

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

Crl. Misc. No. M-26882 of 2014(O&M)

Date of decision : 20.09.2016

Pankaj Sharma & Anr.

... Petitioners

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. Keshav Partap Singh, Advocate
for the petitioners.**

Mr. K.S. Aulakh, AAG Punjab.

**Mr. R.S. Dhaliwal, Advocate
for respondent No.2.**

ANITA CHAUDHRY, J.

The petitioners are seeking quashing of FIR No. 113 dated 01.07.2014(Annexure P-1) registered at Police Station City, Sunam, Distrit Sangrur, under Sections 406 and 498-A IPC and subsequent proceedings conducted therein.

The FIR was lodged on the basis of complaint dated 01.07.2014 given by respondent No.2 Geeta Sharma. Petitioner No.1 is the husband while petitioner No.2 is the mother-in-law. The complaint was also given against father-in-law Jagdish Parshad Sharma and Mamta Sharma and Shweta Sharma, the sisters-in-law. It was alleged in the complaint that the marriage took place on 17.05.2005 and more than Rs.10 lacs was spent which included the household articles, jewellery and cash of Rs.2 lacs, which were handed to the accused. After 10 days of the marriage, the

accused started maltreating her for bringing more dowry. Pankaj, the husband returned to Canada on 26.05.2005 and in his absence the remaining accused used to harass her for bringing less dowry. On 02.08.2005 the in-laws of the complainant also went abroad and demanded Rs.5 lacs from her parents. On 23.09.2006 the complainant was called to Canada only on the assurance of giving Rs.5 lacs within six months. The complainant conceived and the accused pressurized her to abort, so that she could continue her job. Finally she was sent back to India. On 30.12.2006 Pankaj returned to India for his treatment and the complainant was asked to bring Rs.5 lacs for the treatment. On 23.01.2007 father-in-law of the complainant also returned to India and her husband and father-in-law came to Sunam and insulted the parents of the complainant for not paying the amount. They raised an additional demand of Rs. 2 lacs for the treatment of Pankaj. The parents of the complainant showed their inability and the accused left the place in a fit of anger. On 28.05.2007 a baby girl was born but the accused did not come to meet her. Panchayat was convened, but the accused stuck to their demand of Rs.7 lacs and refused to return the *istridhan* or maintenance. The complainant is living with her parents. It was also averred in the application that accused Pankaj was in India for his second marriage.

An enquiry was conducted. After obtaining legal opinion, the case was registered and investigated.

Vide order dated 12.08.2014 the Co-ordinate Bench had stayed the presentation of challan.

Quashing has been sought on the ground that earlier on 09/10.02.2011 the complainant moved an application against the husband and in-laws and after due enquiry no offence, as alleged was found to have

been made out and the complaint was filed. Again, after three years, the complainant had filed another application with similar set of allegations and the police acted in a biased manner and registered the FIR, which is nothing but an abuse of process of law. It was further pointed out that a divorce had taken place between the parties in Canada on 28.01.2011 and as per the directions of the Court, petitioner Pankaj Sharma was depositing \$ 264 towards the maintenance expenses of the child.

In the reply filed by the State, it was admitted that an application dated 10.02.2011 was moved by the complainant. It was averred that at that time the accused were abroad and could not join the enquiry proceedings and the complaint was filed. It was further admitted that another complaint dated 02.06.2014 was moved by the complainant and after enquiry thereupon it was found that the complainant was harassed and maltreated for bringing more money and her *istridhan* had been misappropriated and the case was registered.

Separate reply was filed by the complainant, wherein it was averred that the accused spoiled her life on the allurements to take her to Canada. It was admitted that the Canadian Court had granted divorce on 03.05.2011 and had directed Pankaj Sharma to pay \$264 per month towards the maintenance of the child and the claim of the complainant was dismissed without prejudice to her rights to reapply upon return to Canada. A plea was raised that the said decree of divorce was not binding. It was pleaded that in the earlier enquiry, the accused were not found innocent and only because they were abroad, the complaint was filed. It was further averred that offence under Sections 406 and 498-A IPC was a continuous offence and there was no bar to file another application and the police has

rightly taken cognizance.

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

Learned counsel for the petitioners had urged that the complaint, annexure P-2 submitted by the complainant was found to be false and after lapse of three years due to personal vendetta she had filed another complaint in 2014, on the basis of which FIR was registered. According to him, the parties had been granted divorce by the Canadian Court in the year 2011 and pursuant thereto petitioner Pankaj was depositing maintenance amount for the child and the complainant was estopped from continuing the criminal proceedings. The issue of territorial jurisdiction in India was also raised and it was urged that the allegations primarily related to the period they were in Canada. Reliance was placed on **Shlok Bhardwan Vs. Runika Bhardwaj & Ors. 2015AIR(SCW) 544, T. Venkateshwarlu & Ors. Vs. State of A.P. & Ors. 1999 Crl.L.J. 39, N. Suriyakala Vs. A. Mohandoss & Ors. 2007(2) RCR(Crl.) 1, Mrs. Poonam Vs. State of Punjab & Anr. 2007(2) RCR(Crl.) 712, Manish Ratan & Ors. Vs. State of M.P. & Anr. 2006(4) Crimes (SC) 291, Mohd. Yaseen & Ors. Vs. State of A.P. & Ors., 2015 Crl.L.J. 380, Priya Vrat Singh & Ors. Vs. Shyam Ji Sahai, 2008(3) RCR(Crl.) 940, Geeta Mehrotra & Anr. Vs. State of U.P. & Anr. 2012(4) RCR(Crl.) 812.**

Learned State counsel assisted by the counsel for the complainant justified the action of the police. According to him, the earlier enquiry was not conclusive and in subsequent complaint, the offences were found to have been committed by the accused and as such the FIR was registered. According to them, the investigation was completed and the

challan was awaiting presentation. They had relied upon **Sherish Hardenia & Ors. Vs. State of M.P. & Anr. 2014(14) SCC 406** to contend that existence of prima facie case was sufficient to continue the proceedings and FIR cannot be quashed merely on the ground that there was no likelihood of conviction.

There is no serious dispute that the earlier application dated 10.02.2011 (Annexure P-2) and subsequent complaint dated 02.06.2014, on the basis of which FIR(Annexure P-1) was registered, are based on similar set of allegations. In the complaint, Annexure P-2 the allegations were levelled against the in-laws family, including the maternal uncle namely Kewal Krishan of petitioner Pankaj and in enquiry he was found to be innocent. The complainant had appeared before the enquiry and her statement dated 09.06.2011, Annexure P-10 was recorded wherein there were no allegation regarding demand of dowry, harassment or maltreatment or misappropriation of dowry articles. The primarily grouse raised therein was that she had not been paid maintenance by the husband. It was stated in the report that the accused mentioned in the complaint were residents of Canada and had not joined the enquiry and it was concluded that the allegations levelled against the in-laws family by the complainant were false. No complaint was given for three years. The complainant concealed the factum of filing the earlier complaint and succeeded in getting the FIR registered subsequently. It appears that just to wriggle out of the earlier stand, the State had taken the stand that the earlier enquiry into the earlier complaint was not concluded. Had there been any cognizable offence against the petitioners, the police must have registered the case then and there. The silence on the part of the complainant after filing of her

complaint, Annexure P-2 in the year 2011 and making similar allegations in 2014, wherein the factum of grant of divorce by Canadian Court was not mentioned, also speaks volume about the veracity of allegations levelled by her subsequently.

In Mohd. Yaseen's case (supra), it has been held as follows:-

“4. XXX. As rightly pointed out by the learned counsel for petitioners when the material facts are suppressed and when there is no material supporting the allegations of demand of additional dowry attracting the ingredients of section 498-A IPC forwarding the complaint mechanically to the police is not a proper exercise of judicial discretion which ultimately resulted in making the parents and relatives of the husband to appear before the police and criminal court. As rightly pointed out by the Advocate for petitioners this case squarely falls within seven points that are formulated by the Hon'ble Supreme Court in State of Haryana V. Bhajan Lal, AIR 1992 SC 604:1992 AIR SCW 237. One of the ground indicated in that decision which is applicable to the case on hand is mentioned hereunder:-

(7) Where a criminal proceeding is manifestly attended with malafide 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.”

A perusal of complaint shows that the allegations of harassment and beatings primarily relate to 2005 with regard to demand of cash of Rs.5 lacs. The marriage was of the year 2005 and till 2011 it has not been shown whether any complaint of the alleged harassment and maltreatment was given by the complainant against the accused. She herself had gone to Canada to live with the accused in the year 2006 and returned to India when

she was pregnant. The allegation of demand of Rs.5 lacs cash and beatings are general in nature and it is not specified as to who demanded the money and gave beatings to her. There was general allegation that accused gave beatings to her. The demand of Rs.2 lacs for treatment by the petitioner Pankaj cannot fall within the definition of dowry. The complainant came up with the allegations for the first time on 10.02.2011 by way of complaint Annexure P-2 that too after the divorce proceedings were initiated by the husband at Canada. Annexure P-9 reveals that the claim for maintenance was raised by the respondent before the Canadian Court on 20.07.2009 in which proceedings the decree of divorce was ultimately passed on 03.05.2011 which was to take effect from 03.06.2011. A perusal of documents pertaining to Canadian Court reveal that the complainant was represented by a lawyer there. It is not shown whether she ever questioned the legality of the order granting divorce, rather she accepted the same. In the considered opinion of the Court, in this scenario, the continuation of criminal proceedings is nothing but an abuse of process of law.

It is alleged in the FIR that the petitioner Pankaj was handed cash and jewellery while one suit, gold and silver jewellery was given to the petitioner Suraksha Sharma and they were required to give the same to the complainant on her demand. It cannot be expected that for about six years the complainant had not asked for the same. It is a general tendency now-a-days to term the customary gifts given to the in-laws family into *istridhan* by twisting the facts so as to show entrustment to each and every member of the in-laws family and alleging misappropriation thereof. Admittedly, the petitioners left for Canada after the marriage and had they taken the items with them, the complainant would have made the complaint. She came up

with the allegations only on 10.02.2011. The complaint appears to be a handy work of some legal mind. The allegations are absurd and highly improbable.

The respondents cannot derive any help from Sherish case (supra) because the facts of that case are totally distinguishable from the facts of present case.

Hon'ble Apex Court in the case of **State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors. 1991(1) RCR (Crl.) 383 (SC)**, 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.

Once this Court has concluded that the continuation of criminal proceedings against the petitioners is just an abuse of process of law, it would be unnecessary to go into the plea of jurisdiction.

In view of the above, the instant petition is allowed and the impugned FIR and subsequent proceedings conducted therein are quashed against the petitioners.

September 20,2016
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(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No