

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

CRM-M No.34700 of 2014

Date of decision: 29th September, 2015

Ashish

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Gaurav Mohunta, Advocate for the petitioner.

Mr. Deepak Sabharwal, Addl. Advocate General, Haryana
for respondent No.1.

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

FATEH DEEP SINGH, J.

This is a petition under Section 482 Cr.P.C. by Ashish accused seeking quashing of the FIR No.74 dated 09.02.2014 under Sections 498A/406/506 IPC registered at Police Station Kharkhoda, District Sonapat (Annexure P1) and all consequential proceedings arising therefrom.

Upon hearing Mr. Gaurav Mohunta, Advocate for the petitioner; Mr. Deepak Sabharwal, Addl. Advocate General, Haryana representing the State/respondent No.1 and Mr. S.S. Mor, Advocate

on behalf of the complainant/respondent No.2 and on perusal of the records of the challan.

The background to this lis is a matrimonial dispute between accused Bishnu Tokas and his wife Ruby, the present complainant, whose marriage was solemnized on 24.02.2012 out of which the couple has a son born on 05.12.2012. The petitioner happens to be unmarried younger brother of the husband who at the relevant time was a student of B.Com. at Mussoorie (Uttarakhand).

The allegations levelled in the FIR (Annexure P1) by the wife are that her father gave dowry articles at the marriage and more than ₹70.00 lacs were spent on it and has detailed the gifts given to the accused side. The allegations against the petitioner are that he was given ₹11,000 at the time of ring-ceremony and that a few days prior to the engagement, demand of SUV was made by the accused side and ₹15.00 lacs in cash were given in lieu of the same, and that even after the marriage family was not happy with the dowry articles and often taunted her, and has sought to highlight her traumatic experience at the house of her in-laws without spelling out any incident of cruelty or particulars of demand with time, place and date including the persons who had raised the same.

The main thrust of the arguments of learned counsel for the petitioner Mr. Gaurav Mohunta, Advocate is that the allegations against the petitioner revolve around payment of ₹11,000 which falls within the term 'gifts' and are not covered by the definition of 'Istri

Dhan' and has sought to place reliance upon '**Geeta Mahrotra and another v. State of U.P. and another**' 2012(4) RCR (Criminal) 812; '**Sandeep Singh v. State of Punjab and another**' 2014(10) RCR (Criminal) 2424 and '**Rakesh Kumar and others v. State of Punjab and others**' 2009(2) RCR (Criminal) 565 to hammer home the point that it has become a matter of revenge to level allegations against every member of the family in such a matrimonial dispute and therefore, the Courts need to be sensitive and circumvent such a misuse of the process of the Court.

Though on behalf of the State and the private respondent these arguments have been sought to be refuted contending that it was a matter of trial and thus at this juncture the worth of these allegations cannot be examined and further that being a brother-in-law, has a definite role in the commission of offence.

Appreciating these submissions, the Hon'ble Supreme Court in the case of '**State of Haryana and others v. Ch.Bhajan Lal and others**' 1992 AIR SC 604, has considered at length the exercise of powers under Section 482 Cr.P.C. and has enunciated the principles though not exhaustive but are highly illustrative and the same are to be exercised either to prevent abuse of the process of any Court or to secure the ends of justice and which are incorporated as follows:

- (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 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.

Though at the same time, Courts below have been cautioned that such a power of quashing of criminal proceedings should be exercised sparingly with circumspection and that too in the rarest of the rare cases and it was further provided that in such an endeavour the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

Reverting back to the instant case, a bare perusal of the FIR (Annexure P1) which is the cornerstone of these allegations levelled by the wife though as per this allegations have been levelled against Bishnu Tokas husband, Rukmani mother-in-law, Sukender Singh father-in-law, present petitioner Ashish being brother-in-law (Dewar), Kulbir Singh Khatri Fufar (parental uncle of husband) and Meenti (his wife); thus apparently even the close relations have not been spared by the wife. Further perusing the allegations one does

not come across any particular insinuation or allegation levelled against the present petitioner except the fact that he was given ₹11,000 at the ring-ceremony thus, clearly within the ambit of a gift. Furthermore, neither learned State counsel much less on behalf of the complainant anything could be highlighted to the specific query of the Court what other allegations have been levelled against the petitioner therein. What one could gather was that the money for the SUV comprising of ₹15.00 lacs was given to her in-laws family thus, clearly and completely a vague allegation and similarly that 1 kg of gold ornaments were given to the accused and it is nowhere alleged if it was a part of the Istri Dhan or was kept with the accused as articles of trust. Reliance is placed on **‘Bhaskar Lal Sharma & another v. Monica’ 2009(3) RCR (Criminal) 866**, where another ratio laid down in **‘Rashmi Kumar v. Mahesh Kumar Bhada’ 1999(2) RCR (Criminal) 43** was considered wherein the definition of Istri Dhan has been well laid out and has been defined clearly that the **properties gifted to the bride before the marriage, at the time of marriage or at the time of giving farewell or thereafter, are her Istri Dhan properties**; and which certainly does not become a joint property of the wife and the husband and the wife has exclusive right of its use as per her needs and requirements and the husband has no dominion over such an article. Thus, ₹11,000 is only to the petitioner as a gift and not to the complainant bride and does not fall within the definition of Istri-Dhan. Furthermore, there is no element of entrustment of any

of the Istri-Dhan specifically to the petitioner and therefore, it is implicitly clear that the offence of criminal breach of trust as defined under Section 405 IPC would come into play and deemed to have been committed only when a person who has been entrusted in any manner with the property or as a dominion over it dishonestly misappropriates it, converts it to his own use, dishonestly using or disposing it off in violation of the law prescribing the mode of such trust. Thus, none of the elements essential to show criminal breach of trust is highlighted in the report under Section 173 Cr.P.C. qua the petitioner.

Even allegations against the petitioner qua the element of cruelty are totally amiss. Neither any demand much less handing over of the articles of Istri Dhan to the petitioner finds mention in these allegations. On perusal of the police challan, it nowhere transpires any specific role to the petitioner by any of the witnesses who have been examined under Section 161 Cr.P.C. in the investigations and even the list of dowry articles alleged to have been recovered are not attributed to the present petitioner thus, another blow to the case of the prosecution.

It needs to be asserted here that to attract commission of offence under Section 406 IPC prosecution is supposed to prima-facie bring out allegations of entrustment of the Istri Dhan in such matrimonial disputes and the fact that the same was meant for the use of the bride and the accused have usurped the same and put it to their

own use and thus, denying the bride to its usage and in spite of demand of their return the accused have refused to hand back these articles, which were entrusted with them. There is nothing suggestive of remotely connecting to these allegations qua the present petitioner.

As has been sought to be argued by learned counsel for the petitioner, in **Geeta Mehrotra's case (ibid)**, the Hon'ble Apex Court has considered various ratios on this aspect of the matter holding out that in cases where unmarried sister or brother of the husband moves the Court under Section 482 Cr.P.C., it was the legal duty of the High Court to examine whether there was prima-facie material against them so that they could be directed to undergo the trial. Thus, from it all which forms the entire allegations and the evidence which forms the challan/report under Section 173 Cr.P.C., the mere FIR and the statement and the documentary evidence does not disclose specific allegations against the present petitioner out of such a matrimonial dispute and it was further laid down by this Court in **Sandeep Singh's case (ibid)** holding that over a period of time, a tendency has developed for roping in all relations of the husband which needs to be discouraged.

Thus, appreciating the entire gamut of these allegations and evidence placed on the challan along with the documents, bears out that it is out of the compulsive tendency to rope in close relatives, as the present brother-in-law, which is at work rather than what is truth and has become a legal necessity. Thus having overall view, allowing

the prosecution of the present petitioner would certainly be to the mind of this Court completely an abuse of the process of the Court and thus to prevent such misuse and in the interest of justice, for dispensation of justice, FIR No.74 dated 09.02.2014 under Sections 498A/406/506 IPC at Police Station Kharkhoda, District Sonapat (Annexure P1) registered against the present petitioner and all consequential proceedings arising from the said FIR needs to be quashed and are thus quashed.

Present petition stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

September 29, 2015

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