is dismissed with liberty to the petitioners to raise all the available pleas before the learned trial court at an appropriate stage.

None of the observations made hereinabove shall have any bearing on the merits of the case.

(**LISA GILL**)
JUDGE

April 10 , 2015.
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