

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36189 of 2010 (O&M)
Date of Decision: 31.7.2015

Gurdial Singh

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

CRM-M-23533 of 2011 (O&M)

Harchand Singh Baling and another

.....Petitioners

Vs.

State of Punjab and another

.....Respondents

CRM-M-3135 of 2015 (O&M)

Harpreet Singh Billing

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. S.P.Sidhu, Advocate
for the petitioner in
CRM-M-36189 of 2010 & CRM-M-3135 of 2015.

Mr. Gautam Dutt, Advocate
for the petitioner in CRM-M-23533 of 2011.

Mr. K.D.Sachdeva, Additional A.G. Punjab.

Mr. S.S.Toor, Advocate
for respondent No.2.

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

RAMESHWAR SINGH MALIK J. (ORAL)

These three identical petitions bearing CRM-M- 36189 of 2010 (Gurdial Singh Vs. State of Punjab and another), CRM-M-23533 of 2011 (Harchand Singh Baling and another Vs. State of Punjab and another) and CRM-M-3135 of 2015 (Harpreet Singh Billing Vs. State of Punjab), under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), are being decided together by this common order, as petitioners in all these three petitions are seeking quashing of the same FIR bearing No. 294 dated 22.10.2010, registered under Sections 498-A/406/34 IPC at Police Station Payal, District Ludhiana and subsequent proceedings arising therefrom. However, for the facility of reference, facts are being culled out from CRM-M-36189 of 2010.

All these three cases are classic examples of blatant misuse of process of law, at the hands of the complainant. Complainant-respondent No.2 namely Tega Singh is the maternal

uncle (mama) of Gurbinder Kaur, whose marriage with Harpreet Singh-petitioner, has remained unsuccessful so far.

Briefly put, basic facts of these cases, which are necessary for disposal of these three quashing petitions, are that marriage between Gurbinder Kaur daughter of Gurcharan Singh and Harpreet Singh son of Harchand Singh was solemnised on 9.2.2007, according to the Sikh rites and ceremonies. Out of this wedlock, one son namely Parbhunoor Singh was born on 25.5.2008. After the marriage, Gurbinder Kaur wife of Harpreet Singh-petitioner went to Canada on 5.4.2007, as stated by the author of the FIR, which runs into as many as 10 long pages. After some time, Harpreet Singh-petitioner also went to Canada. Some temperamental differences developed between husband and wife, when they were staying in Canada. This was the crucial stage when father, relatives of Gurbinder Kaur and some like minded residents of her village started approaching the police, making one or the other complaint against the present petitioners and finally, the impugned FIR came to be registered.

Notice of motion was issued and presentation of challan was stayed by this Court, vide order dated 9.12.2010. Pursuant to the notice of motion order, reply was filed on behalf of the State.

Learned counsel for the petitioners submit that the impugned FIR has been got registered by the maternal uncle of Gurbinder Kaur-wife of Harpreet Singh (petitioner in CRM-M-3135 of 2015), who herself was/is admittedly residing in Canada. Even her

husband Harpreet Singh was also residing in Canada. They further submit that lodging the impugned FIR even against grand father-in-law of Gurbinder Kaur would itself show that story putforth in the impugned FIR was a concocted one, which was based on factually incorrect and misleading allegations. Petitioner-Gurdial Singh-grandfather of Harpreet Singh is about 85 years old and he has also been forced to face the criminal trial in the eve of his life. They would next contend that every sincere effort was made on behalf of the petitioners to settle the matter amicably, on any reasonable terms and conditions, but the complainant did not agree, because Gurbinder Kaur and her family members are bent upon to cause maximum harassment to the petitioners. They concluded by submitting that even if contents of the FIR are taken to be true on their face value, no offence of any kind, whatsoever, is made out against the petitioners. In such a situation, continuation of criminal proceedings arising out of impugned FIR would amount to abuse of process of law. They pray for allowing all these three petitions, by quashing the impugned FIR.

Per contra, learned counsel for the State submits that since both the parties to the marriage were residing in Canada, the impugned FIR was registered by maternal uncle of Gurbinder Kaur. He further submits that during enquiry, it was found that as and when Gurbinder Kaur came to India and went to her matrimonial home, she was harassed by the petitioners. He prays for dismissal of all these petitions.

Similarly, learned counsel for the complainant, while endorsing the arguments raised by learned counsel for the State, submits that the impugned FIR was based on true allegations. He further submits that since Gurbinder Kaur was staying in Canada, her maternal uncle lodged the present FIR for which he was entitled in law to do so. He prays for dismissal of all these petitions.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of case and giving thoughtful consideration to the rival contentions raised, this Court is the considered opinion that keeping in view the peculiar facts and circumstances of the case, all these three petitions deserve to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

A bare reading of the impugned FIR, which runs into as many as 10 pages, shows the increasing tendency of implicating all the family members of the husband, in the domestic quarrel that takes place in a matrimonial dispute. In the present case, estranged wife of petitioner-Harpreet Singh did not even come forward to lodge the FIR, being resident of Canada. Her maternal uncle-Tega Singh got the impugned FIR registered at the instance of Gurbinder Kaur, at a time when both the parties to the marriage were admittedly staying in Canada. They are still residing in Canada with their respective families. It is a common knowledge that in the matrimonial dispute, normally husband is the main accused. However, in the present case, the wife through her maternal uncle Tega Singh-complainant

did not spare even her old grandfather-in-law who is more than 80 years of age, besides her parents-in-law and her husband.

When perused in the abovesaid factual background of the case, even after treating the allegations to be true on their face value and accepting the same in their entirety, without adding anything thereto or subtracting anything therefrom, no offence of any kind, whatsoever, is made out against any of the petitioners. It is so said, because making 80 years old person namely Gurdial Singh (who is now stated to be 85 years old) an accused, would itself show that the whole story putforth in the impugned FIR, is based on concoction and baseless allegations, thus, it amounts to totally unwarranted and frivolous litigation.

Such a litigation would amount to a blatant misuse of process of law. In the process, ultimate sufferer is the justice delivery system of this country. Parties to the marriage are hardly bothered because they are staying in Canada and members of both the families are wasting their time and money in pursuing the instant litigation. However, Harpreet Singh-husband of Gurbinder Kaur also had to file one of these quashing petitions, for securing a safe passage for himself to go to his native village in the State of Punjab.

Interestingly, as noticed in the present case, bride and her parents are pursuing the present litigation through remote control, while comfortably staying in Canada. Her maternal uncle-Tega Singh, who is the complainant and author of the FIR, is pursuing this proxy litigation, at the instance of Gurbinder Kaur and her parents. Under

these circumstances, it was thought appropriate to get the matter amicably settled. For this purpose, the matter was referred to the Mediation and Conciliation Centre of this Court, vide order dated 9.3.2015, but they failed to arrive at an amicable settlement. Even thereafter, vide order dated 26.5.2015, this Court requested both the learned counsel for the parties and they graciously accepted the proposal for making another joint effort to get the matter amicably settled, but they also failed.

This Court is constrained to observe that many a times, it has been experienced that whenever a sincere effort is made for getting the matter amicably settled, particularly in the matrimonial cases, parties to the litigation have been found under a totally misplaced and wrong impression, as if they would be obliging the court, while arriving at an amicable settlement. Parties must realise that courts of law have no interest of any kind, whatsoever, in their litigation, except a deep concern that let good sense prevail upon the parties and they may settle the dispute by way of mutual compromise.

It is equally true that if the parties arrive at an amicable settlement, finally it is a win win situation for both the parties. Above all, relations would become cordial enabling both the parties to the litigation, to live peacefully even if they have to part ways. Many a times, marriages are saved and life becomes more beautiful. However, in the present case, parties and particularly the complainant side has chosen to pursue the instant avoidable

litigation still further, for the reasons best known to them. The obvious reason which prima facie seems is the ego and malafide intention of the complainant side to put to the petitioners to maximum harassment.

Having said that, this Court feels no hesitation to conclude that the impugned FIR is the result of malafide intention of the complainant and his relatives, including Gurbinder Kaur. Continuation of criminal proceedings arising out of the impugned FIR, would result into further miscarriage of justice. Thus, it has become imperative for this Court to quash the impugned FIR and subsequent criminal proceedings arising therefrom, while invoking its inherent jurisdiction under Section 482 Cr.P.C., so as to avoid any further abuse of process of law and also to secure the ends of justice.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court and this Court:-

- 1) G.V.Rao, Vs. LHV Prasad, 2000 (3) SCC 693
- 2) Sundar Babu and others Vs. State of Tamil Nadu, 2009 (14) SCC 244
- 3) Preeti Gupta and another Vs. State of Jharkhand and another, 2010 (7) SCC 667
- 4) Geeta Mehrotra Vs. State of U.P. And another 2012 (10) SCC 741
- 5) K. Srinivas Rao Vs. D.A.Deepa 2013 (5) SCC 226
- 6) Sushil Kumar Sharma Vs. Union of India and others 2005 (6) SCC 281
- 7) Madan Lal and others Vs. State of Punjab (P&H) 2012

(8) RCR (criminal) 428.

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.

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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.

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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.

Reverting back to the facts of these cases and respectfully following the law laid down by the Hon'ble Supreme Court, in the cases referred to hereinabove, it is unhesitatingly held that the impugned FIR is another classic example of glaring misuse of

process of law. Since continuation of criminal proceedings arising out of the impugned FIR would amount to sheer wastage of valuable time of court and shall also cause unwarranted harassment to the petitioners, it being a frivolous litigation imposed on the petitioners, at the hands of disgruntled litigants, the impugned FIR as well as subsequent proceedings arising therefrom are liable to be quashed, for this reason also.

This Court is conscious of the fact that although its power under Section 482 Cr.P.C. are wide enough, yet it is equally true that the said inherent jurisdiction is to be exercised sparingly and with circumspection. However, in the present case, this Court is satisfied that if the impugned FIR and subsequent criminal proceedings arising therefrom are not set aside, it would lead to further miscarriage of justice.

The view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **State of Haryana versus Bhajan Lal and others, AIR 1992 SC 604**. The relevant observations made by the Hon'ble Supreme Court, laying down seven principles, which deserve to be reproduced in the present case, read as under:-

(a) 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;

(b) 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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”

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted hereinabove, coupled with the reasons aforementioned, this Court is of the considered view that the impugned FIR as well as subsequent criminal proceedings arising therefrom fall within the ambit of more than one principles of law laid down in **Bhajan Lal's case** (supra), the same are liable to be quashed, so as to secure the ends of justice and also to prevent any further abuse of process of law.

Consequently, FIR No. 294 dated 22.10.2010 under Sections 498-A/406/34 IPC, registered at Police Station Payal, District Khanna and all the subsequent criminal proceedings arising therefrom are hereby ordered to be quashed, however, only qua the petitioners.

Resultantly, with the abovesaid observations made and directions issued, all these three petitions stand allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

31.7.2015
Ak Sharma