

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

**Crl. Misc. No. M-31353 of 2014
Date of decision : 27.11.2015**

Sushil Kumar & Anr.

..... Petitioners

versus

State of Punjab & Anr.

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

Argued by: Mr. Vipin Sharma, Advocate
for the petitioners.

Mr. K.S. Aulakh, AAG Punjab.

Ms. Sushma Chopra, Advocate
for respondent No.2.

ANITA CHAUDHRY, J. (ORAL)

This is a petition under Section 482 Cr.P.C. seeking quashing of FIR No. 79 dated 21.06.2014, registered under Sections 406 and 498-A IPC at Police Station Vaiman, District Ludhiana by respondent No.2 and the subsequent proceedings.

The facts, necessary for disposal of the instant petition are being noticed first.

The petitioners are the in-laws of the complainant/respondent No.2 Nisha Aggarwal. She had made a complaint to the police against the petitioners and her sister-in-law Bindiya for misappropriating her *istridhan*. Neha was married to Amit

Aggarwal on 07.07.2004. A daughter was born to them. She had alleged harassment and maltreatment at the hands of the in-laws. Allegations were made that there were demands which her father had fulfilled, but when some demand was not fulfilled, they used to abuse her. On one occasion, her husband and parents-in-law tried to kill her and had cut her wrist. In 2012, the complainant and her father were treated too badly, due to which her father suffered heart attack. On 20.04.2014 the complainant was beaten up by the accused as she refused to fulfill the demand of money. The complainant further alleged that on 05.11.2013 she was permitted to go to her parental house on the condition that she would bring Rs.2 lacs for construction of the house. Her family could arrange only a sum of Rs.50,000/- which was given to the petitioners and Amit. On 06.11.2013 her husband committed suicide. It was alleged that the *istridhan* was entrusted to the accused with the stipulation that it would be handed to her at the time of need. It was alleged that the accused misappropriated the same and refused to return it to the complainant.

On these allegations, a case was registered and investigated. Challan has been filed; the petitioners have been charge-sheeted and trial has commenced.

The quashing has been sought on the ground that the instant FIR is counter-blast to FIR No. 141 dated 09.11.2013, registered against the complainant and her parents under Sections

306 read with Section 120-B IPC and that the FIR was registered after ten years of marriage and six months after the death of Amit containing vague and general allegations and without any specific instance, just to settle scores.

In the reply filed on behalf of the State, it was pleaded that specific allegations had been levelled by the complainant against the petitioners and during investigation their involvement in the offence was found and the case was rightly registered against the petitioners. An objection about the maintainability of the petition was raised on the ground that the petitioners have been charge-sheeted by the trial Court.

The complainant filed separate reply, wherein the allegations of the FIR and stand taken by the State were reiterated. Besides, circumstances leading to the suicide and other facts were detailed, but the same are not relevant so far as present petitioners are concerned.

I have heard learned counsel for the parties and have gone through the paper-book carefully.

Learned counsel for petitioners had urged that the instant FIR is counter-blast to FIR No. 141 dated 09.11.2013, registered against the complainant and her parents under Sections 306 read with Section 120-B IPC at Police Station Division No.4 for abetment of the suicide by their son Amit Aggarwal. He had further urged that the marriage took place in the year 2004 and the FIR was registered

after ten years thereafter and six months after the death of Amit. He had further urged that the petitioners being the parents-in-law have been roped in this case falsely to settle scores. According to him, no specific instance of harassment were given and general allegations have been made.

Learned State counsel assisted by learned counsel for the complainant had submitted that there are specific allegations against the petitioners of harassment and complaint of demand of dowry and misappropriation. It was further submitted that charge against the petitioners has been framed and this petition was not maintainable.

The question that arises is whether the FIR and the subsequent report under Section 173 Cr.P.C. and subsequent charge sheet can be quashed in exercise of the powers under Section 482 Cr.P.C.

Broad guidelines have been framed by the Hon'ble Apex Court for exercise of powers under Section 482 Cr.P.C. in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, AIR 1992 SC 604, which read as under:-

"105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and

reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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 F.I.R. 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 F.I.R. 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.”

The allegations in the FIR when read in juxtaposition with the factual aspects of the case, makes it abundantly clear that the same falls within clause (7) of the guidelines, reproduced above and warrants interference by this Court in exercise of powers under Section 482 Cr.P.C, for the reasons below. The prosecution of the petitioners was instituted as a counter-blast to the FIR registered against the complainant and her parents.

The marriage of complainant was solemnized with Amit Aggarwal on 07.07.2004. Her husband had consumed celphos on

06.11.2013 and died on 09.11.2013. The complainant along with her family and other relatives were booked in a case registered under Section 306 IPC at the instance of petitioner No.1. The trial of that case is going on. Till that time, there were no allegation of either harassment or dowry demand or misappropriation of dowry articles. The complainant came up with the allegations of harassment only in June 2014 i.e. after more than nine years of marriage and after the death of the husband. In the application, Annexure P-6, the complainant alleged for the first time that her mother-in-law Prem Lata harassed her for not bringing motor-cycle and that she was turned out of her matrimonial home by her husband as she could not fulfill the demand of Rs.2 lacs. It cannot be believed that petitioner No.2 Prem Lata would be a beneficiary from the alleged demand of motor-cycle. Nothing specific is alleged in the complaint about petitioner No.1. After about six months of death of her husband, the complainant came up with a lengthy complaint drafted with the help of some one well versed in law. For all these years, the complainant kept quiet for reasons best known to her. But after the registration of FIR against her, she had filed the complaint only to pressurize the petitioners to settle the issue.

Entrustment is sine quo non for proving the offence under Section 406 IPC. A perusal of the complaint submitted by the complainant, it reveals that in para No. 13 thereof details of articles allegedly entrusted to the petitioners had been given, consisting of

gold and silver jewellery, cash, household articles like dinning table, bed, dressing table, utensils, towel, clothes, suits and sarees was mentioned, besides shagun of Rs.23,100/- for relatives. But nothing specific was mentioned as to which jewellery item was handed over to which petitioner. It was mentioned that it were handed over to the accused with the understanding that the same will be handed over to the complainant at the time of need. It cannot be expected that for the past nine years the complainant had not demanded her jewellery back. Even otherwise, the other household articles mentioned in the complaint were being used by her and the family and it cannot be believed that they were entrusted to the petitioner and they did not hand it back to the complainant. That apart, the customary gifts given to the in-laws do not fall within the definition of dowry.

The Hon'ble Supreme Court in the case of **Kans Raj Vs. State of Punjab & Ors., 2000(2) RCR (Criminal) 695 (SC)**, had observed that a tendency had developed for roping all the relations in dowry cases and if it was not discouraged, it was likely to affect the case of the prosecution even against the real culprits.

In **Arnesh Kumar Vs. State of Bihar & Anr. 2014(3) RCR(Crl.) 527**, the Hon'ble Apex Court observed that the fact that Section 498-A IPC is a cognizable and non-bailable offence had lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives and the simplest way to harass is to get the husband and his relatives arrested under

this provision.

In the case of **Preeti Gupta & Anr. Vs. State of Jharkhand & Anr. 2010 AIR (SC) 3363** the Hon'ble Apex Court observed that a serious relook of the entire provisions of Section 498-A IPC is warranted by the legislation. It was observed that exaggerated versions of the incident are reflected in a large number of complaints and the tendency of over implication is also reflected in a very large number of cases.

The plea of respondents 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.”

In the considered opinion of this Court, the continuance of prosecution against the petitioners would be sheer abuse of the process of law and it is liable to be quashed with an object to meet the ends of justice.

In view of the discussion made above, the instant petition is allowed. The impugned FIR and consequent proceedings taken therein, against the petitioners, are quashed.

27.11.2015

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**(ANITA CHAUDHRY)
JUDGE**