

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. M-11317 of 2015 (O&M)
Date of Decision: 21.10.2016**

Amarjijt Kaur

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Gagandeep Grewal, Advocate
for the petitioner.

Mr. J.S.Bhullar, AAG, Punjab.

Mr. Mohd. Yousaf, Advocate
for respondent No. 2.

ANITA CHAUDHRY, J(ORAL)

CRM-33257-2016

Application is allowed and Annexures P-4 and P-5 are taken on record.

CRM-M-11317-2015

The petitioner is the mother-in-law who has filed this petition seeking quashing of FIR No. 13 dated 13.2.2012 registered under Sections 406, 498-A IPC, Police Station Mulepur, District Fatehgarh Sahib and all the consequent proceedings arising out of the same.

It would be necessary to give the factual matrix that is necessary for disposal of the petition.

The son of the petitioner was married to respondent No. 2 in 2009. The son was living in US since 2003. He came to India for the marriage and returned after one and half month of the marriage. Petitioner

and her daughter are also US citizens. The petitioner is a widow. Respondent No. 2 at that time was pursuing a nursing course and wanted to complete the course. The petitioner's son alone went back in February 2010. Soon thereafter respondent No. 2 shifted out of the matrimonial home and went to her hostel in Kurali. The son of the petitioner was deported from America in September 2010. The FIR was lodged in February 2012 against the husband, mother-in-law and elder brother of the father-in-law. The son of the petitioner died in August 2013.

The allegations levelled by respondent No. 2 are that the petitioner was in America and she used to instigate her son on the telephone and her husband threw her out of the house in November 2010 and a demand of Rs. 3.00 lacs was made and all the *istri* dhan and dowry articles were used by her in-laws and she was beaten.

The complainant had admitted that she had stayed with her husband for 45 days and thereafter the husband went abroad and she went back to college to complete her nursing course. She had also alleged that while she was pursuing her course, no expenses were given by the in-laws. The husband later was deported back. Allegations were also levelled that the husband used to drink everyday and beat her. Towards the end of the complaint it had been alleged that mother-in-law was going back to US and the police should initiate proceedings to stop her from leaving the country.

Though the complaint was given in May 2011, the FIR was lodged in February 2012. The petitioner was abroad when she was declared proclaimed offender. She returned to the country and was allowed to appear before the Court below and charge has also been framed.

Copy of the passport of the petitioner has also been placed on record.

Counsel for the petitioner contends that the petitioner is living in US and her husband had died and the petitioner's son was married to the complainant but had died in August 2013 and the couple lived together for a short period and the only allegation against the petitioner is that she used to instigate her son over the phone and the main allegations are against the husband. It was urged that the marriage took place in 2009 and the complaint had been given after two years and the stay of the petitioner in India was very short. It was urged that the allegations under Section 406 IPC are against the husband.

The submissions on the other hand were that the police had completed the investigation and the petitioner was declared a proclaimed offender and now charge has been framed and it is for the trial Court to see whether the charges were made out or not and the petitioner has not challenged the charge and it should be left to the trial Court to decide the matter after examining the evidence.

Before proceeding further it is necessary to notice the principles laid down in **State of Haryana** vs. **Bhajan Lal**, 1992 Supp(1) **Supreme Court Cases 335** which read 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 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 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.”

The petitioner had approached the Court before the charge was framed. The respondent took four adjournments to file reply and ultimately failed to do so. It clearly demonstrates that the adjournments were being taken as the trial had started.

Petitioner had approached the Court before the charge had been framed and it could examine the charge sheet and the other material collected by the police. The petitioner is the mother-in-law who has been living abroad and had only stayed in India for a few days after the marriage. The only allegation levelled against the petitioner is of instigating the son. There are no allegations of entrustment of dowry articles or causing harassment or taunting the complainant. The allegations against the petitioner are vague and sweeping and without any basis. The police did

not collect any call records to show the duration of the calls nor the complainant has any recorded conversation.

In ***Harjinder Kaur and others versus State of Punjab 2004(4) R.C.R (Criminal) 332*** it was held that even though challan had been filed and charge had been framed yet there was no absolute bar to entertain the petition under Section 482 Cr.P.C. as each case has to be examined on its own facts.

In ***Kans Raj v. State of Punjab and others, 2000(2) RCR(Crl.) 695 (SC) : AIR 2000 Supreme Court 2324*** wherein their Lordships have observed that a tendency has developed for roping in all the relations in dowry cases which ultimately weakens the case of the prosecution even against the real accused.

In ***Ramesh Kumar and others v. State of Tamil Nadu, 2005(2) RCR(Criminal) 68 (SC)*** in which their Lordships while quashing the proceedings against sister-in-law who was staying at a different place observed that there were bald allegations to rope in a many relations of the husband.

In ***Preeti Gupta and another vs. State of Jharkhand and another 2010(4) RCR (Criminal) 45*** the Hon'ble Apex Court observed as under:

“28. 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.

29. The courts are receiving a large number of cases

emanating from section 498-A of the Indian Penal Code which reads as under:-

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.--For the purposes of this section, 'cruelty' means :-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

30. 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 bonafide 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.

31. *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.*

32. *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.*

33. *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.

34. 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.

35. 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.”

Taking into consideration the totality of the peculiar facts and circumstances of the case and following the rational of the judgments referred above including **Preeti Gupta's** case (supra), the instant petition deserves to be allowed. Consequently, the FIR and the subsequent proceedings arising thereof qua the petitioner are quashed.

Resultantly the petition is allowed.

(ANITA CHAUDHRY)
JUDGE

October 21, 2016
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No