

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Misc. No.M-24433 of 2015
Date of Decision : 7.9.2015

Amandeep Singh and anotherPetitioners

Vs.

State of Punjab and othersRespondents

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CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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Present : Mr. Narinder Singh Lucky, Advocate for the petitioners.
Mr. K.D. Sachdeva, Addl. A.G., Punjab.
Ms. Raminder Pratap Kaur, Advocate for respondent no.2.

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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 pray for quashing of impugned FIR No.38 dated 4.3.2014 under Sections 363/366-A IPC registered at Police Station Talwandi Sabo, Distt. Bathinda (Annexure P-4) and the subsequent criminal proceedings arising therefrom.

Notice of motion was issued and pursuant thereto, respondents no.1 and 2 appeared, but no reply was filed. However, on behalf of respondent no.3-complainant, neither anybody appeared nor any reply has been filed, despite service.

Learned counsel for the petitioners submits that a bare glance at the photographs of marriage Annexure P-1, would show that it was finally an

arranged marriage solemnized on 20.2.2014 between petitioner no.1 and respondent no.2. However, later on, father of respondent no.2-complainant, respondent no.3 herein, came under unwarranted pressure of his relatives to oppose the marriage between his daughter-respondent no.2 and petitioner no.1, it being an inter-caste marriage. As a result of changing his mind, complainant-respondent no.3 got the impugned FIR registered against the petitioners, despite knowing fully well that he participated in the marriage and marriage certificate Annexure P-2 dated 20.2.2014 was also issued. He further submits that apprehending danger to their life and liberty at the hands of complainant and his relatives, petitioner no.1 and his wife Amandeep Kaur approached this court by way of CRM No.M-7708 of 2014 (Amandeep Kaur and another Vs. State of Punjab and others), seeking protection to their life and liberty, wherein notice of motion was issued and interim protection was granted by this court, vide order dated 4.3.2014 (Annexure P-3). Said petition was later on disposed of. However, the impugned FIR came to be registered on the same day i.e. 4.3.2014. He also places reliance on a statement dated 23.4.2014 suffered by the respondent-wife before the court of learned Additional Sessions Judge, Bathinda, during the pendency of an application under Section 438 Cr.P.C., for anticipatory bail moved on behalf of petitioner no.1 and his relatives. He concluded by submitting that since petitioner no.1 and respondent no.2 are still living as husband and wife, continuation of the criminal proceedings arising therefrom would result in miscarriage of justice and the same are liable to be quashed. He prays for quashing the impugned FIR and the subsequent proceedings arising therefrom, by allowing the present petition.

Learned counsel for respondent no.2 also verifies the material fact

of marriage having been taken place between petitioner no.1 and respondent no.2, as an arranged marriage, in the presence of complainant-respondent no.3 and she also prays for allowing the present petition, submitting that the parties to the marriage are living happily as husband and wife in the matrimonial home. Similarly, learned counsel for the State has fairly stated that once the complainant is not coming forward, despite having been served, let the present petition be disposed of, by passing an appropriate order. However, he submits that respondent no.2-wife, as per her statement Annexure P-5 was 17.1/2 years of age at the time of marriage.

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 hereinabove, 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 quashing the impugned FIR and subsequent criminal proceedings arising therefrom. To say so, reasons are more than one, which are being recorded hereinafter.

The averments taken by the petitioners have gone undisputed on record. Despite having been duly served, complainant-respondent no.3 has not come present either in person or through counsel nor any reply has been filed on his behalf. So far as respondent no.2-wife is concerned, she has been found fully justified in supporting the case of the petitioners, petitioner no.1 being her husband. Similarly, learned counsel for the State was fair enough to submit that once the complainant was not coming forward, this petition may be disposed of, by passing an appropriate order, however, keeping in view the fact

that respondent-wife was not major at the time of her marriage.

It would suffice to observe in this regard that once the respondent-wife has reached the age of discretion, as held by the Hon'ble Supreme Court in **S. Varadarajan Vs. State of Madras**, AIR 1965 SC 94, she has committed no wrong, while performing the marriage with petitioner no.1 and that too with the consent of her father, who was very much present at the time of marriage. Having said that, this court feels no hesitation to conclude that the impugned FIR as well as the subsequent criminal proceedings arising therefrom, cannot be sustained, so as to prevent any further abuse of process of court and also to secure the ends of justice.

Had it been a bonafide litigation instituted at the instance of respondent no.3-complainant, he would have certainly come forward to contest the present petition. However, he did not do so for the reasons best known to him. It seems that the impugned FIR was got registered by him only after having come under immense pressure putforth by his relatives and thereafter he might have realised his mistake. Under these circumstances, it can be safely concluded that the impugned FIR as well as the subsequent criminal proceedings arising therefrom are liable to be set aside, for this reason also.

The above said view taken by this court also finds support from the judgement of the Hon'ble Supreme Court in **Rishi Pal Singh Vs. State of U.P. and another**, 2014 (7) SCC 215. The relevant observations made by the Hon'ble Supreme Court in paras 10 to 12 of its judgment in **Rishipal Singh's case (supra)**, which can be gainfully followed in the present case, read as under :-

“Before we deal with the respective contentions advanced on either side, we deem it appropriate to have thorough look

at Section 482 Cr.P.C., which reads :

“Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any orders of this Code or to prevent abuse of process of any court or otherwise to secure the ends of justice”.

A bare perusal of Section 482 Cr.P.C. makes it crystal clear that the object of exercise of power under this section is to prevent abuse of process of court and to secure the ends of justice. There are no hard and fast rules that can be laid down for the exercise of the extraordinary jurisdiction, but exercising the same is an exception, but not a rule of law. It is no doubt true that there can be no straight jacket formula nor defined parameters to enable a Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The courts have to be very circumspect while exercising jurisdiction under Section 482 Cr.P.C.

This court in *Medchl Chemicals & Pharma (P) Ltd. Vs. Biological E. Ltd. and others*, 2009 (2) RCR (Criminal) 122 : 2000 (3) SCC 269, has discussed at length about the scope and ambit while exercising power under Section 482 Cr.P.C. and how cautious and careful the approach of the courts should be. We deem it apt to extract the relevant portion from that judgement, which reads :

“Exercise of jurisdiction under inherent power as

envisaged in Section 482 of the Code to have the complaint or the charge sheet quashed is an exception rather than rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution with the lodgement of First Information Report. The ball is set to roll and thenceforth the law takes its own course and the investigation ensures in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the Court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge sheet on the fact of it does not constitute or disclose any offence alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situations as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount.”

This Court in plethora of judgements has laid down the guidelines with regard to exercise of jurisdiction by the Courts under Section 482 Cr.P.C. In *State of Haryana V.*

Bhajan Lal, 1991 (1) RCR (Criminal) 383: 1992 Supp (1) SCC 335, this court has listed the categories of cases when the power under Section 482 can be exercised by the Court. These principles or the guidelines were reiterated by this court in (1) Central Bureau of Investigation V. Duncans Agro Industries Ltd., 1996 (3) RCR (Criminal) 60: 1996 (5) SCC 592; (2) Rajesh Bajaj Vs. State NCT of Delhi, 1999 (2) RCR (Criminal) 160: 1999 (3) SCC 259 and (3) Zandu Pharmaceuticals Works Ltd. V. Mohd. Sharaful Haque and another, 2004 (4) RCR (Criminal) 937: (2005) 1 SCC 122. This Court in Zandu Pharmaceuticals Ltd., observed that : “The power under Section 482 of the Code should be used sparingly and with 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.” Also see Om Parkash and others Vs. State of Jharkhand, 2012 (4) RCR (Criminal) 662: 2012 (5) Recent Apex Judgements (R.A.J.) 127 : 2012 (12) SCC 72. What emerges from the above judgements is that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The Courts have to see whether the continuation of the complaint

amounts to abuse of process of law and whether continuation of the criminal proceedings results in miscarriage of justice or when the Courts comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482 Cr.P.C. While exercising the power under the provision, the Courts have to only look at the controverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial Court and well into the disputed questions of fact.”

Coming to the peculiar fact situation of the present case and respectfully following the law laid down by the Hon'ble Supreme Court, it is unhesitatingly held that the registration of impugned FIR has resulted in serious miscarriage of justice. If the criminal proceedings arising from the impugned FIR are allowed to continue any further, it will certainly amount to further abuse of process of law. No useful purpose would be served, except wastage of valuable time of the court, therefore, impugned FIR and the criminal proceedings arising therefrom are liable to be set aside, for this reason as well.

Considering the peculiar facts and circumstances of the case, coupled with the reasons aforementioned, this court is of the considered view that the present petition deserves to be accepted.

Consequently, the impugned FIR No.38 dated 4.3.2014 under Sections 363/366-A IPC registered at Police Station Talwandi Sabo, Distt.

Bathinda (Annexure P-4), as well as the subsequent criminal proceedings arising therefrom are hereby quashed, however, only qua the petitioners.

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

7.9.2015
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(RAMESHWAR SINGH MALIK)
JUDGE