

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-249-2014 (O&M)
Date of decision: 05.10.2015

Poonam Nagar

... Petitioner

Vs.

State of Haryana and anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. Vikas Chopra, DAG, Haryana.

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

RAMESHWAR SINGH MALIK, J.

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of impugned FIR No.484 dated 24.09.2013 (Annexure P-1) under Sections 498-A, 406, 506 of Indian Penal Code ('IPC' for short), registered at Police Station Sector-5 Gurgaon, District Gurgaon and the consequential criminal proceedings arising therefrom.

Notice of motion was issued. Reply by way of affidavit was filed on behalf of the respondent-State. Thereafter, since in the meantime, challan had been presented to the learned Court of competent jurisdiction, fresh reply

by way of affidavit dated 20.04.2015 was filed on behalf of the respondent-State, in compliance of the order dated 25.03.2015 passed by this Court. However, none has put appearance on behalf of complainant-respondent No.2, despite service.

Learned counsel for the petitioner submits that petitioner is married sister-in-law of the complainant-respondent No.2, she being sister of the husband of complainant. Marriage of the complainant took place with the brother of the petitioner on 06.02.2003 whereas petitioner already stood married, way back on 22.11.1996 vide Annexure P-2-Marriage Card. Thereafter, a voter identity card had been issued by the competent authority in favour of the petitioner vide Annexure P-3, at the address of her matrimonial home. He further submits that when the complainant left the company of her husband without any justified reason, he filed a petition for dissolution of marriage by a decree of divorce under Section 13 of the Hindu Marriage Act, 1955 by way of Annexure P-4. Complainant realized her mistake and filed her sworn affidavit (Annexure P-5), showing that she had no problem with her husband and his family members. She was staying with her parents but wanted to go with her husband. He concluded by submitting that in such a situation, even after treating the allegations levelled against the petitioner in the impugned FIR, to be true on their face-value, no offence, of any kind whatsoever, would be made out against the petitioner. He prays for quashing the impugned FIR and the consequential criminal proceedings arising therefrom, by allowing the present petition.

Per contra, learned counsel for the State submits that since allegations against the petitioner were direct and serious, coupled with the fact

that challan had already been presented against the petitioner, impugned FIR is not liable to be quashed. The allegations against the petitioner cannot be said to be frivolous or baseless because of which the petitioner is not entitled to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C. He prays for dismissal of the present petition.

Having heard the 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 totality of facts and circumstances of the case, noticed hereinabove, instant 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 a matter of record that petitioner was married sister-in-law of the complainant. Her marriage had already taken place much before the marriage of the complainant with the brother of the petitioner. Marriage of the petitioner took place on 22.11.1996 as per Annexure P-2, whereas marriage of the complainant took place on 06.02.2003. Allegations against the petitioner were general in nature. Petitioner has been admittedly staying away and had no role to play in the married life of the complainant. Having said that, this Court feels no hesitation to conclude that even if the allegations levelled against the petitioner in the impugned FIR, are taken to be true on their face-value, no offence, of any kind whatsoever, is disclosed against the petitioner and the impugned FIR as well as the criminal proceedings arising therefrom are liable to be quashed.

Present one is another glaring example of the unhealthy practice and unwarranted general tendency to implicate maximum members of the family of the husband, including his distant relatives, at the hands of estranged wife-complainant, in the cases under Sections 498-A, 406 IPC, arising out of matrimonial discord. Once such a glaring fact situation comes to the notice of this Court, it become its constitutional obligation to come to the rescue of an accused, like the petitioner herein, while exercising its inherent jurisdiction under Section 482 Cr.P.C., so as to prevent any further abuse of process of Court and also to secure the ends of justice, by quashing the FIR/criminal complaint as well as the criminal proceedings arising therefrom.

The abovesaid view taken by this court also finds support from a catena of judgments on the subject, including the following judgments of the Hon'ble Supreme Court as well as this Court :-

1. ***State of Haryana and others Vs. Bhajan Lal and others, AIR 1992 SC 604 (Hon'ble Supreme Court)***
2. ***G.V.Rao, Vs. LHV Prasad, 2000 (3) SCC 693 (Hon'ble Supreme Court)***
3. ***Manjula Sinha Vs. State of U.P. and others, 2007(3) RCR (Crl.) 778 (Hon'ble Supreme Court)***
4. ***Sundar Babu and others Vs. State of Tamil Nadu, 2009(14) SCC 244 (Hon'ble Supreme Court)***
5. ***Preeti Gupta and another Vs. State of Jharkhand and another, 2010 (7) SCC 667 (Hon'ble Supreme Court)***
6. ***Geeta Mehrotra Vs. State of U.P. And another 2012 (10) SCC 741 (Hon'ble Supreme Court)***
7. ***K. Srinivas Rao Vs. D.A.Deepa 2013 (5) SCC 226 (Hon'ble Supreme Court)***
8. ***Sushil Kumar Sharma Vs. Union of India and others 2005 (6) SCC 281 (Hon'ble Supreme Court)***

9. ***Madan Lal and others Vs. State of Punjab (P&H) 2012 (8) RCR (criminal) 428***
10. ***Gurdial Singh Vs. State of Punjab and another, decided by this Court on 31.07.2015 in CRM-M-36189-2010***
11. ***Rajiv Mehta and another Vs. State of Punjab and others, decided by this Court on 17.08.2015 in CRM-M-8495-2014***
12. ***Kuldip Singh Jaswal and others Vs. Jaspal Singh and another, decided by this Court on 03.09.2015 in CRM-M-12551-2012***

The relevant observations made by the Hon'ble Supreme Court in para 20, 21 and 24 of its judgment in **Geeta Mehrotra's** case (supra), which can be gainfully followed in the present case, read as under:-

“It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao vs. L.H.V. Prasad & Ors. reported in 2000 (2) RCR (criminal 290; (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

“there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also

involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.” The view taken by the judges in this matter was that the courts would not encourage such disputes.

*In yet another case reported in AIR 2003 SC 1386 in the matter of **B.S. Joshi & Ors. vs. State of Haryana & Anr.** it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife under Section 498A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal*

to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power.

xxx

xxx

xxx

However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognisance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in

cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.”

Similarly, the observations made by the Hon'ble Supreme Court in para 28 and 30 to 35 of its judgment in **Preeti Gupta's** case(supra), which aptly apply to the facts of the present case, read as under:-

“It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

xxx

xxx

xxx

It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the

moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints.

Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large

number of complaints. The tendency of over implication is also reflected in a very large number of cases.

The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society."

Coming back to the fact situation obtaining in the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court, in the cases referred to hereinabove, it is unhesitatingly held that continuation of the criminal proceedings arising out of the impugned FIR, will certainly amount to misuse of process of Court and will result in miscarriage of justice, thus, the same cannot be permitted to continue any further.

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 present petition deserves to be allowed. Consequently, FIR No.484 dated 24.09.2013 (Annexure P-1) under Sections 498-A, 406, 506 IPC, registered at Police Station Sector-5 Gurgaon, District Gurgaon, as well as the consequential criminal proceedings arising therefrom, are ordered to be quashed, however, only qua the petitioner.

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

[RAMESHWAR SINGH MALIK]
JUDGE

05.10.2015
vishnu