IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-19794 of 2012
Date of decision : 02.06.2016

Kuljit Kaur and another

...... Petitioners

versus

State of Punjab and another

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

Present: Mr. N.S. Sodhi, Advocate for the petitioners

Mr. V.P.S. Sidhu, AAG Punjab

Mr. D.K. Bhatti, Advocate for respondent No. 2

ANITA CHAUDHRY, J.

This petition has been filed under Section 482 Cr.P.C for quashing of the FIR No.6 dated 05.11.2011 registered under Section 406, 498-A, 420 and 34 IPC, registered at Police Station Division NRI Jalandhar, District Jalandhar.

The petitioners are the mother-in-law and father-in-law of respondent No.2. The petitioners claim that petitioner No.1 Kuljit Kaur and mother of complainant Jasleen were employees of the Education Department and were known to each other for a long period. The son of petitioner No.1 Harpreet Singh was already abroad. The complainant's family were planning to shift to Canada and were searching for a boy. The alliance materalised. The marriage took place on 08.02.2010 at a Gurdwara at Jalandhar. The petitioners claim that the complainant lived in India only for about 40 days and she alongwith her brother and parents went to Canada and thereafter did not return to live with them in India.

Jasleen had alleged that the mother-in-law came to know that they were going to Canada and she approached her mother with a proposal, which was accepted by her parents and the rokka ceremony took place in January, 2010. The complainant had given the details of the expenses incurred by her parents and shagun given to the different family members which need not detain us. The complainant had also detailed the amount spent on various articles purchased by the family and the amount spent on videography, photography etc. The complainant had alleged that when the preparations for marriage were going on and a week prior to the marriage, a list of articles was handed over and a condition was laid that in case the articles were not provided then the marriage would be cancelled. The parents were left with no option but to arrange for the dowry articles. The complainant had given details of the jewellary and cash given to the husband and his parents. The major part of the FIR refers to the amount that was spent on the functions i.e. on and the invitation cards, photography and vidoegraphy.

The complainant had alleged that after marriage, her husband and the family members started taunting her and she and her husband stayed in India for 45 days but the marriage was not consummated and each time the husband came up with some excuse. She and her parents and her brother returned to Canada on 20.03.2010. The complainant had pleaded that she had sponsored her husband and Harpreet reached Canada in August, 2010 and he started living with her family. After his arrival the complainant claimed that his attitude towards her changed as he showed no affection and became arrogant and the marriage was still not consummated. She further pleaded that he lived with her family for seven months and in April, 2011 he took away all the gold and diamond jewellary and never returned. The allegations are that while leaving the husband had told that his motive was only to come to Canada and the purpose was to get permanent residency in Canada and he got the permanent residency after seven months. It was pleaded that she alongwith her parents and some other persons namely her father's friends contacted the in laws to return the dowry articles and the jewellry that was given to the in-laws, but they refused and they had mis-appropriated her istridhan and the dowry articles.

The petitioners claim that a simple marriage was performed and girl left for Canada after 40 days of marriage and while in India she stayed with her parents and never lived with them and question of giving threats did not arise and those were early days of marriage when their son was yet to go to Canada. It was pleaded that the wife had sponsored their son. It was pleaded that the son was already abroad as he was pursuing his studies. It was pleaded that no cause of action accrued in India and the main allegations were against the husband since the marriage was not consummated and there was no mis-appropriation by them.

The State in its reply had submitted that a complaint was given by Jasleen which was inquired into and was filed after an enquiry by the Additional Deputy Commissioner of Police but another complaint was given and the FIR was registered.

The respondent/complainant had pleaded that a false plea was taken that the boy was already in Canada and the fact was that Harpreet had gone to England and did not have any Visa for Canada prior to the marriage. It was pleaded that the accused could be tried for the offences which were committed beyond the boundaries of the country in view of the provisions contained in Section 3 of the Indian Penal Code. It was pleaded that the marriage had taken place at Jalandhar and the demand was made at Jalandhar and the entrustment of dowry articles was also in the same District and, therefore, the Courts at Jalandhar would have the jurisdiction. It was pleaded that challan had been presented and the son of the petitioner was a proclaimed offender. It was further pleaded that there was a demand before marriage and the details of the torture and the dowry that was given were disclosed in detail in the FIR. It was pleaded that son of the petitioner had been sponsored by the complainant and they had paid the expenses but on reaching

Canada in August, 2010 the behaviour of Harpreet did not change and he misbehaved with the respondent and her parents and demanded money and on 06.04.2011 he took the gold and diamond jewellery and left the house and never joined her company.

The marriage between Harpreet and Jasleen took place in February, 2010. The marriage was not consummated. The mothers of both the boy and the girl were friends and were teaching in the same Department. About 32 days after the marriage the girl left for Canada and sponsored the boy who reached Canada in August, 2010. The couple stayed together for 7 months and the husband left his in-laws house in April, 2011. It appears that no complaint was lodged by wife in Canada though the allegations were made that husband took away gold and diamond jewellery. The complainant stay with the in-laws was only for few days after marriage.

Allegations have been leveled that there was a demand even before marriage and taunts were thrown by the family members. Despite this fact the girl sent the sponsorship for Harpreet. Even after the boy had reached Canada no complaint was made by the family members. Harpreet left the complainant in April, 2011 and the FIR was lodged in November, 2011. The complaint is silent as to when the complainant had demanded her goods back. The record reveals that soon after registration of the FIR the police had recovered some articles from the house of the petitioners.

The complainant had given a complaint earlier and the police had conducted the inquiry and did not register the FIR. Another complaint was given and some other official recommended registration of the FIR. There is no evidence to show what material was produced along with the charge-sheet. The girl had remained with her husband and in-laws only for few days. There was no complaint then nor there were any allegations of any demand. Some gifts were given at the time of marriage and those were entrusted to the family and the gifts given to the bride would not amount to entrustment. The major part of the allegations pertain to a period when the couple was living abroad. No complaint was given to the authorities at Canada even though the husband is alleged to have taken all the jewellery with him.

In the light of the factual background, it appears that the couple could not pull on and the marriage was not consummated and that was the main grievance but since the husband was in Canada and it was difficult to bring him back, therefore, the complainant had also named the in-laws with the view to widen the net.

The Courts have consistently taken the view that powers under Section 482 Cr.P.C can be exercised to prevent injustice and secure the ends of justice. In ***R.P. Kapur*** *v.* ***State of Punjab*** AIR 1960 SC 866, the Apex Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

> (i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;
> (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;
> (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

Hon'ble Supreme Court in ***State of Karnataka*** v. ***L. Muniswamy & Others*** (1977) 2 SCC 699 observed that the wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.

In ***State of Haryana & Others*** *v.* ***Bhajan Lal & Others*** 1992 Supp. (1) SCC 335, the Apex Court in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure and the inherent powers under section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice:

> "(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.
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> (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.
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> (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.
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> (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 a Magistrate as contemplated under Section 155(2) of the Code.
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> (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.
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> (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 a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of

> the aggrieved party.
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> (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."

Considering the allegations made in a complaint, I find it is a fit case where the powers under Section 482 Cr.P.C should be exercised. Accordingly, the petition is allowed and the FIR No.6 dated 05.11.2011 registered under Section 406, 498-A, 420 and 34 IPC and all the subsequent proceedings arising therefrom are quashed, qua the petitioners.

(ANITA CHAUDHRY)
JUDGE

June 02, 2016
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