

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

**Criminal Misc. No. M-28639 of 2015
Date of Decision: 8.10.2015**

Sandeep Kumar @ Goldi

--Petitioner.

Vs.

State of Punjab and another

--Respondents.

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Arnav Sood, Advocate
for the petitioner.

Mr. Daljit Singh Virk, AAG, Punjab.

- 1. To be referred to the Reporters or not? Yes**
- 2. Whether the judgment should be reported in the Digest?**

RAMESHWAR SINGH MALIK J. (ORAL)

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of FIR No. 72 dated 19.5.2015 registered under Sections 363/366-A of Indian Penal Code ('IPC' for short) at Police Station Mukerian, District Hoshiarpur and criminal consequential proceedings arising therefrom.

Notice of motion was issued, however, despite service, nobody has put appearance on behalf of complainant-respondent

No.2.

Learned counsel for the petitioner, while placing reliance on an order dated 26.5.2015 passed by this Court in CRM-M-17425 of 2015 (Sandeep Kumar and another Vs. State of Punjab and others), submits that registration of the impugned FIR and continuation of criminal proceedings arising therefrom, clearly amounts to abuse of process of court. He submits that petitioner performed marriage with Kirna Devi-daughter of the complainant-respondent No.2. However, since the respondent-complainant was not agreeing with the marriage, he lodged the impugned FIR. He also submits that once the petitioner and Smt. Kirna Devi, daughter of the complainant-respondent No.2, are living happily as husband and wife, impugned FIR is nothing but a blatant misuse of process of law. He concluded by submitting that in such a situation, even if the allegations levelled in the impugned FIR are taken to be true on their face value, no offence, whatsoever, would be made out against the petitioner. He prays for quashing the impugned FIR and consequential criminal proceedings arising therefrom, by allowing the present petition.

On the other hand, learned counsel for the State, on instructions from ASI Gurdev Singh, Police Station Mukerian, submits that although a written compromise is available with the investigating officer, yet the complainant-respondent No.2 is not coming forward despite service. He prays for passing an appropriate order.

Having heard learned counsel for the parties at considerable length, after careful perusal of the record of 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, 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. To say so, reasons are more than one, which are being recorded hereinafter.

The averments taken in the petition as well as arguments raised by learned counsel for the petitioner have gone unrebutted. In fact, learned counsel for the State has been found fully justified in apprising this Court about the reason as to why the complainant-respondent No.2 is not coming forward, because parties seem to have settled the matter amicably. On merits, even after treating the allegations levelled in the impugned FIR to be true on their face value, no offence whatsoever, would be made out against the petitioner.

It is also gone unrebutted on record that petitioner and Mrs. Kirna Devi, daughter of the complainant-respondent, are living happily as husband and wife. It is also a matter of record that after performing marriage with the daughter of the complainant-respondent No.2, petitioner approached this Court by way of CRM-M-17425 of 2015 seeking protection to their life and liberty and the same was granted vide order dated 26.5.2015 (Annexure P-2). Having said that, this Court feels no hesitation to conclude that continuation of the impugned FIR as well as criminal proceedings arising therefrom would certainly result in serious miscarriage of justice, hence liable to be quashed.

It is also pertinent to note here that validity of the marriage of the petitioner with the daughter of the complainant is not in dispute in the present petition. Even if it is accepted, only for the sake of argument, that wife of the petitioner did not attain the age of majority at the time of their marriage, still no offence under Section 363/366-A would be made out against the petitioner, because he did nothing except to fulfill the will of daughter of the complainant, while performing marriage with her.

It would suffice to observe in this regard that once daughter of the complainant has reached the age of discretion, as held by the Hon'ble Supreme Court in **S. Varadarajan versus State of Madras, AIR 1965 SC 94**, she did not commit any wrong, while performing marriage with the petitioner. In such a situation, it can be safely concluded that continuation of the impugned FIR and subsequent criminal proceedings arising therefrom would amount to abuse of process of Court and the same cannot be permitted to continue any further.

The complainant-respondent has not come present, despite service. Had it been a bonafide litigation initiated at the hands of the complainant, he would have certainly come present before the Court to oppose 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 because he came under pressure from his relatives and other family members. Thereafter, the complainant and his other relatives might have realized their mistake and reconciled, therefore, the impugned FIR as well as consequential 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 it's own course and the

investigation ensures in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and it's 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 face 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 vindictivness 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.”

The abovesaid judgment of the Hon'ble Supreme Court was also followed by this Court in CRM-M-24433 of 2015 (Amandeep Singh and another Vs. State of Punjab and others), as the said case also arose out of somewhat similar circumstances.

Coming to the peculiar fact situation obtaining in the present case and respectfully following the law laid down by the Hon'ble Supreme Court in Rishi Pal Singh's case (supra) as well as in S.Vardarajan's case (supra), it is unhesitatingly held that since registration of the impugned FIR has resulted in serious miscarriage of justice, continuation of criminal proceedings arising therefrom would result in wastage of valuable time of the Court, thus, the impugned FIR as well as criminal proceedings arising therefrom are liable to be quashed, for this reason as well.

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

accepted.

Consequently, FIR No. 72 dated 19.5.2015 registered under Sections 363/366-A IPC at Police Station Mukerian, District Hoshiarpur and consequential criminal proceedings arising therefrom are hereby ordered to be quashed, so as to prevent any further abuse of process of court and also to secure the ends of justice, however, qua the petitioner only.

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

(RAMESHWAR SINGH MALIK)
JUDGE

8.10.2015
AK Sharma