

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-20177 of 2010

Date of Decision : 29.05.2015

Rashmi @ Nandni and others

....Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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?*

Present: Mr. J.S. Bedi, Senior Advocate
Ms. Diya Sodhi, Advocate
for the petitioners.

Mr. Gazi Mohd., DAG, Punjab

Mr. G.P.S. Bal, Advocate
for respondent no. 2

R.P. Nagrath, J.

Petitioners have invoked the jurisdiction of this Court under Section 482 Cr.P.C. seeking to quash FIR No. 36 dated 08.03.2007 for offences under Sections 376, 120-B of the Indian Penal Code (for brevity 'the Code') and Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') qua the petitioners.

2. Date of birth of respondent no. 2-complainant is admittedly 27.09.1980 and in the year 2007 when the FIR was registered she was about 27 years old. She had an affair with Vishal Sharma for about 2½ years before the FIR was registered. Petitioner no. 1 is the sister of Vishal Sharma and petitioners no. 2 and 3 are his parents.

3. Complaint dated 05.02.2007 was made to the Senior

Superintendent of Police, Ludhiana by respondent no. 2-complainant against Vishal Sharma and the petitioners. The complainant belongs to *Balmiki Samaj* and in the course of investigation she also produced caste certificate of her mother for supporting the contention that they belong to a scheduled caste. In the complaint it was stated that Vishal Sharma induced the complainant to enter into a friendly relationship with him which subsequently resulted into good relation between two families. Vishal Sharma proposed the complainant to marry him but the complainant told him that she would consult her parents. It was further stated that Vishal Sharma and his father-petitioner no. 2 induced the complainant and her parents to lend them an amount of ₹ 1.5 lac as Vishal Sharma wanted to buy one Qualis car as taxi as he was already running a taxi stand. The aforesaid amount was lent in parts at different times. When father of the complainant demanded the return of amount, the same was refused. A family sitting was convened.

4. In the presence of *panchayat* accused persons are said to have abused the complainant and her father and that they belong to *Balmiki Samaj* which hurt the feelings of her family. The complaint was made for offences under Sections 406, 420, 120-B and 506 of the Code and under the appropriate provisions of the Act. The DSP held enquiry into the complaint and recommended registration of FIR for offences under Sections 376 and 120-B of the Code and Section 3 of the Act, resulting into registration of FIR dated 08.03.2007 (Annexure P-1).

5. The DSP had recorded statement of the complainant

on 16.03.2007 (Annexure P-4). The complainant stated that Vishal Sharma promised to marry her and kept on sexually harassing the complainant for about 2½ years. Vishal Sharma had been dilli-dallying the matter on the ground that he would first speak to his parents and sister. He would also make the complainant speak on telephone with the petitioners. The petitioners assured that they would agree for the marriage but sought time. Vishal Sharma, however, kept on putting off the matter on the ground that he is not yet settled in life. About 3 months before, the complainant and her family asked Vishal Sharma for marriage but he revealed his intention that he has been engaged to another girl and that his family members are also not agreeing to it.

6. It was further stated that in the first week of February, 2007, a meeting of families was convened which was attended by one Shiv Kumar and Om Parkash Chauhan known to the family of complainant. In their presence, the parents and sister of Vishal Sharma remarked that they were *pandits* and cannot solemnize marriage with the complainant as she comes from a lower caste family and on that account the family members of complainant came back feeling ashamed. Mother of the complainant narrated the aforesaid incident to the complainant.

7. After registration of FIR, marriage of the complainant and Vishal Sharma was solemnized on 25.05.2007 where-after she started residing in the house of her in-laws. Consequently, the complainant gave an affidavit dated 08.06.2007 (Annexure P-

2). On that basis cancellation report dated 21.08.2007 was presented before the Magistrate.

8. When the area Magistrate issued notice to the complainant of the cancellation report, the couple had already separated. The complainant did not agree to the cancellation report and further investigation was ordered on 08.09.2009. Vishal Sharma and her mother-petitioner no. 3 were arrested on 16.04.2010 and the challan was presented on 18.05.2010. Petitioners no. 1 and 2 were yet to be arrested.

9. It was stated in the instant petition that there are no specific averments in the FIR as well as statement of the complainant with regard to derogatory remarks nor any date and time was mentioned when said incident took place. Reply by the learned State counsel as well as separate reply by the complainant were filed.

10. There is some confusion about the date of marriage. In the affidavit, on the basis of which cancellation report was filed, the date of marriage was stated as 25.03.2007 and accordingly, the same date was mentioned in the affidavit filed by the State counsel. But in the instant petition as well as reply filed by the complainant-respondent no. 2, both admit that the marriage was solemnized between Vishal Sharma and the complainant on 25.05.2007.

11. It was stated by petitioners that after the marriage complainant did not settle herself in the matrimonial home and after a few days the couple shifted to a rented accommodation where the complainant gave birth to a male child on 23.07.2008.

There is no specific denial to the aforesaid assertion except stating that the contents of paras are totally misleading and denied. However, in the reply filed on behalf of official respondents, it is admitted that the couple solemnized marriage and out of the marriage a male child was born on 23.07.2008.

12. I have heard learned senior counsel for the petitioners, the State counsel assisted by learned counsel for the complainant-respondent no. 2.

13. Learned senior counsel for the petitioners, vehemently, contended that from bare perusal of FIR and the final report no offence under Section 376 of the Code can be attracted and the allegations with regard to offence under the Act are quite vague and absurd. It was further contended that after the marriage has been solemnized and a child was born from the wedlock, there was no scope of attracting Section 376 of the Code and if there is any matrimonial offence recourse could be had to the relevant provisions of Sections 498-A, grant of maintenance or under the Protection of Women from Domestic Violence Act, 2005 etc.

14. Learned counsel for the complainant on the other hand submitted that the challan having been presented after investigation the disputed questions cannot be and should not be gone into as the matter is under judicial scrutiny. It was further contended that Vishal Sharma and his family has committed another fraud first by entering into the marriage after registration of the case and then caused further harassment to the complainant and therefore, the act of solemnizing marriage

was a device to get rid of the prosecution in the instant FIR.

15. I have given my thoughtful consideration to the aforesaid contention. A perusal of the record would show that this Court directed the trial Court to adjourn the case beyond the date fixed as a result of which proceedings before the trial Court stand stayed. This order was initially passed by this Court on 16.12.2011.

16. Vishal Sharma is not a petitioner before this Court. The allegations that he entered into sexual relationship with the complainant on the promise to marry with the complainant and solemnized marriage after the registration of FIR and then again parting ways to get rid of the criminal action, are the questions which Vishal Sharma has to answer during the course of trial. The real question would be that if a female, who is 27 years old at the time of registration of FIR, was having an affair with Vishal Sharma for about 2½ years, whether his family members could be held responsible in any way on the basis of story propounded in the FIR and revealed during investigation. Petitioner no. 1 is the married sister of Vishal Sharma.

17. In view of the facts of the instant case, I am of the considered view that continuation of proceedings against petitioners would be an abuse of process of the court and if that be so, this Court would definitely intervene to quash the proceedings to secure the ends of justice.

18. Before entering into merits of the matter, the scope and object of provisions of Section 482 Cr.P.C. should be discussed. The Apex Court in plethora of decisions has laid down

the principles and guidelines with regard to the exercise of inherent jurisdiction by the High Court under section 482 of the Code. In **State of Haryana vs. Bhajan Lal, 1992 SCC (Cri) 426**, the Apex Court has listed the categories of cases when power under section 482 of the Code can be exercised by the High Court. These principles or guidelines have been reiterated by the Apex Court in **CBI vs. Duncans Agro Industries Ltd [(1996) 5 SCC 591]**, **Rajesh Bajaj vs. State, [(1999) 3 SCC 259]**, **Medchl Chemicals & Pharma vs. Biological E. Ltd, [(2000) 3 SCC 269]** and **Zandu Pharmaceuticals Works Ltd. vs. Mohd. Sharaful Haque [(2005) 1 SCC 122]**.

19. In **Zandu's case (supra)**, the Apex Court has made following observations:-

"The power under section 482 of the Code should be used sparingly and with circumspection to prevent abuse of process of Court, but not to stifle legitimate prosecution. There can be no two opinions on this, but, if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of Court, the power under section 482 of the Code must be exercised and proceedings must be quashed."

20. Recently the Apex Court in **Rishipal Singh vs. State of UP, [(2014) 7 SCC 215]** has taken the survey of its earlier decisions with regard to the scope and object of section 482 of the Code and held that the object of section 482 of the Code is to prevent the abuse of the process of Court and to secure the ends

of justice; the High Court needs to be circumvent and exercise power under section 482 in exceptional circumstances depending upon the facts of each case. It was further held that if the allegations leading to criminal prosecution, prima facie, do not disclose or constitute the offence, then, power under section 482 can be exercised. However, disputed questions of fact cannot be decided like a trial Court. It was further observed that frustrated litigant need not be permitted to vent vindictiveness through abuse of process of law and such proceedings are required to be stopped in early stages.

21. Perusal of FIR and final report would reveal in the exact term that intervention of the parents of Vishal Sharma was sought, for finally settling the issue of marriage between the complainant and Vishal Sharma. It was the version in the FIR that petitioner no. 2 induced the complainant and her family to part with an amount of ₹ 1.5 lac and subsequently the marriage of the complainant and Vishal Sharma was solemnized in May, 2007. The allegations so far as petitioners are concerned would pale into insignificance when child was born to the complainant after about 1 year and 4 months after registration of FIR. There is no assertion in the FIR or challan report that parents or the married sister of Vishal Sharma had any role to play when Vishal Sharma and the complainant started having an affair about 2½ years before registration of FIR. If that be the fact situation, there is no scope of entertaining a plea that the petitioners can be criminally prosecuted. There was the categorical assertion in the statement dated 16.03.2007 (Annexure P-4) that Vishal

Sharma used to pass in the street where house of the complainant was located and he proposed friendship with her. Vishal Sharma enticed the complainant and they entered into friendship. Vishal Sharma assured the complainant that he would marry her and in this way sexually exploited her for about 2½ years.

22. After learned Magistrate sent back the matter for further investigation, statement of the complainant was again recorded on 17.05.2010 under Section 161 Cr.P.C. and she reiterated her previous version. Copy of statement of the mother of complainant i.e. Shisha recorded under Section 161 Cr.P.C. on 16.03.2007 has also been taken on record. Shisha stated that her daughter developed friendly relationship with Vishal Sharma for about 2 ½ years and he used to frequently visit their house and established contact with her on the promise of marrying the complainant. Many a times Shisha told Vishal Sharma to discuss the matter with his family.

23. The elaborate discussion, however, is required with regard to allegation made under Section 3 of the Act. For that purpose, statement of Shisha, the mother of complainant recorded under Section 161 Cr.P.C. would be most material as the complainant had not accompanied her family members when the meeting was convened. In February, 2007, mother of Vishal Sharma invited them to have discussion in their house. Mother of the complainant accompanied by Shiv Kumar and Om Parkash went to their house and in the presence of family members of the complainant and those two persons, petitioner no. 3 became

furious and starting remarking that they cannot marry their son with the complainant as they are *pandits* and the complainant's family is from a lower caste by referring the complainant as *chamaar*. Will this evidence collected by the prosecution attract the provisions of Section 3 (1) (x) of the Act?

24. The case is sought to be covered by clause (x) of subsection (1) of Section 3 of the Act because there is no other provision basically attracted in view of the aforesaid allegations of fact. It makes liable any person who intentionally insults or intimidates the aggrieved/complainant with intent to humiliate a member of a Scheduled Caste or a Schedule Tribe in any place within "public view". When the meeting with regard to settling the marriage of the complainant was being discussed in the house of petitioners, that would not under any circumstance fall within the requirement of "public view". As per copy of final report, the witnesses cited in support of prosecution are the complainant, her mother and both Shiv Kumar and Om Parkash aforesaid who were taken along by the complainant's family for the discussion in relation to the aforesaid incident of February, 2007.

25. In **Kuldip Raj Mahajan vs. Hukam Chand, 2008 (1) RCR (Criminal) 370**, it was alleged that the complainant belongs to *Dhanak* caste which is a scheduled caste whereas petitioner comes from *Vaish* caste, which is a higher caste. The petitioner challenged the proceedings in the complaint in which the summoning order was issued. The petitioner was the Branch Manager of the Bank and the complainant was the Head Cashier. It was stated that on 09.09.1999 at about 04.45 p.m., petitioner

insulted the respondent in the presence of other employees and abused him by his caste. Petitioner's utterances demeaning the respondent by caste were quoted in paragraph no. 4 of the complaint. The case set up by the petitioner was that he had been issuing orders for smooth functioning of the bank and the complaint was motivated. It was held by this Court that disputed questions of fact cannot be gone into in the petition under Section 482 Cr.P.C. However, the High Court cannot be a helpless spectator when it is made out that the criminal prosecution is *mala fide* and an abuse of the process of the court. It was further held that the High Court has inherent power and corresponding duty to prevent abuse of the process of any court or otherwise to secure the ends of justice. As regard, the offence under Section 3 of the Act, the version of the complainant was that incident took place at 4.45 p.m. when bank customers were not there. This Court observed from the facts and circumstances of the said case as under:-

*“.....It has not been even alleged in the impugned complaint that any public person, except the three bank employees cited as witnesses, was present at the time of alleged occurrence. It was accordingly contended that the alleged occurrence had not happened in any place within public view which is mandatory requirement of offence under Section 3 (1) (x) of the Act. Reliance in support of this contention has been placed on judgment in the case of **J. Sumana vs. Endluri Aseerwadamma and another, reported as 2003 (2)***

RCR (Criminal) 503 (A.P.), wherein it was held that no offence under Section 3 (1) (x) of the Act was made out when the accused abused a member of Scheduled Caste in his office, as the offence was not committed at public place. There is considerable force in the argument. In the instant case, the occurrence took place inside the bank office when public persons were not present. Consequently, the incident cannot be said to have occurred at a place within public view. Accordingly, offence under Section 3 (1) (x) of the Act is not made out.”

26. Learned senior counsel for the petitioners, vehemently, contended and rightly so that petitioners No. 1 and 3 cannot be at all prosecuted for offence under Section 376 of the Code as their role was introduced while settling the issue of marriage between the complainant and Vishal Sharma. Even if it was stated that Vishal Sharma sexually exploited the complainant with a promise to marry her and subsequently solemnized marriage to get rid of criminal case, the petitioners cannot be made liable even if the story propounded is to be accepted.

27. In **State of Rajasthan vs. Hemraj and another, 2009 (12) SCC 403**, Hon'ble Supreme Court held that woman cannot have an intention to commit rape.

28. It was not even the allegation against petitioners that they abetted the commission of offence of rape except that their family was not agreeable to accept the matrimonial alliance

because the families belong to different castes. This response of petitioners is not abnormal or something unusual. The fact whether Vishal Sharma was dishonest right from the beginning would of course be a disputed question of fact which would be determined during course of the trial and cannot be even discussed in the proceedings for quashing of FIR and consequent proceedings qua the petitioners.

29. In the conspectus of the present matter I am of the clear view that entire material in the present case in the form of FIR and charge-sheet would not disclose any offence so far as petitioners are concerned. In such circumstances, the continuation of the prosecution of petitioners would be an abuse of process of the court. In the light of above discussion, the instant petition is allowed and the FIR and subsequent proceedings qua petitioners only are quashed. The trial Court be directed to proceed with the matter so far as the accused Vishal Sharma is concerned in accordance with law.

May 29, 2015
jk

(R.P. NAGRATH)
JUDGE