

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

**Crl. Misc. No. M-15396 of 2015(O&M)
Date of decision : 08.02.2016**

Ashok Kumar

..... Petitioner

versus

State of Haryana & 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

Argued by: Mr. G.S. Sandhu, Advocate
for the petitioner.

Ms. Dimple Jain, DAG Haryana.

Mr. V.B. Aggarwal, Advocate
for respondent No.2.

ANITA CHAUDHRY, J. (ORAL)

This is a petition under Section 482 Cr.P.C. seeking quashing of FIR No. 46 dated 15.01.2015, registered under Sections 323, 406 and 498-A IPC at Police Station Thanesar City, District Kurukshetra and the subsequent proceedings.

The facts, necessary for disposal of the instant petition are being noticed first.

The petitioner is the father-in-law of the complainant/respondent No.2 Sangeeta. She was married to Neeraj on 02.11.2003. Two children were born. A lengthy complaint was given to the police against the petitioner, his wife and son levelling

allegations that after marriage the accused started taunting and harassing her for bringing less dowry. After the marriage she learnt that it was second marriage of Neeraj and he was an addict. She further alleged that after one month of marriage, her father-in-law tried to do an illegal act with her. Her husband used to harass her and confined her in a room. On 18.05.2011 accused gave beatings to her. The matter was reported to the police where the matter was settled. The accused did not mend their ways and her husband again started harassing her under the influence of liquor and levelled allegations on her character. An amount of Rs.20,000/- was given to Neeraj on two occasions. Later she was turned out of the house after she was beaten. With the intervention of the police she was sent back to her matrimonial home. Later she came to her parental home. On 15.08.2014 when she came to her matrimonial home, she was not permitted to enter the house and was threatened and her dowry articles were retained.

On these allegations, a case was registered and investigated. During investigation, accused Raj Dulari, the mother-in-law had died. Challan was filed against the petitioner and husband Neeraj.

The father-in-law is seeking quashing on the ground that the petitioner was 63 years old and was living separately from the couple and had been made a scapegoat and the instant FIR had been lodged on 15.01.2015 containing vague and general allegations

and without any specific instance, just to settle scores that too after the husband had filed the divorce petition on 06.01.2015.

In the reply filed on behalf of the State, it was pleaded that during investigation, involvement of the petitioner was found and challan was submitted against the petitioner and his son and they have been charge-sheeted by the trial Court under Sections 323, 406 and 498-A IPC.

The complainant had also filed the reply on the same lines. It was additionally pleaded that the petitioner has been charge-sheeted and a revision was maintainable against the order framing charges, therefore, the instant petition was not maintainable. It was also averred that earlier also FIR under different Sections, including 307, 323, 341, 342, 405, 498-A, 420 IPC was registered against six persons, including the present petitioner by Parul, first wife of Neeraj and specific allegations had been levelled by the complainant against the petitioner.

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

Learned counsel for petitioner had urged that the petitioner is living separately from his both sons at Khatri Mohalla, Karnal, while his son Neeraj, husband of the complainant are residing in a different locality in Dhobian Mohalla, Karnal. He had referred to ration card (Annexure P-2) , AADHAR card (Annexure P-3, Senior Citizen Identity Card (Annexure P-4) of petitioner, AADHAR

card (Annexure P-5) of his son Pankaj and Voter Card (Annexure P-6) and AADHAR card (Annexure P-7) of his son Neeraj Kumar. He had further urged that the marriage took place in the year 2003 and the FIR was registered after twelve years thereafter and there is no allegation that the petitioner was entrusted with any dowry article. He had further urged that the petitioner being the father-in-law had been roped in this case to settle scores. According to him, no specific instance of harassment were given and general allegations have been made.

Learned State counsel assisted by learned counsel for the complainant had submitted that there are serious allegations against the petitioner of harassment and complaint of demand of dowry and misappropriation. It was further submitted that charge against the petitioner had been framed and this petition was not maintainable, as he had an alternative remedy of filing a revision. Reliance has been placed on **Hamida Vs. Rashid @ Rasheed & Ors. 2007(2) RCR(Crl.) 917.**

The question that arises is whether the FIR and the subsequent report under Section 173 Cr.P.C. and subsequent charge sheet can be quashed in exercise of the powers under Section 482 Cr.P.C.

The Hon'ble Supreme Court in the case of **Kans Raj Vs. State of Punjab & Ors., 2000(2) RCR (Criminal) 695 (SC)**, had observed that a tendency had developed for roping all the relations in

dowry cases and if it was not discouraged, it was likely to affect the case of the prosecution even against the real culprits.

In **Anita & Ors. Vs. State of Punjab, 2003(4) RCR (Criminal) 313**, when a first information report was lodged by the wife under Sections 498-A and 406 of the Indian Penal Code against the entire family members of the husband, this Court exercising its powers under Section 482 Cr.P.C. quashed the FIR and observed that there is a tendency to involve all the relatives of the husband when the relations between the husband and the wife become strained.

Similarly, in the case of **Harjinder Kaur & Ors. Vs. State of Punjab, 2004(4) RCR (Criminal) 332**, a criminal complaint was filed under Sections 498-A and 406 IPC against the husband, his parents and 5 sisters and the proceedings qua sisters were quashed as the allegations against the sisters were vague and exaggerated allegations had been made to rope in each and every relation of the husband.

In **Arnesh Kumar Vs. State of Bihar & Anr. 2014(3) RCR(Crl.) 527**, the Hon'ble Apex Court observed that the fact that Section 498-A IPC is a cognizable and non-bailable offence had lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives and the simplest way to harass is to get the husband and his relatives arrested under this provision.

In the case of **Preeti Gupta & Anr. Vs. State of Jharkhand & Anr. 2010 AIR (SC) 3363** the Hon'ble Apex Court observed that a serious relook of the entire provisions of Section 498-A IPC is warranted by the legislation. It was observed that exaggerated versions of the incident are reflected in a large number of complaints and the tendency of over implication is also reflected in a very large number of cases. In that case the Hon'ble Apex Court quashed the criminal proceedings against brother and sister of husband, living separately.

In the instant case, from a perusal of FIR, it is abundantly clear that there are no allegations of entrustment of dowry articles to the petitioner. It is only mentioned that dowry was given beyond their capacity. There is no whisper in the FIR that it was handed over to the petitioner at the time of marriage. Entrustment is sine quo non for proving the offence of misappropriation and in absence of any allegation of entrustment, charge against the petitioner under Section 406 IPC could not survive. The petitioner has taken a stand that he was residing separately from the married couple and documents, as referred to above, have been placed on record. Interestingly, neither the State nor the complainant has controverted this fact. Thus, it goes undisputed that the petitioner was having separate residence. Once this is the position, it cannot be accepted that the petitioner was a beneficiary of the alleged demand of dowry. The allegation against the petitioner is that he and other accused gave beatings to

the complainant for bringing more dowry and threatened her. There are no specific allegations regarding the demand raised by the accused, the period, the month etc. have not been pleaded nor the manner in which the threat was extended. There is no MLR regarding the incident. The FIR was registered after about twelve years of the age. The complainant came up with a lengthy complaint but the allegations are vague, omnibus and general in nature and appears to have been made to widen the net. The complainant herself had mentioned in the FIR that when she complained about the conduct of the husband to her in-laws, then she was given beatings by all the accused. The allegations against the petitioner appear to have been made out of frustration. There is general tendency to involve all members of the in-laws family in matrimonial disputes and Courts have to see whether the allegations are probable. The petitioner and some others were booked in another FIR in the year 2000, but it has been pointed out that it ended in a compromise.

The plea of respondents 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 be 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.”

The charge was framed after filing of the instant quashing petition and the respondents cannot derive any help from Hamida's case, in the light of guidelines framed by Hon'ble Apex Court in the

case of **State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors. 1991(1) RCR (Crl.) 383 (SC)**, 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, 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 with an object to meet the ends of justice and 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.

08.02.2016

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**(ANITA CHAUDHRY)
JUDGE**