

CRM-M-21985-2014

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In the High Court of Punjab and Haryana at Chandigarh.

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Date of Decision: 31.08.2015

Harbhajan Kaur and another ...Petitioners

Versus

Jaswinder Singh and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.K. Dadwal, Advocate,
for the petitioners.

Mr. A.P.S. Mann, Advocate,
for respondent No.1.

Mr. J.S. Sekhon, AAG, Punjab.

SABINA, J.

Petitioners have filed this petition seeking quashing of the criminal complaint No.51 dated 04.05.2012 as well as the summoning order dated 19.02.2014.

Case of the complainant, as per the complaint, Annexure P-4, in brief, is that Kulwant Kaur Kaul niece of the complainant got married to Iqbal Singh-petitioner No.2 on 28.03.2001 at village Nangal Kalan. Kulwant Kaur was residing in England and had come to India for marriage purposes. After about one month of her marriage, Kulwant Kaur left for England alongwith her parents. Thereafter, petitioner No.2 also went to England and started residing with

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Kulwant Kaur. Out of the said wedlock one daughter was born. The case of the complainant is that from the very beginning of the marriage, petitioner No.1 as well as his other family members had been harassing Kulwant Kaur due to insufficiency of dowry.

Learned counsel for the petitioner has submitted that initially the matter was inquired by the police and it was found that no cause of action has arisen in India. In fact Kulwant Kaur came to India from England for marriage purposes. After marriage Iqbal Singh-petitioner No.2 also left for England. Due to some matrimonial discord, the couple could not live together happily as husband and wife and vide Annexure P-3, their marriage was dissolved. In fact, no cause of action had arisen in India and the complaint in question was liable to be dismissed.

Learned counsel for respondent No.1, on the other hand, has opposed the petition and has submitted that Kulwant Kaur had been harassed on account of insufficiency of dowry in India and the Courts at Hoshiarpur had the jurisdiction to try the case.

In the case of **State of Haryana** vs. **Bhajan Lal**, 1992 **Supp(1) Supreme Court Cases 335**, the Apex Court has held as under:-

“The following categories of cases can be stated by way

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of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. Can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently chennelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

(1) Where the allegations made in the first information report or the complainant/respondent No.2, 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.

(3) 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.

(4) 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

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Police Officer without an order of Magistrate as contemplated under Section 155(2) of the Code.

(5) 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.

(6) 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 specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings 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.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an

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arbitrary jurisdiction on the court to act according to its whim or caprice.”

In the present case, admittedly, Kulwant Kaur had come from England for marriage purposes. Marriage of Kulwant Kaur was performed with Iqbal Singh on 28.03.2001 at village Nangal Kalan. After marriage, Kulwant Kaur returned to England along with her parents. Petitioner No.2 Iqbal Singh also joined the company of his wife in England and out of their wedlock they were blessed with a daughter on 19.10.2003. It appears that there arose some matrimonial discord between Iqbal Singh and Kulwant Kaur and vide Annexure P-3, decree of divorce was granted by the Court in England on 24.08.2011.

During the course of arguments, it has also transpired that presently Kulwant Kaur and Iqbal Singh are residing in England. Thus, from the facts of the present case it is evident that cause of action, if any, had arisen in England as Kulwant Kaur and Iqbal Singh after marriage have been residing in England. Complaint in question has been made by maternal uncle of Kulwant Kaur in India. It appears that due to matrimonial discord between Iqbal Singh and Kulwant Kaur, the maternal uncle of Kulwant Kaur has involved Iqbal Singh and his family members in the present criminal proceedings, although, no cause of action can be said to

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have arisen in India.

In view of the facts and circumstances of the present case, continuation of criminal proceedings would be nothing but to abuse of process of law.

Accordingly, this petition is allowed and criminal complaint No. 51 dated 04.05.2012 as well as the summoning order dated 19.02.2014 are hereby quashed.

August 31, 2015
kapil

(SABINA)
JUDGE