

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

**Crl. Misc. No. 15948 of 2015(O&M)
Date of decision : 15.03.2016**

Amritpal Kaur

..... 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

**Argued by: Mr. Vipul Aggarwal, Advocate
or the petitioner.**

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

ANITA CHAUDHRY, J.

The petitioner is seeking quashing of FIR No. 236 dated 28.11.2014, under Sections 363, 366-A and 120-B IPC and under Sections 4 and 10 of Protection of Children from Sexual Offences Act, 2012 registered at Police Station Kambo, District Amritsar.

The facts relevant for adjudication of the present petition, are noticed first.

Petitioner Amritpal Kaur was a student of 10+1. Respondent No.2 Ravinder Kaur was studying in same school in 10+2 class at Amritsar. Amritpal's date of birth was stated to be 15.04.1998. In the FIR the complainant claimed her date of birth as 28.04.1998.

The complainant alleged that on 13.10.2014 Amritpal Kaur brought her to Jalandhar in order to meet her friend Manpreet Singh. They travelled in a train. They met Manpreet Singh @ Mani at Jalandhar, who took them to the house of Darshan Singh at Fatehgarh Sahib, where they met Karamjit Kaur, who happened to be the sister of Manpreet Singh and sister-in-law of Darshan Singh. They stayed there for two days and after handing her over, Amritpal Kaur returned to Amritsar. It was alleged by the complainant that she was forced and threatened by accused Darshan Singh, Karamjit Kaur and Manpreet Singh to marry Darshan Singh. Under pressure her signatures were obtained on some papers and she was made to appear before the High Court. She stayed at the house of Darshan Singh for about two weeks.

On 05.11.2014 she succeeded in making a call to her mother, upon which the police came to the house of Darshan Singh and took her to the Court where her statement under Section 164 Cr.P.C. was recorded. Her custody was given to the parents.

On 28.11.2014 she made statement to the police at Amritsar alleging that her friend Amritpal Kaur, Manpreet Singh @ Mani, Karamjeet Kaur @ Soni and Darshan Singh had connived together and by allurement and inducement she was forced to marry Darshan Singh and she had been cheated. FIR No. 236 dated 28.11.2014 was registered and investigated. Challan has not been presented yet.

In the reply filed by the State, it was averred that the complainant was taken to Jalandhar by the petitioner on the pretext of meeting her friend. Manpreet Singh took both of them to Fatehgarh Sahib to the house of Darshan Singh. After handing over the complainant, petitioner came back to Amritsar. Accused Darshan Singh, Karamjit Kaur and Manpreet Singh threatened and forced her to marry Darshan Singh. She was made to sign some documents and appear before the High Court. It was averred that an enquiry was conducted by DSP, Amritsar (Rural) and it was found that petitioner Amritpal Kaur had hatched a conspiracy with the other accused and she took the complainant to Jalandhar and it was recommended that challan should be filed against the petitioner. It was averred that the case was still under investigation and none of the accused had been arrested.

Notice of petition was served upon respondent No.2 through affixation, but none had appeared.

I have heard learned counsel for the petitioner as well as State counsel and have gone through the paper-book.

Learned counsel for the petitioner had urged that the only allegation against the petitioner was that she took the complainant to Jalandhar and had accompanied her to the house of Darshan Singh at Fatehgarh Sahib and thereafter she returned to Amritsar, but it is not believable that the petitioner who is younger to complainant could induce her to accompany her to Jalandhar. According to him, the complainant had eloped with Darshan Singh with her own free will and they got married and

she remained at the house of Darshan Singh, performed marriage in a Gurudwara and appeared before the High Court and did not raise any objection. He had further urged that on 13.10.2014 when her statement under Section 164 Cr.P.C. was recorded by the Magistrate, no allegations were made against the petitioner and the FIR has been lodged with due deliberations and consultations. According to him, the continuation of the criminal proceedings against the petitioner were an abuse of process of Court.

Learned State counsel had refuted the submissions and urged that the petitioner was solely responsible for the miseries of the complainant as she took her to Jalandhar on the pretext of meeting a friend and thereafter the other accused by inducement and allurement got her married to Darshan Singh. It was further submitted that the petitioner had hatched a conspiracy with other accused.

Broad guidelines have been framed by the Hon'ble Apex Court for exercise of powers under Section 482 Cr.P.C. in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, AIR 1992 SC 604, which read as under:-

“105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of

the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised 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 channelised 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 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 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 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 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 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.”

Similar view point has been reiterated by the Hon'ble Apex Court in **State of Madhya Pradesh v. Awadh Kishore Gupta , (2004) 1 SCC 691.**

It is made clear at the outset that this Court is analyzing and examining the material and allegations only so far as the present petitioner is concerned and any observation made shall be without prejudice to the case/ trial of the other accused.

In the instant case, the complainant had alleged that on 13.10.2014 on the instigation of the petitioner she accompanied her to Jalandhar in a train to meet her friend, from where Manpreet Singh took both of them to Fatehgarh Sahib and to the house of Darshan Singh. Surprisingly, she accompanied the petitioner and Manpreet Singh on a motorcycle and did not object. As per allegations, the petitioner and the complainant stayed at the house of Darshan Singh for two days and then the

petitioner returned home. Still no effort was made by her to return. Her parents were also quiet and did not lodge a missing report. It has not been shown by the State that any complaint was made by the parents.

Interestingly, the complainant and Darshan Singh had filed Crl. Misc. No.M-36064 of 2014 seeking protection and liberty and claimed to be under threat from none else but from the parents of the complainant. It was claimed that they had married on 16.10.2014 in a Gurudwara. An affidavit was filed by the complainant(petitioner No.1 there) and date of birth was shown 28.04.1996 and that she had attained majority and had married Darshan Singh with free consent. The petition came for hearing before this Court on 13.10.2014 and interim protection was granted. The matter was adjourned to 26.11.2014 for notice to the parties. Before that date, i.e. on 05.11.2014 the police from Amritsar reached Darshan Singh's house and took the complainant and produced her before the Judicial Magistrate, Fatehgarh Sahib. Her statement under Section 164 Cr.P.C. was recorded. Copy thereof was placed on record by the State as Annexure R-1/T which indicates that the complainant had stated therein that her parents-in-laws Harchand Singh and Surjit Kaur, sister-in-law Moni and her brother had given threats to kill her parents and also teased that their son would give divorce to her on their asking. Fearing trouble from the in-laws family, she accompanied her parents to Amritsar. In that statement, there is not a whisper about involvement of the petitioner. She did not

state that she had left the house on the inducement by the petitioner. The protection petition filed by the complainant and Darshan Singh was withdrawn on 26.11.2014. A day later i.e. on 28.11.2014 the complainant got the FIR registered against the petitioner and other accused, alleging conspiracy and claiming that she was minor. From 13.10.2014 till 27.11.2014 there was no allegation that she had left the house on the instigation of the petitioner. The tenor and manner of her statement made under Section 164 Cr.P.C. reveals that the complainant primarily had a grouse against her in-laws family. It appears that the petitioner had been roped in just because she was friendly with Manpreet Singh, a relative of Darshan Singh. There is a dispute also regarding the age of the complainant. In the protection petition, the complainant had given an affidavit that she was born on 28.04.1996 while in FIR she claimed her date of birth as 28.04.1997. This factor would be adjudicated during trial. But there is no dispute that the petitioner is younger to the complainant. It does not appeal to prudence that on her instigation the complainant would leave home. The allegations, so far as the petitioner is concerned, are so absurd and inherently improbable and this Court is of the considered view that continuation of criminal proceedings against the petitioner would amount to abuse of the process of law.

The objection of the State that the case is still under investigation and petition should be dismissed is sans merit.

There is no hard and fast rule that can be laid down for the

exercise of the extraordinary jurisdiction, but exercising the same is an exception, but not the rule of law. It is no doubt true that there can be no straight jacket formula nor defined parameters to enable a Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The Courts have to be very circumspect while exercising jurisdiction under Section 482 Cr.P.C. Reference can be made to **Rishipal Singh Vs. State of U.P. & Anr. 2014(3) RCR(Crl.) 637.**

In the case of **Medchl Chemicals & Pharma (P) Ltd. V. Biological E. Ltd. & Ors., 2000(2) RCR(Crl.) 122**, the Hon'ble Apex Court had discussed at length about the scope and ambit while exercising power under Section 482 Cr.P.C. and how cautious and careful the approach of the Courts should be. It was held as under:-

"Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgment of F.I.R., the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the Court on perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the face of it does not constitute or disclose any offence as alleged, there

ought not to be any hesitation to rise upto the expectation of the people and deal with the situation as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount.”

Therefore, there is no impediment in exercise of powers under Section 482 Cr.P.C. so as to secure ends of justice.

In view of the above, the instant petition is allowed and impugned FIR and consequent proceedings taken therein are quashed only to the extent of petitioner.

March 15, 2016
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(ANITA CHAUDHRY)
JUDGE