

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No. M-27920 of 2012 (O&M)
Date of decision : 21.04.2015**

Shiv Kumar & Anr.

..... Petitioners

versus

State of Punjab & Anr.

... Respondents

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Argued by: Mr. Sanjeev Kumar Arora, Advocate
for petitioner.

Mr. Deep Singh, AAG Punjab.

Mr. K.S. Brar, Advocate
for respondent No.2.

ANITA CHAUDHRY, J.

Through the present petition filed under Section 482 Cr.P.C., petitioners Shiv Kumar and Savita Rani are seeking quashing of FIR No. 71 dated 30.05.2012, registered at Police Station Makhu, Tehsil Zira, District Ferozepur, under Sections 323, 498-A and 120-B IPC.

The factual matrix giving rise to the petition may be touched.

Rajinder Kaur, complainant got married to Jagpreet Singh. The marriage ended in a divorce in 2008. In 2010, she married Kamal Kishore and a son was born out of that

wedlock. It was the second marriage for Kamal Kishore and he had two sons from his previous marriage. Rajinder Kaur filed a complaint alleging harassment at the hands of her second husband, Kamal Kishore. It was averred that on 27.05.2012, her husband entered the house, abused and slapped her. The complainant informed her mother who arrived the next day. Kamal Kishore is said to have been mis-behaved with them also. The complainant returned to her paternal house at Faridkot. The allegations against the petitioners Shiv Kumar (son of Kamal Kishore) and Savita Rani are that they used to instigate Kamal Kishore.

The police investigated into the complaint and filed the challan and charge had been framed. The petitioners approached this Court for quashing of the FIR on the plea that they were living separately from the complainant & Kamal Kishore and had no concern with the matrimonial life of their father and step mother and the allegations made in the complaint were vague and the complaint contained no specific incidences of harassment at their hands.

The State in its response raised the plea regarding maintainability of the petition. Respondent no.2 averred that Kamal Kishore had started harassing her on the instigation of the petitioners and the divorce petition had been filed at their instigation.

The petitioner no.1 is the step son of the complainant while petitioner no.2 is the wife of petitioner no.1. They are seeking quashing of the FIR and the subsequent proceedings.

The arguments put forth on behalf of the petitioners is that they have been roped in out of frustration and they were residing separately and the allegations against them were vague.

Respondents have opposed the plea and it was urged that the police had investigated into the complaint and had filed the challan and even charge had been framed.

A perusal of the record shows that the FIR in this case was registered on 30.05.2012. The petitioners had approached the Court in September, 2012. Charge by then had not been framed.

It is not disputed that the petitioners were living separately from the complainant. It has been noticed that there is a tendency to rope in all the relatives, specially in matrimonial disputes and the Hon'ble Apex Court in the case of **Kans Raj Vs. State of Punjab & Ors., 2000(2) RCR (Criminal) 695 (SC)**, had observed that a tendency had developed for roping all the relations in dowry cases and if it was not discouraged, it would affect the case of the prosecution even against the real culprits.

In **Anita & Ors. Vs. State of Punjab, 2003(4) RCR (Criminal) 313**, when a first information report was lodged by the wife under Sections 498-A and 406 of the Indian Penal Code against the entire family members of the husband, this Court exercising its powers under Section 482 Cr.P.C. quashed the FIR and observed that there is a tendency to involve all the relatives of the husband when the relations between the husband and the wife become strained.

Similarly, in the case of **Harjinder Kaur & Ors. Vs. State of Punjab, 2004(4) RCR (Criminal) 332**, a criminal complaint was filed under Sections 498-A and 406 IPC against the husband, his parents and 5 sisters and the proceedings qua sisters were quashed as the allegations against the sisters were found to be vague and exaggerated to rope in each and every relation of the husband.

In **Arnesh Kumar Vs. State of Bihar & Anr. 2014(3) RCR(Crl.) 527**, the Hon'ble Apex Court observed that the fact that Section 498-A IPC is a cognizable and non-bailable offence had lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives and the simplest way to harass is to get the husband and his relatives arrested under this provision.

In the case of **Preeti Gupta & Anr. Vs. State of Jharkhand & Anr. 2010 AIR (SC) 3363** the Hon'ble Apex Court observed that a serious relook of the entire provisions of

Section 498-A IPC is warranted by the legislators. It was observed that exaggerated versions of the incident are reflected in a large number of complaints and the tendency of over implication is also reflected in a very large number of cases. In that case the Hon'ble Apex Court quashed the criminal proceedings against the brother and sister of husband, living separately.

Similarly in the instant case, the allegations, so far as petitioners are concerned, are omnibus and are general in nature and appears to be an outcome of frustration of the complainant. The husband had filed a divorce petition against her. It is a general tendency to involve each and every member of the in-laws family in cases of matrimonial dispute. It is the case of the complainant that she had been residing separately with her husband. In that view of the matter, it cannot be expected that the petitioners were instrumental in her harassment. It also cannot be believed that on the instigation of the petitioner (son & daughter-in-law) who are residing separately, the complainant would be harassed. There are no allegations that the petitioners at any point of time indulged in beating the complainant. In absence of any specific instance or overt act, the petitioners cannot be said to be conspired with Kamal Kishore.

The question regarding non-maintainability can very well be answered by referring to **Satish Mehra Vs. State of**

N.C.T. of Delhi & Anr. AIR 2013 SC 506, wherein it has been observed thus:-

"15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at

the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused.”

Furthermore, in the case of **State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors. 1991(1) RCR (Crl.) 383 (SC)**, the Hon'ble Supreme Court had observed that where the proceeding is instituted with an ulterior motive or where the allegations made in the complaint are absurd and improbable, the Court would be within its power to quash the complaint/ FIR.

Thus, there is no legal impediment in exercising the powers under Section 482 Cr.P.C. considering the facts of the case. Vague allegations have been made and it warrants interference for quashing the proceedings against the petitioners

with an object to meet the ends of justice and prevent abuse of the process of the Court.

In view of the discussion made above, the instant petition is allowed and the impugned FIR and consequent proceedings thereto, qua petitioners are quashed.

(ANITA CHAUDHRY)
JUDGE

April 21, 2015
Sunil