

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-21903-2015
Date of decision:10.7.2015

Kuldeep Singh Birl and others

...Petitioners

Versus

The State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

Present: Mr.K.S.Khehar, Advocate for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

Petitioners seek pre-arrest bail in FIR No.14 dated 3.12.2014 registered under Sections 406, 420, 498-A and 34 of the Indian Penal Code ('IPC' for short) at Police Station, NRI/SAS Nagar (Mohali).

Learned counsel for the petitioners submits that the petitioners have been falsely implicated in the present case, at the instance of the complainant, by misusing the process of law. Even as per the allegations levelled in the FIR, incident(s), if any, took place in Canada, because of which, Indian Police and courts would have no jurisdiction in the matter, either to investigate or decide. A concocted story has been put forth in the FIR which is based on false allegations. He further submits that on the one hand, the complainant-wife namely Anant Kaur Birl is not complying with the orders passed by the competent authority of British Columbia at Annexure P-2 and P-5 and on the other hand, she is bent upon to harass the petitioners by misusing the process of law. Filing of the petition under the Guardian and Wards Act, 1890 as well as under Section 125 of the Code of

Criminal Procedure ('Cr.'P.C.' for short), at Annexures P-3 and P-4, at the instance of the complainant, were also not maintainable in India because the complainant, her husband-petitioner No.1 as well as both of her daughters are citizens of Canada. Since the police of Police Station; NRI/SAS Nagar (Mohali) was not having any jurisdiction in the matter, FIR was illegally registered. In support of his contentions, learned counsel for the petitioners places reliance on two judgments of the Hon'ble Supreme Court in **Y.Abraham Ajith and others v. Inspector of Police, Chennai and another, 2004(8) SCC 100** and **Bhura Ram and others v. State of Rajasthan and another, 2009 (11) SCC 103** as well as two judgments of this Court in **Satwant Singh and others v. State of Punjab and another, 2008 (4) RCR (Cr.) 429** and **Rajesh Kumar and others v. State of Haryana, 2008(2) RCR (Cr.) 835**. While concluding his arguments, learned counsel for the petitioners submits that the petitioners are entitled for the concession of anticipatory bail. He prays for allowing the present petition.

Having heard the learned counsel for the petitioners 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 in the given fact situation of the instant case, petitioners have not been found entitled for the concession of anticipatory bail, for the following more than one reasons.

A bare reading of the FIR would show that the allegations against the petitioners are not only direct and specific but they are serious as well. It seems that the intention of the petitioners were not bonafide, right from day one. They concealed the material fact from the complainant and

her family members at the time of marriage of petitioner No.1 with the complainant on 6.2.2002 at Gurudwara Sahib, Dhakoli, District SAS Nagar (Mohali), to the effect that petitioner No.1 was earlier married with Rajpreet Kaur on 7.2.1996 at Moga but divorce was granted vide order dated 26.11.2001 by the Court of British Columbia. Soon after the marriage of the complainant with petitioner No.1, the complainant was taken to the village of the petitioners, i.e. Kalyan, District Sangrur. Petitioner No.1 and the complainant cohabited and stayed together as husband and wife at village Kalyan, District for three months.

During this period, all the three petitioners have put the complainant to wholly unwarranted harassment and cruelty saying that sufficient dowry was not given in the marriage. As and when the complainant would tell petitioner No.1 about the misconduct of petitioners No.2 and 3, he used to slap the complainant. Allegations levelled by the complainant against the petitioners in first two pages of the FIR at pages 23 and 24 of the paper-book, would show that all these allegations were about physical as well as mental torture of the complainant caused by the petitioners, while staying in their village. Having said that, this Court feels no hesitation to conclude that the petitioners committed the offences in question in India as well as in Canada. Thus, the instant case clearly falls within the ambit of Section 178 Cr.P.C.

There is another serious allegation that parents of the complainant gave Rs.3 lacs to petitioner No.1, as demanded by him in the beginning of the year 2003 and only thereafter the complainant was taken to Canada. A fake marriage of Amandeep Kaur Bajwa from India was got performed by the petitioners in year 2009 and she was called by the

petitioners in Canada, as alleged in the FIR. The complainant objected the stay of Amandeep Kaur Bajwa in her matrimonial home but the petitioners did not pay any heed because of their malafide intention. Petitioners again demanded money from the parents of the complainant, who gave Rs.50 lacs so that their daughter may live comfortably. In the interregnum, the complainant came to India for some time and when she went back to Canada, she was shocked to know that petitioner No.1 had developed illicit relations with Amandeep Kaur Bajwa. Allegations are further levelled that the complainant saw accused No.1 and Amandeep Kaur Bajwa in a compromising position. The objection having been raised by the complainant, she was beaten up and turned out of the matrimonial home.

The complainant further alleged that she has got documentary proof taken from the Face Book so as to clearly show that petitioner No.1 was having undesirable relations with Amandeep Kaur Bajwa. Having been tortured physically as well as mentally at the hands of the petitioners, the complainant was forced to come to India for the safety and welfare of her minor daughters as well as her own life. It has also been alleged that when the complainant went to Canada in the month of January 2014, she was not allowed to enter in her matrimonial home. All the dowry articles/Istridhan of the complainant was in possession of the petitioners who have refused to give any of the items to the complainant, despite having been demanded by her. Allegation further goes to show that petitioner No.1 was receiving child tax benefit from the Government of Canada for their two daughters and had already received 8,000 dollars. On the other hand, the complainant on behalf of her two daughters had to file a petition under Section 125 Cr.P.C. (Annexure P-4) for maintenance.

Since the star argument raised by learned counsel for the petitioners was regarding the jurisdiction of the matter, it would be appropriate to refer to Sections 177 and 178 Cr.P.C. and the same read as under:-

*“Section 177. **Ordinary place of inquiry and trial.** Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.*

*Section 178. **Place of inquiry or trial.** (a) When it is uncertain in which of several local areas an offence was committed, or*

(b) where an offence is committed, partly in one local area and partly in another, or

(c) where an offence, is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.”

A bare reading of the above-said provisions of law would show that in the given fact situation of the present case, noticed hereinabove, it would clearly fall within the scope of Section 178 Cr.P.C. Thus, the argument raised by the learned counsel for the petitioners has not been found worth acceptance.

So far as the judgments relied upon by the learned counsel for the petitioners are concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, the same have been found distinguishable on facts and are of no help to the petitioners. In **Bhura Ram’s** case (supra), the Hon’ble Supreme Court was dealing with a matter, wherein as per the allegations levelled in the complaint, all the

alleged acts had taken place in the State of Punjab but the case was registered in the State of Rajasthan, whereas in the instant case, as noticed hereinabove, parties stayed in the village of the petitioners and the complainant has stated that the alleged acts took place in the village of the petitioners, immediately after the marriage.

Similarly in **Y.Abraham Ajith's** case (supra), as per the allegations levelled, no alleged incident took place in the local jurisdiction where the case was registered, whereas in the present case, fact situation is entirely different. In **Rajesh Kumar's** case (supra), divorce between the petitioners had already been granted by the court of competent jurisdiction. There was no child out of the wedlock. Again as per the allegation levelled, no incident had taken place within the local jurisdiction where the case was registered. In **Satwant Singh's** case (supra), there are again more than one distinguishable features. As per FIR itself, no offence was alleged to have taken place within the local jurisdiction where the case was registered. The complainant was also not residing within the jurisdiction of the said police station and was admittedly residing out of the territorial jurisdiction of the area where the case was registered. Further, all the cited judgments were rendered in the petitions for quashing of the FIR, which is not the case in hand.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533.

So far as the orders passed by the court of British Columbia are concerned, this Court would like to restrain itself from making any comments at this stage, lest it should prejudice the rights of either of the parties. Let the law take its own course. Under these circumstances, it can be safely concluded that it is the petitioners who are trying to misuse the process of law. All the petitioners are admittedly staying in Canada and are not showing any respect for the law of the country of their birth.

In view of the above and without commenting anything further on merits, this Court is of the considered opinion that in the peculiar facts and circumstance of the case, custodial interrogation of the petitioners would be the compulsive necessity of the investigating agency, so as to carry out an effective investigation. No case for anticipatory bail is made out.

Dismissed.

10.7.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE