IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No. M-36197 of 2010 (O&M)
Date of Decision: 11.9.2015.

Madhu Sharma @ Madhu Lata Sharma and another ....Petitioners

Vs.

State of Punjab and another ......Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Anupam Gupta, Senior Advocate with
Mr. Yogeh Goel, Advocate
for the petitioners.

Mr. J.S.Sekhon, AAG, Punjab

Mr. Y.P.Khullar, Advocate
for respondent No. 2.

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SABINA, J.

Petitioners have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No. 186 dated 30.10.1998, under Section 406, 498-A, 109, 506 of the Indian Penal Code, 1860 ('*IPC*' for short), registered at Police Station Division No. 3, Jalandhar and all the subsequent proceedings arising therefrom including the order dated 24.5.1999 (Annexure P-9).

Prosecution story, in brief, is that complainant along with his brother were residing in Canada along with their families. Jeevan Lata, daughter of the complainant, had come to India for marriage purposes. Marriage of Jeevan Lata was performed with Rajesh Sharma on 13.2.1994 at Noor Mahal.

Complainant had given sufficient dowry to his daughter at the time of her marriage. On 2.3.1994, Jeevan Lata was turned out of the matrimonial home by her husband and his family members after giving beatings to her. Jeevan Lata came to Noor Mahal and told the complainant that her in-laws were demanding a car. On 10.3.1994, parents of Rajesh Kumar told the complainant that they would have to incur the expenses for sending Rajesh Kumar to Canada. While leaving for Canada, Jeevan Lata demanded back her gold ornaments but the accused had refused to return the same to her. On 16.3.1994, complainant along with his daughter returned to Canada. Rajesh Kumar also reached Canada and started living with Jeevan Lata. The couple were blessed with a son in August, 1996. However, Rajesh Kumar started harassing Jeevan Lata on account of demand of dowry.

Learned senior counsel for the petitioners has submitted that petitioner No. 1 is the married sister of Rajesh Sharma whereas petitioner No. 2 is the husband of petitioner No. 1. Complainant was the resident of Canada. Jeevan Lata, daughter of the complainant, had come to India for marriage purposes from Canada and had returned to Canada on 16.3.1994. In case the allegations levelled in the FIR qua harassment meted out to Jeevan Lata by the accused before she left for Canada were correct, there was no occasion for Jeevan Lata to have initiated sponsorship of her husband. Jeevan Lata had duly moved the papers for sponsorship of Rajesh Kumar and on the basis of the same, Rajesh Kumar had reached Canada. The couple were blessed with a son out of the wedlock. However, some matrimonial discord occurred between the couple while they were residing in Canda and due to this reason, parties got a decree of divorce in Canada vide Annexure P-2. Petitioners were residing in Canada and had not received any summons qua the pendency of the criminal proceedings against them. In fact the petitioners had left for Canada in December, 1997 whereas the FIR in question was registered in October, 1998. Kamlesh Sharma, co-accused of the petitioners, who had faced the trial, was acquitted by the Trial Court vide order dated 7.3.2007 (Annexure P-10). The said order was upheld by this Court vide order dated 4.10.2007 (Annexure P-11). Learned senior counsel for the petitioners has further submitted that cause of action, if any, could be said to have arisen in Canada and the FIR qua the petitioners was liable to be quashed.

Learned counsel for respondent No. 2, on the other hand, has opposed the petition and has submitted that the marriage of Jeevan Lata was performed with Rajesh Sharma in India. The petitioners had been declared proclaimed offenders and, therefore, this petition was liable to be dismissed.

In the case of **State of Haryana** vs. **Bhajan Lal,, 1992 Supp(1) Supreme Court Cases 335,** the Apex Court has held as under:-

> "The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. Can be exercised by the High Court 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 chennelised 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 complainant/respondent No.2, 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 no 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 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 specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.

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

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

In **Kans Raj vs. State of Punjab and others, 2000 (2) RCR (Criminal) 696 (SC),** their Lordships of the Apex Court have observed that a tendency has developed for roping in all the relations in dowry cases and if it is not discouraged, it is likely to affect case of the prosecution even against the real culprits. The efforts for involving the other relations ultimately weaken the case of the prosecution even against the real accused.

In the present case, admittedly, complainant is resident of Canada. Jeevan Lata, daughter of the complainant, had come to India for marriage purposes. Marriage of Jeevan Lata was performed with Rajesh Sharma on 13.2.1994. Jeevan Lata then left for Canada on 16.3.1994. Rajesh Sharma joined his wife Jeevan Lata in Canada. Jeevan Lata has not visited India after her marriage. A perusal of the FIR reveals that some allegations have been levelled qua harassment meted out to Jeevan Lata in India. Had the allegations levelled in the FIR prior to 16.3.1994 been correct, there was no occasion for Jeevan Lata to have sponsored Rajesh Sharma enabling him to join her in Canada. Rajesh Sharma and Jeevan Lata lived together as husband and wife and a son was born to them out of their wedlock. It appears that some matrimonial discord occurred between the couple and due to this reason, they got a decree of divorce from the Court in Canada. Annexure P-2 is the copy of the order whereby a decree of divorce was granted and the marriage of Rajesh Sharma and Jeevan Lata was dissolved.

Annexure P-3 is the copy of the order whereby the parties had settled qua custody/maintenance of the child.

Petitioners had left India for Canada on 6.12.1997. The FIR in question was registered in October, 1998. There is nothing on record to suggest that the petitioners had received summons qua pendency of the present criminal proceedings in India. Apparently, petitioners were declared proclaimed offenders without effecting proper service on them. Kamlesh Sharma, mother of Rajesh Sharma, had faced the trial and was acquitted by the Trial Court vide order dated 7.3.2007 (Annexure P-10) and the said order was upheld by this Court vide order dated 4.10.2007 (Annexure P-11).

From the facts and circumstances of the present case, it is evident that the cause of action, if any, had arisen in Canada whereas the FIR in question has been lodged in India. Moreover, it is evident that the petitioners have been involved in this case merely because of their relationship with Rajesh Sharma.

In the facts and circumstances of the present case, continuation of criminal proceedings against the petitioners would be nothing but an abuse of process of law.

Accordingly, this petition is allowed. FIR No. 186 dated 30.10.1998, under Section 406, 498-A, 109, 506 IPC, registered at Police Station Division No. 3, Jalandhar qua the petitioners and all consequential proceedings, arising therefrom including the order dated 24.5.1999 (Annexure P-9), are quashed.

(SABINA)
JUDGE

September 11, 2015
Gurpreet