

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

DATE OF DECISION : 8.5.2015

1. Criminal Misc. No.M-821 of 2014 (O&M)
Shanoo and another v. State of Punjab and another
2. Criminal Misc. No.M-1909 of 2014 (O&M)
Bharat Bhushan alias Ninnu v. State of Punjab & another

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

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

Present:- Shri Sandeep Kotla, Advocate for the petitioners.

Shri R.S.Randhawa, Additional A.G. Punjab.

MAHESH GROVER, J.

By this order I will dispose of Cr.M.Nos.M-821 and 1909 of 2014 as they arise out of a common F.I.R. No.54 dated 23.5.2013 registered under Sections 363,366-A,376/120-B I.P.C. at Police Station Phase 11, S.A.S.Nagar (Mohali).

In Cr.M.No.M-821 of 2014, petitioners are the parents of one Karan who is alleged to have eloped with the daughter of the complainant. In Cr.M.No.M-1909 of 2014, petitioners are the brother-in-law and sister of said Karan. It is stated by the learned counsel for the petitioners that the F.I.R. and the

consequential proceedings arising therefrom against the petitioners in both these petitions are a sheer abuse of the process of law as the allegations, if any, were against Karan who is alleged to have eloped with the daughter of the complainant. The only role attributed to the petitioners in the F.I.R. is of conniving in the commission of the offence.

Learned counsel for the respondents on instructions from ASI Sulakhan Singh, Police Station Phase-11, Mohali does not dispute that the primary allegations were against Karan who enticed away the daughter of the complainant on 20.5.2013. In so far as the petitioners in both the petitions are concerned, the solitary role attributed to them is of facilitating the crime.

On due consideration of the matter and noticing the fact that the allegations in the F.I.R. have surfaced on account of the disgruntlement of the father whose girl has been enticed away by Karan who is related to the petitioners, would not *ipso facto* make the petitioners privy to the commission of offence particularly when the facts indicate the involvement of Karan with the daughter of the complainant. It is not in dispute that Karan is facing trial, while Kajal is with her parents.

It is settled principle of law that if the F.I.R. does not disclose the commission of offence, its continuance with the proceedings and persisting with the F.I.R. will be an abuse of the process of law.

In State of Haryana and others v. Ch.Bhajan Lal and others A.I.R. 1992 S.C. 604 the Hon'ble Supreme Court observed as follows :-

“In following categories of cases, the High Court may in exercise of powers under Art.226 or under S.482 of Cr.P.C. may interfere in proceedings relating to cognizable offences to prevent abuse of the purpose of any Court or otherwise to secure the ends of justice. However, power should be

exercised sparingly and that too in the rarest of rare cases.

- (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 S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.
- (3) Where the uncontroverted allegations made in the F.I.R. 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 F.I.R. 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 S.155(2) of the Code.
- (5) Where the allegations made in the F.I.R. 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 proceeding 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.

Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases enumerated above, calling for exercise of extraordinary powers or inherent powers, quashing of FIR was not justified.”

The Hon'ble Supreme Court in **Geeta Mehrotra & another v. State of U.P. & another** 2012(4) R.C.R. (Criminal) 812 held as follows :-

“19. Coming to the facts of this case, when the contents of the FIR is perused it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance

against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

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24. 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 cognizance 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 of skirmish of domestic bickering while settling down her new matrimonial surrounding.”

Even though the observations of Hon'ble Supreme Court in **Geeta Mehrotra & another v. State of U.P. & another** (supra) may not strictly apply, but the fact remains that the F.I.R. is a result of elopement of the complainant's daughter with the son of petitioner in Cr.M.No.M-821 of 2014, with a serious possibility of enlargement of the arena of accused, given the tendency of the complainant in such like cases. The parent and the relatives of young men who tread the adventurous path cannot be pushed into the throes of a trial, merely because they have defied societal norms unless there is cogent material to depict their involvement.

For the aforesaid reasons, I am of the opinion that F.I.R. No.54 dated 23.5.2013 registered under Sections 363,366-A,376/120-B I.P.C. at Police Station, Phase-11, Mohali District S.A.S. Nagar and consequential proceedings arising therefrom qua the petitioners need to be quashed.

Ordered accordingly.

The petitions stand allowed.

May 8, 2015
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(MAHESH GROVER)
JUDGE