

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Crl. Misc. No.M-31237 of 2014
Date of decision : 14.12.2015

Vinod Kumar

.....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

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

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. J.P.S. Viridi, Advocate
for the petitioner.

Mr. K. S. Aulakh, AAG, Punjab.

Mr. Sumit Dua, Advocate
for respondent no.2.

ANITA CHAUDHRY, J.

This petition has been filed under Section 482 Cr.P.C. for quashing the FIR No. 151 dated 15.06.2011, registered under Section 406, 498-A IPC at Police Station City Rajpura, District Patiala and all the consequential proceedings arising thereof qua the petitioner.

Nisha respondent no.2 was married to Devinder. She got an FIR registered in June, 2011 arraying her husband, sister-in-law and her father-in-law and the petitioner as an accused. The allegations only qua the petitioner are being referred to as during the course of arguments, it was informed that a compromise had been effected with the family members. The petition has been filed only

qua the petitioner. The allegations made by the complainant were that after her marriage on 21.10.2007, they had come to Rajpura and petitioner Vinod Sharma was a friend of her father-in-law. He was accompanying them. He spoke to her parents in an insulting manner and Vinod Sharma and his wife Jyoti started demanding Rs.1 lac and threatened that they would not allow the daughter to settle at Patiala. The complainant's family pleaded that the marriage had taken place only the day before and whatever arrangements were asked had been made and they did not have any more money. The complainant's father paid Rs.50,000/- to Vinod Sharma who was the mediator but the harassment did not end and he would harass them daily asking them for another sum of Rs.50,000/- and kept on visiting their house and kept a watch on the complainant. The allegations are that Vinod Sharma and his wife came to their house at night and they took all their jewellery and also the 'Shagun' amount. The complainant has alleged that she had told this fact to her family on telephone and her family came thrice along with the Panchayat. The complainant returned to her parent's house as she was expecting the birth for a child. The police investigated the case and filed the challan against the husband, his father, sister and the petitioner.

The petitioner moved an application seeking his discharge which was dismissed by the trial Magistrate and charge was framed. Against that order, a revision was filed which was dismissed on 17.04.2014.

By way of this petition, the petitioner is seeking quashing of the FIR and the consequential proceedings.

I have heard both the sides.

The counsel for the petitioner contends that the petitioner is not related to the complainant or to her in-laws and the FIR had been registered after four years of the marriage and the complainant was referring to the incident which took place on the next day of the marriage. It was urged that the complainant had named five persons but the police did not challan two of them. It was urged that there was no entrustment to the petitioner nor he was to benefit from any demand whatsoever and the complainant had entered into a compromise with her husband & in-laws and the FIR qua them had been quashed. It was urged that the complainant had alleged that petitioner was the mediator and that Panchayats were held. It was contended that no such material could be collected by the police and had the harassment been made on the very first day of the marriage, the complaint would have been lodged then. It was urged that the allegations made in the FIR are on the face of it absurd and inherently improbable and it would be an abuse of the process of law if the proceedings are allowed to continue. It was contended that the complainant has not given any date and the allegations were vague.

The submissions on behalf of the complainant were that there were specific allegations against the petitioner and charge had been framed and he could raise all the pleas in his defence. It was urged that the order passed in the revision petition had not been challenged.

The submission on the other hand was that the copy of the order passed on the discharge application and the order passed

on the revision were placed on record and they have filed a quashing petition after the order was passed and they have challenged all the consequential proceedings arising therefrom qua the petitioner which would include the orders passed subsequent to the filing of challan.

The scope of the exercise of powers under Section 482 and the categories of the cases where the High Court can exercise the powers under it in order to prevent the abuse of the process of Court were stated in detail by the Apex Court in the case of ***State of Haryana Vs. Ch. Bhajan Lal 1995 (Suppl.) 1 SCC 375*** which 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 un-controverted 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.

Ordinarily the High Court does not embark upon an enquiry where the charge-sheet has been filed and charges have been framed but considering the facts of the case, it is a fit case where the powers should be exercised.

The plea of the respondent no.2 about the non-maintainability of the petition after framing of charge 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.”

It is not in dispute that the FIR qua the rest of the persons who were arrayed as an accused has been quashed as a compromise was effected. The petitioner is not a family member of the husband. Vague allegations have been levelled against the petitioner after four years of the marriage. The allegations made in the FIR are absurd and inherently improbable and there would be no ground for proceeding against the accused. Criminal proceedings initiated against the petitioner was only with a view to wreak vengeance with a view to spite him due to a personal grudge. The prosecution did not collect any evidence during the course of the investigation to show that he was present at the time of her 'Phera'.

Having regard to the peculiar facts and circumstances of the case, it is a fit case where the extra ordinary power under Section 482 Cr.P.C. should be exercised. The petition is allowed and the FIR (Annexure P-1) and the subsequent proceedings arising thereof qua the petitioner are quashed .

14.12.2015

sunil

**(ANITA CHAUDHRY)
JUDGE**