

CRM No. M-29891 of 2013 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM No. M-29891 of 2013 (O/M)  
Date of decision : 13.1.2015

Manish Luthra and others ..... Petitioners

Versus

State of Punjab and another ..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Ms. Gursharan K. Mann, Advocate, for the petitioners.

Mr. Nikhil K. Chopra, Deputy A.G. Punjab.

Mr. D.S. Pheruman, Advocate, for the complainant.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes.
2. To be referred to the Reporter or not. Yes.
3. Whether the judgment should be reported in the digest ? Yes.

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KULDIP SINGH, J.

The present petitioners have filed this petition under Section 482 Cr.P.C. for quashing of FIR No. 5 dated 8.3.2013, registered under Sections 406, 498-A, 120-B IPC at Police Station Women, Amritsar City, District Amritsar.

It is claimed that petitioner No. 1 Manish Luthra, is brother-in-law (Jeth), petitioner No. 2 Meena @ Minakshi wife of

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Manish Luthra, is sister-in-law (Jethani), petitioner No. 3 Ritika @ Ritu, is widow sister-in-law (Nanad), petitioner No. 4 Janak Raj, is father-in-law and petitioner No. 5 Sneh Lata @ Babli is mother-in-law of the complainant.

At the very outset, it has come out that after the filing of the present petition, the challan has been presented and the charges have been framed. 3 witnesses have been examined so far. It has also come out that petitioners No. 2 and 3, i.e. Meena @ Minakshi (Jethani) and Ritika @ Ritu (Nanand) respectively, have not been chargesheeted. Therefore, the learned counsel for the petitioners does not press the present petition qua them. Learned counsel for the petitioners also does not press the present petition qua petitioners No. 4 and 5, i.e. Janak Raj (father-in-law) and Sneh Lata @ Babli (mother-in-law) respectively. The same is accordingly dismissed as withdrawn qua petitioners No. 2 to 5. However, the present petition qua petitioner No. 1 Manish Luthra, who is brother-in-law (Jeth) of the complainant, is seriously pressed.

It is stated that respondent No. 2/complainant was living separately. No demand of demand of dowry was ever made from respondent No. 2. The FIR in question is misuse of process of Court. The petitioner has nothing to do with the matrimonial dispute of respondent No. 2 with her husband.

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Notice was issued to the respondents.

The State, in the reply, has taken the stand that petitioners No. 2 and 3 have not been nominated as accused and that now, the challan has been presented against petitioners No. 1, 4 and 5.

It is stated that petitioners No. 1 and 2 have got made separate ration card, but they live with petitioners No. 4 and 5 in the same house i.e. House No. MI/1806, Gali No. 2, Ishwar Nagar, Tarn Taran Road, District Amritsar. It was further stated that during investigation, inquiry was conducted and after the inquiry, sufficient evidence was found and challan had been presented. It was further stated that Amit Luthra, husband of complainant/respondent No. 2, had been declared a proclaimed offender, but now he has been granted anticipatory bail by this Court with a direction to surrender before the trial Court.

I have heard learned counsel for the parties and have also carefully gone through the file.

Learned counsel for the petitioner has taken this Court to the contents of the FIR in question to state that there are vague allegations against petitioner No. 1 and that on the basis of vague allegations, petitioner No. 1 has been challaned though he is living separately from the complainant. The complainant had a dispute

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with her husband and petitioner No. 1 has nothing to do with the same. It has been argued that since the challan was presented during the pendency of the present petition and that the charges were also framed during the pendency of the present petition, therefore, the same should also be quashed.

This contention has been seriously opposed by the learned counsel for the complainant as well as the learned State counsel.

Learned counsel for the petitioner has relied upon authority of this Court in Rakesh Kumar and others Versus State of Punjab and others, 2009 (2) RCR (Criminal) 565 and two authorities of the Hon'ble Supreme Court in U. Suvetha Versus State By Inspector of Police and another, (2009) 6 Supreme Court Cases, 757 and Geeta Mehrotra and another Versus State of Uttar Pradesh and another, (2012) 10 Supreme Court Cases, 741.

Learned counsel for the complainant has produced some other authorities of the Hon'ble Supreme Court. A Three-Judges Bench of the Hon'ble Supreme Court in Manjula Sinha Versus State of U.P. and others, 2007(3) RCR (Criminal) 778, while discussing the scope of Section 482 Cr.P.C., has observed as under :-

“8. Section 482 Criminal Procedure Code does not confer any new power on the High Court. It only saves the inherent power which the Court

possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly,

carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.”

In the said case, the chargesheet was filed and the charges were also framed. Therefore, the quashing of the FIR was refused by observing as under :-

“15. Application filed before the High Court related to alleged commission of offences punishable under Section 498-A and 406 of Indian Penal Code. Undisputedly the charge-sheet has been filed and the same was not in question. Charges have also been framed and, therefore, the question of quashing the FIR does not arise.”

In Dr. Monica Kumar and another Versus State of U.P.

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and others. 2008(3) RCR (Criminal) 548, the chargesheet was quashed by the Hon'ble Supreme Court in exercise of powers under Article 142 of the Constitution of India without going into the legality of the allegations. However, regarding the exercise of powers under Section 482 Cr.P.C., the Apex Court has referred to the produced case law on the point and observed as under :-

“25. xxxxx                      xxxxxx                      xxxxxx

..... The scope of exercise of the power under Section 482 of the Code and categories of the cases where High Court may exercise its power under it relating to cognizable offences to prevent the abuse of the process of court or otherwise to secure the ends of justice were set in detail by the Apex Court in the case of [State of Haryana v. Ch. Bhajan Lal] [1995 Suppl. I SCC 335] they have been enumerated as under:-

(1) Where the allegations made in the first information report or the complaint, 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 police officer without an order of a 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 a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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

Here allegations made in the report and the evidence so collected in the course of investigation construe a cognizable offence, it would not fall in any category of the case enumerated above, call for the exercise of extra ordinary powers or inherent power quashing the charge sheet submitted in the above-noted cases.”

Further guidelines laid in R.P. Kapur Versus State of Punjab, (1960) 3 SCR 388, were also discussed as under :-

“28. In R.P. Kapur v. State of Punjab, (1960) 3 SCR 388, this Court summarises some categories of cases in which inherent power can and should be exercised to quash the proceedings:-

- (i) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
- (ii) Where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged.
- (iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.”

While referring to the case of Som Mittal Versus Government of Karnataka, (2008) 2 SCC 753, the Apex Court

observed as under :-

“32. This Court in the latest decision has held that where investigation was completed, charge sheet had been filed and charges are framed, the High Court should not ordinarily embark upon an enquiry as to the reliability of offences to sustain the allegations made in the complaint which is the function of the trial court. [see Som Mittal v. Government of Karnataka, (2008) 2 SCC 753].”

The position in the present case is that pending the present petition, the investigation was carried out and two of the petitioners were found innocent. The police collected the evidence and filed the chargesheet. The learned Judicial Magistrate 1<sup>st</sup> Class, after going through the report of the police under Section 173 Cr.P.C., the statements of the witnesses recorded under Section 161 Cr.P.C. and the documents placed on file, framed the charges against petitioners No. 1, 4, and 5 under Sections 406 and 498-A IPC, vide chargesheet dated 26.2.2014 (Annexure-R-2/9). In this case, three witnesses have also been examined. Therefore, relying upon the case law of the Hon'ble Supreme Court in Manjula Sinha's case (supra), discussed above, I am of the view that ordinarily when the police has presented the challan under Section 173 Cr.P.C. and the trial Court has also framed the charges after applying its mind on the evidence collected during the police investigation, the FIR in

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question alongwith consequential proceedings arising therefrom  
should not be quashed.

Accordingly, the present petition is dismissed.

(KULDIP SINGH)  
JUDGE

13.1.2015  
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