

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Misc. No.M-21346 of 2014
Date of Decision : 3.9.2015

Shavnam and othersPetitioners

Vs.

State of Punjab and anotherRespondents

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CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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Present : Mr. V.S. Rana, Advocate for the petitioners.
Mr. D.S. Virk, AAG, Punjab.

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1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Petitioners, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seek quashing of impugned FIR No.74 dated 13.10.2013 under Sections 363/366-A,120-B IPC, registered at Police Station Sadar, Pathankot, Distt. Gurdaspur and consequential criminal proceedings arising therefrom.

Notice of motion was issued and further proceedings before the learned trial court were stayed. Reply was filed on behalf of the respondent-State. However, nobody appeared on behalf of the complainant-respondent no.2.

Learned counsel for the petitioners submits that petitioner no.1 is the wife of petitioner no.2. Both are living happily as husband and wife. Impugned FIR was got registered by respondent no.2-complainant against petitioners no.2

to 5. Complainant is mother of petitioner no.1. Petitioners no.3 and 4 are also husband and wife. Petitioner no.3 is brother of petitioner no.2 and petitioner no.5 is mother of petitioner no.2. He further submits that petitioners no.1 and 2 got married with each other on 11.7.2013. However, since the parents of petitioner no.1 were interested in getting her married with some other person, they were not happy with the marriage of petitioners no.1 and 2. This was the reason that impugned FIR was got registered by respondent no.2-complainant, which clearly amounts to misuse of process of law, in the given facts and circumstances of the case. Learned counsel for the petitioners would next contend that out of this wedlock, there is a daughter. Petitioners no.1 and 2 are still living happily as husband and wife. He also refers to an order dated 24.7.2013 passed by this court in CRM No.M-23472 of 2013 (Shabnam and another Vs. State of Punjab and others), whereby petitioners no.1 and 2 were granted the protection to their life and liberty, at the hands of parents and relatives of petitioner no.1. He prays for allowing the present petition.

On the other hand, learned counsel for the State submits that at the time of marriage, petitioner no.1 was minor. She was short of the age of 18 years by 3.1/2 months. He further submits that in such a situation, the registration of FIR was justified, because of which present petition is liable to be dismissed.

After hearing learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed herein above, present one has been found to be a fit case, warranting interference at the hands of this court, while exercising its inherent jurisdiction under Section 482 Cr.P.C., for the following more than one reasons.

It is undisputed on record that petitioner no.1 has attained the age of discretion. The Hon'ble Supreme Court in **S. Varadarajan Vs. State of Madras AIR 1965 94** held that once the girl reaches the age of discretion and goes with a person of her choice, on her own, as happened in the present case, then no offence would be made out, nor the marriage would be void. Further, even if petitioner no.1 was minor at the time of her marriage with petitioner no.2, the marriage would, at the most, be voidable and that too, only at the instance of parties to the marriage. It seems that it was a clash of ego of the parents of petitioner no.1, which was the result of registration of the impugned FIR. By now, they must have reconciled to some extent, if not completely and this seems to be the reason that respondent no.2-complainant is not coming forward to contest this case. Having said that, this court feels no hesitation to conclude that continuation of the impugned FIR and criminal proceedings arising therefrom, would certainly amount to misuse of the process of court and the same deserve to be quashed.

The Hon'ble Supreme Court, in its celebrated judgement, in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others, 1992 AIR 604**, laid down the following broad guidelines for the cases of quashing of criminal proceedings and the same, read as under :-

(a) 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;

(b) 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;

(c) 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;

(d) where the allegations in the FIR 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;

(e) 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;

(f) 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;

(g) 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”.

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in **Bhajan Lal's case (supra)**, which has been consistently followed in the later judgements as well, it can be safely concluded that the present case falls within the scope of more than one above said guidelines laid down by the Hon'ble Supreme Court. Thus, the impugned FIR as well as the criminal proceedings arising therefrom are liable to be quashed, for this reason also.

During the course of hearing, when a pointed question was put to learned counsel for the State, as to whether, there would be even a remote chance of conviction of any of the accused, he had no answer and rightly so, because it is a matter of record. In such a situation, continuation of the criminal proceedings would be sheer wastage of valuable time of the court. Under such circumstances, it becomes the bounden duty of this court to invoke its inherent jurisdiction under Section 482 Cr.P.C., so as to prevent any further abuse of the process of court and also to secure the ends of justice.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that even after considering the allegations levelled in the impugned FIR to be true on their face value, no offence, of any kind whatsoever, would be made out against any of the accused-petitioners and the present petition deserves to be accepted, for this reason as well.

Consequently, impugned FIR No.74 dated 13.10.2013 under Sections 363/366-A,120-B IPC, registered at Police Station Sadar, Pathankot, Distt. Gurdaspur, as well as consequential criminal proceedings arising therefrom

are hereby quashed.

Resultantly, with the above said observations made, the present petition stands allowed, however, with no order as to costs.

3.9.2015
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(RAMESHWAR SINGH MALIK)
JUDGE