

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

**Crl. Misc. No.M-22165 of 2015 (O&M)
Date of decision : 30.09.2016**

Harinder Pal Singh and another

.....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ashish K. Gupta, Advocate
for the petitioners.

Mr. Deep Singh, A.A.G. Punjab.

Mr. P.S. Ahluwalia, Advocate
for respondent no.2.

ANITA CHAUDHRY, J.

The petitioners have filed the present petition under Section 482 Cr.P.C. seeking quashing of the FIR and the final report prepared under Section 173 Cr.P.C. as well as the charge-sheet and the charge framed under Section 498-A, 406 IPC.

The challan had been filed in 2012. Charge was framed in January, 2013 and the present petition was filed in July, 2015. The trial had made a head way and in the middle of the proceedings which this petition was presented, therefore, limited notice regarding maintainability of the petition was issued.

The submission on behalf of the petitioner is that petitioner no.1 is the father-in-law while petitioner no.2 is the brother-in-law and the husband of the complainant is a proclaimed offender and is abroad and the marriage had taken place in Mohali and the dowry articles were handed at Mohali and the demand of Istridhan even it is prima facie accepted, that too is at Mohali and only the Courts at Mohali would have the jurisdiction. It was urged that in ***Harjeet Singh Ahluwalia Vs. State of Punjab and another 1986 CriLJ 2070*** this Court had considered the provisions contained in Section 181(4) Cr.P.C. and had rejected the argument that the dowry articles have to be returned wherever the complainant moves after the return from the matrimonial home. The counsel had referred to para no.8 of the judgment and had led stress on the observations made therein. It was urged that the offence of cruelty cannot be said to be continuing as contemplated in Section 171 of the Code and the alleged cruelty could occur only at the place where the husband and his family were residing after the marriage. Reliance was placed upon ***Amarendu Jyoti Vs. State of Chattisgarh 2014(3) ACR 2740 (SC)***, ***Manish ratan and others Vs. State of M.P. and another 2007(2) ACR 1451(SC)***, ***Bhura Ram and others Vs. State of Rajasthan and another 2008(2) ACR 2089 (SC)***, ***Naresh Kumar and others Vs. Chanchal Rani and others 2010(2) RCR (Criminal) 668 (SC)*** and ***Jasjit Singh Bakshi and others Vs. State of Punjab and another 2008(3) RCR (Crl.) 170***.

The submission on the other hand that the objection regarding territorial jurisdiction was not raised before the trial Court nor the order of charge was challenged then and the charge had been framed in January, 2013 and there was a remedy of filing revision and the petition under

Section 482 Cr.P.C. had been filed in July, 2015. It was urged that after being thrown out of the matrimonial home, the girl had returned to her parent's house and great prejudice would be caused to the complainant as she will have to travel. It was urged that the FIR has been registered in District Kapurthala and the petitioners were called to the Women Cell at Kapurthala thrice in 2011 and a reference thereto is available in the report filed under Section 173 Cr.P.C. It was urged that there would be no failure of justice even if the trial goes on at Phagwara. It was urged that since there are allegations under Section 406 IPC and charge has been framed under Section 406 IPC, therefore, the goods were to be returned at the place where the complainant was residing. Reliance was placed upon *Arun Ramachandran Nair Vs. State of Kerala Crl. Rev. Pet No.3330 of 2010*, *Kushal Kumar Gupta and another Vs. Mala Gupta 2011(4) RCR (Crl.) 186*, *Sandeep Aggarwal Vs. Sudesh Gupta 1997(2) RCR (Crl.) 322*, *Manjula Sinha Vs. State of U.P. and others 2007(3) RCR (Crl.) 778*, *Shiv Dayal Arora and another Vs. Smt. Renu Arora 2007(3) RCR (Crl.) 10* and *Pirithi Singh Chauhan and others Vs. State of Haryana 2013(3) Law Herald 2653*.

Responding to the submissions, it was urged that the complainant was working at Mumbai and not at Phagwara and if the argument is to be accepted then the complaint should have been made in Mumbai.

I have gone through the paper book and I find that no plea had been taken by the the petitioner that the complainant was working at Mumbai or was residing there. Admittedly, the marriage had taken place in

2009 at Mohali. Perusal of the FIR shows that prior to the marriage the complainant was working with Airtel in Mohali and then she got a job in Reliance at Mumbai. At the time of lodging of FIR she was working with Reliance, Chandigarh. The marriage was fixed through an advertisement placed in a leading newspaper. The husband went abroad on 12.07.2009 i.e. after two months of the marriage. The complainant was living with her in-laws. Allegations of cruelty, harassment, demand and misappropriation were levelled against the in-laws. The FIR was lodged on 22.12.2011 at Police Station Phagwara City, which falls in district Kapurthala. The investigations were completed and challan was presented in the middle of the year 2012.

The only point for consideration in this case is whether the Court at Phagwara had the territorial jurisdiction. The main ground taken by the petitioners is that the Courts at Phagwara had no jurisdiction as no part of the cause of action has arisen within its jurisdiction. This objection was not taken by the petitioners at any point of time. It is not their case that the complainant is residing in Mumbai. Admittedly, the parents are living in Kapurthala. The petitioners will have to prove at the trial that the complainant was residing somewhere else. There are allegations of criminal mis-appropriation and criminal breach of trust. Section 181(4) Cr.P.C. provides that an offence of criminal misappropriation or breach of trust can be inquired into and tried by a Court within whose jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained or was required to be returned or accounted for by the accused persons.

The dowry articles have not been returned and they were to be returned where they were to be received.

I have gone through the judgments relied upon by the petitioners. All the cases have distinguished facts and would not apply to the present case. In none of the cases the dowry articles had been returned at some other place.

A perusal of Section 482 Cr.P.C. would show that the provisions can be invoked only when it is established prima facie on going through the averments of the complaint that the allegations contained in the complaint do not constitute any offence. When the FIR prima facie discloses a commission of offence, the provisions of Section 482 Cr.P.C. cannot be invoked.

In the light of the above discussion, I do not find any merit in the petition and is dismissed being not maintainable.

30.09.2016

Sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No