

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Crl. Misc. M 24047 of 2011 (O&M)
Date of decision: December 12, 2016

Manju Kalia and another

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Parvnjeet Singh, Advocate,
for the petitioners.

Mr. Sanjay K. Saini, AAG, Haryana.

Mr. Harsh Manocha, Advocate,
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

The instant petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of FIR No. 533 dated 28.11.2009 (Annexure P/2) registered under Sections 406, 498-A, 420, 323, 506 and 120-B IPC at Police Station Sector 5, Panchkula and all subsequent proceedings arising therefrom.

In brief, the facts are that respondent No.2 contracted marriage with son of the petitioners herein on 11.12.2006 at Arya Smaj Mandir, Sector 9, Panchkula and thereafter respondent No.2 got registered the aforesaid FIR against the petitioners. In the said FIR, it was alleged that the marriage was solemnized after the complainant i.e. respondent No.2 herein

came in contact with Nitin Sahai Kalia (son of the petitioners), while they
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were working together at DELL. It was alleged that the conduct of the accused namely, the petitioners and their son changed drastically when they started proposing for various ceremonies as *roka* engagement etc. There was also a demand for dowry and other household items.

After registration of the FIR, the petitioners herein preferred the instant petition seeking quashing of the FIR against them. It is alleged that their son and respondent No.2 performed the marriage at Arya Smaj Mandir, Sector 9, Panchkula, on 11th December, 2006. No dowry was given in the marriage. The pujari of the Mandir had also given a statement that he was Purohit who had solemnized the marriage ceremony and at that time there was no dowry given. It is further contended that immediately after the marriage, their son and respondent No.2 left for their work place at Delhi, while the petitioners herein continued to be residents of Chandigarh. It is argued that after the marriage when differences arose between the husband and wife, the matter was settled on the basis of a compromise, wherein it is specifically noted that it was a marriage of choice and no gift or dowry were exchanged. It was also mentioned that after the marriage, the parties were living in Delhi, while further stating that relations with the parents were quite formal and there was hardly any interaction with the parents-in-law. In fact, the couple even did not come at the parents residence for *phera*, which is customary, and rather left for Delhi from the Mandir itself. The first compromise was entered between the parties on 8th February, 2009 and the second agreement was entered into on 4th May, 2009 to the similar effect that the parties lived in Delhi and there was hardly any interaction with the parents-in-law. Thereafter, respondent No.2 had also sworn on oath by way

of affidavit that she is going to join her husband in her matrimonial home at Bangalore and that she will not leave matrimonial home without any provocation.

Mr. Kanwaljit Singh Senior Advocate with Mr. Parvnjeet Singh Advocate, for the petitioners contends that the petitioners are residents of Chandigarh and whereas the married couple did not live with them. After marriage, they left for Delhi and thereafter lived in Bangalore, therefore, the question of demand of dowry or harassment at the hands of the petitioners does not arise and as such offences, as alleged, under Section 498-A and 406 IPC are not made out qua the petitioners. In fact, they have been falsely roped in the matrimonial dispute only to exercise a pressure tactics being parents of the husband of respondent No.2. In this regard, reliance has been placed on judgments in **Preeti Gupta and another Versus State of Jharkhand and another 2010 (7) SCC 667** and **Anguri Devi etc. Versus State of Punjab etc. 2011 (2) R.C.R. (Criminal) 431**.

Per contra, Mr. Harsh Manocha, learned counsel for the respondents contends that the allegations in the complaint are specific enough against the petitioners herein under the sections as mentioned in the FIR. It is argued that the compromise/agreement/affidavits that have been furnished by the respondents were under duress and in order to save the marriage. However, since there has been specific entrustment and demand of dowry therefore, this Court should not interfere in the matter.

I have heard learned counsel for the parties and perused the record carefully.

A perusal of the record shows that the marriage took place

between the parties in Arya Smaj Mandir, Sector 9, Panchkula on 11th December, 2006 and as per the affidavit, which is Annexure P/1 on record, respondent No.2 has stated her date of birth to be 2nd August, 1980 and that she intend to marry Nitin Sahai son of Shri A.K. Kalia out of her free will and without any sort of pressure or coercion. It was further affirmed on affidavit that she had not brought any valuables, such as jewellery or cash etc. for presentation to Nitin Sahai as dowry for the wedding. This affidavit was sworn by respondent No.2 at the time of solemnization of her marriage with the son of the petitioners i.e. on 11th December, 2006. After the gap of almost two and half years, on account of differences which arose between the couple an agreement/compromise dated 8th of February 2009 had been executed between respondent No.2 and the son of the petitioners wherein it was affirmed that after the marriage, the parties had been living at Delhi and the parents of the 1st party i.e. petitioners herein lived in Chandigarh and the parents of respondent No.2 lived at Panchkula, while further submitting that the relationship with the parents-in-law were quite formal since they had performed the marriage out of their choice. In this agreement, the parties agreed to resolve their difference amicably and that respondent complainant would return to her matrimonial home situated at Savita Vihar, New Delhi while agreeing to go for counselling. A similar agreement/compromise was also entered into on 4th May, 2009 wherein respondent No.2 agreed to return to her matrimonial home and join the son of the petitioner at Bangalore, since he had been subsequently transferred there. While agreeing that the parties would improve their relationship, it was also reiterated in the second compromise that there was no interaction with the parents-in-law on account

of the fact that the parties had performed their marriage out of their own choice.

These agreements and affidavits affirm that the relationship between the respondent complainant and her in laws was formal in nature. The petitioners were residing in Chandigarh whereas the complainant was residing either at Delhi or at Bangalore on account of the job. The petitioners had no occasion to interfere in the matrimonial life of respondent. Entrustment is sine-quo-non for the offence under Section 406 IPC. It cannot be believed that the petitioners, who are admittedly residing separately, were entrusted with the *istridhan*. Moreover the affidavit dated 11th of December 2006 can not be lost sight of which was executed at the time of marriage in the Arya Samaj Mandir that no dowry was given as well as the affidavit of of the Pujari Sh. Sandeepan Giri.

The argument raised by the counsel for the respondent that the compromise/agreements should not be taken into consideration, is an argument not sustainable in view of the fact that that the respondent herein is an educated person, had the experience of working in an Multinational Company so would be aware of what document she was executing. There are two such compromise/agreements which reiterate that the nature of relationship was formal with the petitioners. Affidavits are also available on the record which affirm that no dowry was given. There is no mention in the said compromise/agreements that the petitioners have harassed the respondent or there is a demand for dowry. The FIR was registered almost soon thereafter the affidavits were executed.

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 weapon rather than a shield by disgruntled wives and the simplest way to harass is to get the husband and his relatives arrested under this provision.

Similarly, in the case of **Anguri Devi etc. v. State of Punjab etc. 2011(2) RCR (Criminal) 431**, this Court has quashed the FIR on the ground that a tendency has developed for roping in all the relatives in dowry cases in order to browbeat and pressurize the immediate family of the husband.

In the case of **Preeti Gupta and another Vs. State of Jharkhand and another 2010 (4) RCR (Crl.) 45**, it has been held by the Hon'ble Apex Court that there is unfortunate tendency to rope in all family members in the matrimonial dispute. It was observed that exaggerated versions of the incident are reflected and there is a tendency of over implication. In that case the Hon'ble Apex Court quashed the criminal proceedings against brother and sister of husband, living separately.

The FIR also came to be registered under Sections 323/506 IPC. The fact that the petitioners and the complainant did not reside together in Chandigarh and that the complainant left for Delhi immediately after the marriage that was performed in Arya Samaj Mandir, Panchkula, the occasion for causing injuries or threat to the complainant would not arise. If there have been common residence for a period of time, such allegations may have been sustainable to be looked into by this Court. Furthermore, the

dispute, if any, appears to be between the husband and wife because of their temperamental differences and the petitioners have unnecessarily been dragged in the dispute. So the ingredients of any of the offences, as alleged in the FIR, are not made out and hence the FIR deserves to be quashed.

Therefore, in the facts and circumstances of the case, this Court is of the considered opinion that continuing of proceedings against the petitioners in the aforesaid FIR would tantamount to be an abuse of process of court and therefore, it is a fit case warranting interference under Section 482 of the Code of Criminal Procedure.

Consequently, this petition is allowed and FIR No. 533 dated 28.11.2009 (Annexure P/2) registered under Sections 406, 498-A, 420, 323, 506 and 120-B IPC at Police Station Sector 5, Panchkula and all subsequent proceedings arising out of the same are quashed qua the petitioners.

December 12, 2016
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No