

In the High Court of Punjab and Haryana at Chandigarh

CRM-M-41782 of 2013
Date of Decision:9.1.2015

Sweetpal Singh

---Petitioner

versus

State of Punjab and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Paminder Singh, Advocate
for the petitioner**

**Mr. Ankur Jain, AAG, Punjab
for the respondent-State**

**Ms. Narinder Kaur, Advocate
for respondent No. 2**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporter or not?**
- 3. Whether the judgment should be reported in the Digest?**

REKHA MITTAL, J.

The present petition under Section 482 of the Code of Criminal Procedure (in short “Cr.P.C.”) has been preferred for quashing FIR No. 149 dated 3.7.2013, registered at Police Station Dakha, District Ludhiana for offence punishable under Sections 328, 380, 420, 120-B of the Indian Penal Code (in short “IPC”) and proceedings emanating therefrom qua the petitioner.

Counsel for the petitioner contends that the petitioner is the son of Baljit Kaur, co-accused in the case and Baljit Kaur performed marriage

with respondent No. 2/complainant after death of Nand Singh, her previous husband on 24.4.2010 which was got registered on 21.5.2010. The complainant has lodged the FIR against Baljit Kaur and the petitioner wherein most of the allegations have been levelled against Baljit Kaur against whom challan has been presented in the court and proceedings are pending. The petitioner has been indicted in the crime by raising certain general and vague allegations which are detailed at page 17 of Annexure P1, translated copy of the FIR. It is argued that there is no medical evidence that the complainant was administered any poison or any stupefying, intoxicating or unwholesome drug or other thing with an intent to cause hurt to him. Even the date on which the alleged occurrence when the complainant felt unconsciousness due to drinking of glass of milk purportedly given to him by Baljit Kaur, is not mentioned. No offence under Section 328 IPC is made out against the petitioner even if the allegations are taken on its face value.

The complainant has alleged that the petitioner took away his Alto car when as a matter of fact, the complainant furnished an affidavit duly attested by an Executive Magistrate, Tehsil Mullanpur Dakha, District Ludhiana (Annexure P-5) in favour of Baljit Kaur and sold the said vehicle to Baljit Kaur and later Baljit Kaur sold the car to another person in whose favour registration has been transferred in the records of the Registering Authority in December 2011 (Annexure P-6). The allegations in regard to an occurrence which allegedly took place about 1½ years when he left Baljit Kaur and the petitioner at his house and found certain articles missing from the house are vague and the petitioner has nothing to do with taking away

any article belonging to the complainant. The last submission made by counsel is that the petitioner has been falsely involved in the proceedings as he is son of Baljit Kaur with whom the complainant performed marriage after death of previous husband of Baljit Kaur.

Counsel for the contesting respondent, on the other hand, would contend that the complainant had to move from pillar to post to book the accused in the crime committed by them. He approached this Court twice/thrice for initiation of action against the accused and eventually in pursuance of directions issued by this Court to look into grievance of the complainant, the instant FIR has been lodged. The complainant has levelled specific allegations that his signatures were obtained on blank papers after making him partially unconscious and affidavit Annexure P-5 has been prepared on the blank signatures of the complainant and the photograph appended on the affidavit was taken from his passport which was in possession of Baljit Kaur. It is further argued that disputed questions of fact are not amenable to adjudication under Section 482 Cr.P.C., therefore, the petition may be dismissed. Counsel has further submitted that Baljit Kaur walked out of the matrimonial home and thereafter started residing with a person of Tarn Taran and duped him of his property and he has also made a complaint against her.

I have heard counsel for the parties and perused the records.

Respondent No. 2/complainant put in appearance in the case on February 11, 2014 and thereafter the case was adjourned on a number of occasions for filing reply but he did not file any response to counter averments set up in the petition, therefore, the allegations raised by the

petitioner remain uncontroverted. Counsel for respondent No. 2 offered to argue the matter without filing any formal reply by him.

Before advertng to the submissions made by respective counsel, it is appropriate to recount the legal position laid down in the judgment *State of Haryana and others vs. Ch. Bhajan Lal and others 1992 AIR (SC) 604* wherein the court has laid down certain principles in regard to exercise of jurisdiction under Section 482 Cr.P.C. for quashing of criminal proceedings. In para 108, the court has culled out certain categories of cases by way of illustrations wherein such power can be exercised either to prevent abuse of process of any Court or otherwise to secure ends of justice with the observations that 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. Sub para 3 of para 108 is relevant and extracted thus:-

“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.”

There cannot be any dispute about the settled position of law that disputed questions of fact are not amenable to adjudication in proceedings under Section 482 Cr.P.C. The complainant has levelled allegations against the petitioner, precisely extracted hereinbelow:-

“One day Baljit Kaur and her son Sweetpal Singh came to them at village Bhattian. They took the meals and

while going to sleep, Baljit Kaur made him drink a glass of milk. Just after about half an hour his head started moving and he became partially unconscious and Baljit Kaur got his signatures on many papers and had stolen Rs. 50,000/- from his wallet.”

He further alleged:-

“When they reached home, by that time Sweetpal Singh had already left in Alto car of the applicant. About 1½ years earlier, on one day Sweetpal Singh had visited his mother Baljit Kaur at village Bhattian. He (complainant) had gone to Mullanpur by leaving mother and her son at home. When he came back from Mullanpur after 3-4 hours, both mother and son were not in the house. All the doors of the rooms were lying open. His locked attache was lying in the bed containing 2½ tollas one gold kara, 2½ tollas gold chain, two rings and he kept Rs. 05 lakhs for purchase of a plot which was stolen by them. When he contacted Baljit Kaur over phone regarding this, she told him that she has gone to Sarli Kalan and she is not liable to pay any thing to him. Baljit Kaur started living with one Baljit Singh son of Kulwant Singh at Sarli Kalan, District Tarn Taran.”

With regard to allegation of visit of the petitioner to village Bhattian when Baljit Kaur made the complainant to drink a glass of milk causing him partial unconsciousness, no date, month or year of the said

occurrence has been given. Counsel for the respondent has fairly conceded that there is no medical evidence that the complainant was administered any poison or any other substance which falls within the purview of Section 328 IPC. This apart, the complainant has levelled allegations only against Baljit Kaur (non-applicant) for obtaining his signatures on certain papers and stealing Rs. 50,000/-

So far as allegation with regard to stealing of Alto car, no reply has been filed by respondent No. 2 in regard to the affidavit furnished by him whereby he sold the car in favour of Baljit Kaur. The affidavit was attested by an Executive Magistrate. Baljit Kaur has transferred the car in favour of one Gurnaib Singh and the vehicle has already been transferred in his name in the official records of Registering Authority, as per Annexure P-6 dated 16.12.2011. Admittedly, Sweetpal Singh had not taken away the car in presence of the complainant nor the complainant has alleged that the car was taken away by him in presence of some other person.

The allegations in regard to occurrence which allegedly took place about 1½ years are quite vague. No date, month or year of the said occurrence has been mentioned. After the alleged occurrence, the complainant allegedly contacted Baljit Kaur to know about those articles. It appears that as the petitioner is the son of Baljit Kaur, born out of her wedlock with Nand Singh and the complainant had a serious grievance to express against Baljit Kaur for exploiting his position, extracting money and taking away his movable and immovable property, the petitioner has been sought to be indicted in the crime. When the facts and circumstances of the present case are examined in the light of sub para 03 of para 108 of the

aforesaid judgment, I am of the considered opinion that the criminal proceedings against the petitioner are nothing but an abuse and misuse of process of law and, therefore, can not be allowed to continue.

For the reasons aforesaid, the petition is allowed, FIR No. 149 dated 3.7.2013, registered at Police Station Dakha, District Ludhiana for offence punishable under Sections 328, 380, 420, 120-B IPC is ordered to be quashed only qua the petitioner (Sweetpal Singh). However, nothing stated in this order shall cause any prejudice in regard to culpability of Baljit Kaur, co-accused in the case.

(REKHA MITTAL)
JUDGE

9.1.2015
PARAMJIT