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

**Crl. Misc. No. M-11702 of 2015(O&M)
Date of decision : 07.11.2016**

Sarabjit Singh

... Petitioner

versus

State of Punjab & Anr.

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1.Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2.To be referred to the Reporters or not? Yes/No
3.Whether the judgment should be reported in the digest? Yes/No

**Present: Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. I.P.S. Kohli, Advocate
for the petitioner.**

Mr. K.S. Aulakh, AAG Punjab.

**Mr. Navjot Singh, Advocate
for respondent No.2.**

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ANITA CHAUDHRY, J.

Documents, Annexure P-10 have been filed in the Court today, which are taken on record. Copy given.

Sarabjit Singh, the husband is seeking quashing of the FIR No. 17 dated 21.02.2010, registered at Police Station Kotwali, District Kapurthala, under Sections 420-498-A and 120-B IPC, lodged by wife-respondent No.2 Dharwinder Kaur Cheema and consequent proceedings conducted therein.

A complaint was made by respondent No.2 on 15.02.2010 naming six persons, namely, Sarabjit Singh-the husband, Jasjit Singh and Balwinder Kaur, the parents-in-law, Navjot Kaur, the sister-in-law and Gulzar Singh and Surjeet Kaur, the paternal grand-parents-in-law. It was alleged that her marriage took place on 30.03.2008 and Gulzar Singh and Surjit Kaur were mediators. Allegations were made that more than 22 lacs were spent and it included gold ornaments and cash of Rs.5 lacs which was given to Sarabjit Singh and his mother Balwinder Kaur for purchase of furniture and domestic articles. On 5.12.2008 the complainant took Sarabjit Singh to Canada but on reaching, the accused started maltreating her and taunted that her parents had not given a Safari car. Sarabjit Singh stayed with her only till 14.12.2008 and demanded that a restaurant be opened. On 14.12.2008 Sarabjit Singh went to the house of his uncle residing 500 miles and threatened her on telephone that unless and until his demand of a restaurant was not acceded to, he would not accept her as his wife. The complainant brought this fact to the notice of her parents-in-law, sister-in-law and the mediators. It was alleged that the accused had connived and cheated her just to send Sarabjit Singh abroad. Her father pursuaded Sarabjit Singh, but he refused to rehabilitate the complainant. On return to India, she along with her father went to the matrimonial home, where they were insulted by the parents-in-law and sister-in-law and they repeated the demand of opening a restaurant. On 25.12.2009 a Panchayat was convened, but nothing came out of it.

On the basis of complaint, FIR was registered and investigated. Challan was filed.

It is relevant to mention here that co-accused Gulzar Singh and Surjit Kaur had filed Crl. Misc. No.M-3685 of 2012 seeking quashing of the

FIR. The same was allowed on 17.09.2013 and the FIR qua them was quashed. Trial against accused Jasjit Singh and Balwinder Kaur for an offence under Sections 120-B, 406, 420 and 498-A IPC culminated in their acquittal vide judgment dated 16.10.2014 passed by Judicial Magistrate Ist Class, Kapurthala.

The petitioner was declared a proclaimed offender vide order dated 29.09.2014. He initially filed Crl. Misc. No.M-7023 of 2013 for quashing of the FIR. In the meanwhile, petitioner returned to India and was arrested on 08.03.2015. The petition was withdrawn and a liberty was given to file fresh one after the petitioner was released on regular bail. He was released on regular bail vide order dated 18.03.2015 and instant petition had been filed.

Quashing has been sought, inter alia, on the ground that the complainant was residing at Canada prior to the marriage and she returned to Canada after two months. The petitioner reached Canada but due to temperamental differences, the couple could not live together for long and a divorce petition was filed by the petitioner at Canada, which was allowed on 20.04.2012 and a decree of divorce had been granted w.e.f. 21.05.2012. The allegations pertain to the period when the couple had been staying at Canada. The Courts in India would have no jurisdiction to try those incident. The counsel had pointed out that on the complaint of respondent No.2, a probation order, Annexure P-8 was passed against the petitioner at Canada. According to learned counsel, there are no allegation of demand or cruelty in India and the allegations against the in-laws were found false and they were acquitted after a trial.

The petitioner claims that the complainant has not alleged how she had been cheated and there are no allegation that her dowry articles had been misappropriated and continuation of proceedings against the petitioner were sheer abuse of process of law and a result of vendetta and vengeance.

The State in reply questioned the maintainability of the petition on the ground that after arrest, supplementary challan was filed and the trial Court had framed charges against the petitioner. It was averred that the case was registered after due enquiry.

In the reply filed by respondent No.2 it was averred that no dowry articles were recovered by the petitioner and he solemnized marriage with malafide intention to get permanent residence/ citizenship of Canada and the complainant sponsored the petitioner. On reaching Canada, the petitioner started harassing the complainant and probation order was passed by the Ontario Court of Justice's against the petitioner for assault. The petitioner achieved his purpose and reached Canada and then left the complainant in lurch. It was pleaded that the anticipatory bail application of the mother of the petitioner was dismissed by this Court as she had not cooperated and did not get the gold and dowry articles recovered.

I have heard learned counsel for the parties and have gone through the paper-book carefully.

The grievance of the complainant in the FIR was that the accused cheated her in connivance with others and her sole purpose was to reach Canada and on reaching there, the petitioner started harassing her and maltreated her and demanded help from her parents to open a restaurant. A perusal of the FIR would show that not a single instance of cruelty and harassment has been alleged against the petitioner while they were in India. It is not the case of the complainant that she had been harassed on account of demand of dowry in India. There is not even a whisper in the FIR that her istridhan had been misappropriated by the petitioner or that she had been harassed by the petitioner during their stay in India on account of dowry. There is only a bald allegation that the petitioner and her mother were given Rs.5 lacs for purchase of furniture and domestic articles. It is necessary to mention here that the parents of the petitioner had been tried for offence of misappropriation, apart from other offences and after a trial they were acquitted by the trial Court.

The marriage took place on 30.03.2008. There is no denial to the averment made in the petition in the reply that the complainant had returned to Canada after two months of the marriage. It is not shown that during that period of stay in India any complaint was made regarding harassment or maltreatment or misappropriation of dowry articles. The petitioner reached Canada on 05.12.2008 and the couple stayed together only upto 14.12.2008.Qua the allegation of assault during their stay at Canada, the petitioner had already been criminally charged and a probation order was passed against him by the Canadian Court. The demand of opening a restaurant and passing of taunts about not giving the Safari car were made in Canada and not in India. It is settled that offence of cruelty is not a continuing offence as contemplated under Section 178 Cr.P.C. Reference can be made to **Amarendu Jyoti Vs. State of Chattisgarh 2014 (3) ACR 2740(SC), Manish Ratan & Ors. Vs. State of M.P. & Anr. 2007 (2) ACR 1451(SC).** In this view of the matter, the Courts in India have no jurisdiction in the matter and it was the Canadian Court which had the jurisdiction in the matter and the complainant has availed the remedy. As noticed above, a probation order was passed against the petitioner. As per

Annexure P-10, it is apparent that the divorce petition was filed by the petitioner at Superior Court of Justice, Ontario claiming separation since May 2009. The complainant replied to the notice and opted to contest the petition. Ultimately, a decree of divorce was passed by the Ontario Court.

There is no averment in the FIR regarding the manner the complainant had been cheated. No dishonest intention or inducement was shown by which the complainant had been asked to deliver any property, which was sine quo non for proving the offence of cheating. It was not the case of the complainant that she had been misled by any representation on the part of the petitioner. As per the complainant, she herself had sponsored the visit of the petitioner to Canada. The problem arose when the couple were abroad and ultimately they were judicially separated. The allegations against the petitioner are absurd and have been levelled just to wreak vengeance since the complainant failed to maintain the matrimonial alliance.

The plea of the State about the non-maintainability of the petition can very well be answered by referring to **Satish Mehra Vs. State of N.C.T. of Delhi & Anr. AIR 2013 SC 506,** wherein it has been observed thus:-

> "15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the

> core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused."

Hon'ble Apex Court in the case of **State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors. 1991(1) RCR (Crl.) 383 (SC)** held that wherein it was observed that where the proceeding is instituted with an ulterior motive or where the allegations made in the complaint are absurd and improbable and continuation thereof would amount to abuse of process, the Court would be within its power to quash the complaint/ FIR.

In the considered opinion of this Court, the allegations made in the complaint are absurd and improbable and warrants interference by this Court to prevent abuse of the process of the Court, in exercise of powers under Section 482 Cr.P.C.

In view of the discussion made above, the instant petition is allowed. The impugned FIR and consequent proceedings taken therein, against the petitioner, are quashed.

November 07,2016 **(ANITA CHAUDHRY)**
Jiten **JUDGE**

Whether speaking/ reasoned Yes/ No

Whether reportable Yes/ No