

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Misc. No.M-4688 of 2011
Date of Decision : 12.10.2015

Raj Kumar

.....Petitioner

Vs.

Sonika Rani

.....Respondents

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CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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Present : Mr. Yogesh Goel, Advocate for the petitioner.
Mr. Sheetal Vaishnav, Advocate for the respondent.

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

RAMESHWAR SINGH MALIK, J

Petitioner seeks quashing of criminal complaint No.8 dated 27.1.2009 under Sections 406/498-A of the Indian Penal Code ('IPC' for short) (Annexure P-1), summoning order dated 24.2.2010 (Annexure P-2) and the revisional order dated 12.1.2011 (Annexure P-3) as well as consequential criminal proceedings, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short).

Notice of motion was issued.

After having been served, respondent- complainant filed her reply by way of affidavit.

Learned counsel for the petitioner submits that petitioner was unmarried brother-in-law of the complainant, he being the younger brother of

the husband of the complainant. Petitioner has become the victim of general tendency, which is an unhealthy practice to implicate maximum members of the family of the husband in the criminal cases under Sections 406/498-A IPC. He submits that the allegations levelled against the petitioner were so absurd that the same cannot be accepted. He next contended that to entrust the alleged dowry articles like 10 beddings and kitchen set to unmarried boy like the petitioner, would leave no room for doubt that the impugned complaint, atleast qua the petitioner, was based on a concocted story put forth by the complainant-respondent. He prays for quashing the impugned complaint, summoning order, revisional order as well as the consequential criminal proceedings arising therefrom, however, only qua the petitioner, by allowing the present petition.

On the other hand, learned counsel for the respondent-complainant submits that since the petitioner-accused no.4 in the complaint had been actively participating in the commission of offences, he is not entitled for invoking the inherent jurisdiction of this court under Section 482 Cr.P.C. and the present petition is liable to be dismissed. He also submits that since the summoning order has been issued against the petitioner and his revision petition has also been dismissed by the learned Additional Sessions Judge, present petition is misconceived. He prays for dismissal of the present petition.

After hearing learned counsel for the parties and going through the record of the case, this court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed herein above, petitioner has been found entitled for invoking the inherent jurisdiction of this court under Section 482 Cr.P.C. Present petition deserves to be accepted for the following more than one reasons.

A bare reading of the impugned complaint, summoning order as

well as the revisional order would show that it is the result of glaring abuse of process of court at the hands of the complainant. So far as the petitioner is concerned, even after treating the allegations levelled against him in the impugned complaint to be true on their face value, no offence of any kind, whatsoever, is made out against him. Having said that, this court feels no hesitation to conclude that the impugned complaint, summoning order as well as the revisional order, qua the petitioner, cannot be sustained.

It is a matter of record and not in dispute that petitioner was the unmarried brother-in-law of the complainant. He was the younger brother of the husband of the complainant, thus, had no role to play in the matrimonial dispute. This seems to be the reason that the story put forth by the complainant was not found reliable by the police authorities, because of which the impugned complaint was filed. It does not appeal to reason as to what an unmarried boy would do with 10 beddings and kitchen set. However, since the learned trial court as well as the learned revisional court have misdirected themselves, while passing the impugned summoning order as well as the revisional order against the petitioner, without appreciating the undisputed fact situation obtaining in the present case, thus, the impugned orders have resulted in miscarriage of justice and the same cannot be sustained.

The above said view taken by this court also finds support from numerous judgements of the Hon'ble Supreme Court as well as this court, including the following judgements :-

1) G.V.Rao, Vs. LHV Prasad, 2000 (3) SCC 693

2) Manjula Sinha Vs. State of U.P. and others, 2007(3) RCR (Crl.)
778,

3) Sundar Babu and others Vs. State of Tamil Nadu, 2009(14) SCC

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- 4) Preeti Gupta and another Vs. State of Jharkhand and another,
2010 (7) SCC 667
- 5) Geeta Mehrotra Vs. State of U.P. And another 2012 (10) SCC
741
- 6) K. Srinivas Rao Vs. D.A.Deepa 2013 (5) SCC 226
- 7) Sushil Kumar Sharma Vs. Union of India and others 2005 (6)
SCC 281
- 8) Madan Lal and others Vs. State of Punjab (P&H) 2012 (8) RCR
(criminal) 428
- 9) Gurdial Singh and another Vs. State of Punjab and others
decided by this court in CRM No.M-36189 of 2010.
- 10)Rajiv Mehta and another Vs. State of Punjab and others (CRM
No. M-8495 of 2014) decided on 17.8.2015.
- 11) Sarla Devi and another Vs. State of Haryana and another (CRM
No.M-15435 of 2014) decided on 18.9.2015.

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 peculiar facts of the present case and

respectfully following the law laid down by the Hon'ble Supreme Court as well as this court, in the cases referred to herein above, it is unhesitatingly held that the impugned complaint as well as the above said orders clearly amount to abuse of process of court and the same cannot be sustained, for this reason also.

During the course of hearing, when a pointed question was put to learned counsel for the respondent, as to how the above said absurd allegations are justified, he had nothing to say, except that the petitioner has actively participated in the commission of offences alleged against him. However, he failed to substantiate any of his arguments in this regard. Under these circumstances, it can be safely concluded that continuation of the criminal proceedings arising out of impugned complaint, would further result in glaring misuse of process of court, because of which same are liable to be set aside, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that the instant petition deserves to be accepted. Consequently, impugned criminal complaint no.8 dated 27.1.2009 under Sections 406/498-A IPC (Annexure P-1), summoning order dated 24.2.2010 (Annexure P-2) and the revisional order dated 12.1.2011 (Annexure P-3), as well as the criminal proceedings arising therefrom are hereby ordered to be quashed, however, only qua the petitioner.

Resultantly, with the above said observations made, present petition stands allowed, however, with no order as to costs.

12.10.2015
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(RAMESHWAR SINGH MALIK)
JUDGE

