

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Crl. Misc. No.M-28778 of 2014

Date of Decision: 24.02.2016

Manjit Singh Shahi

....Petitioner

Versus

State of Punjab and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. J.S. Gill, Advocate
for the petitioner.

Mr. T.N. Sarup, Addl. A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

This petition has been filed under Section 482 Cr.P.C for quashing of FIR No.71 dated 23.07.2011 registered under Sections 406, 420, 498-A and 201 IPC at Police Station Khamano, District Fatehgarh Sahib.

Learned counsel for the petitioner submits that the petitioner is ex-husband of daughter of the complainant and has falsely been implicated in the case along with his other family members. During inquiry, the allegations qua other family members of the petitioner were found to be false and they were declared innocent. The present petitioner is the only accused in this case and challan has been presented against him. Learned

counsel also submits that initially, a complaint was made by the complainant to Senior Superintendent of Police, Fatehgarh Sahib on 19.01.2011 without being any allegation of rape, maltreatment or giving of any beatings by any family member of the petitioner. Rather it was stated in the complaint that the daughter of the complainant stayed in her in-laws' house for one day only and thereafter, she returned to Canada due to some emergent duty. The matter was investigated into by the Inspector of Economic Offences Wing, Fatehgarh Sahib, wherein, the complainant suffered a statement that he did not want to take any action on the complaint moved by him and the same be filed.

After recording the statement of the complainant, the complaint was submitted to Senior Superintendent of Police, Fatehgarh Sahib and it was filed. Learned counsel for the petitioner also submits that the present FIR has been registered on the basis of the complaint made by the complainant, whereas, the same allegations have already been investigated into and were found to be false. The marriage between the petitioner and daughter of the complainant was solemnised on 13.11.2007 and no family member was present at that time. The daughter of the complainant left for Canada immediately after marriage and she applied for permanent status of the petitioner before the Canadian Authorities but the same was rejected. Learned counsel further submits that even as per allegations levelled in the FIR, no offence is made out against the petitioner. A divorce has also been granted between the parties by the Court at Canada. In absence of the daughter of the complainant, the continuation of the proceedings is a misuse of process of law. Learned counsel further submits that in spite of having various opportunities, the factum of divorce has not been ascertained by the Investigating Officer, whereas, respondent No.2 has been served but none has appeared for her.

The FIR and other proceedings are liable to be quashed in view of ratio of law laid down by Hon'ble the Apex Court in case **State of Haryana vs Ch. Bhajan Lal** 1991(1) RCR (Criminal) 383.

Learned counsel for the respondent-State opposes the submissions made by learned counsel for the petitioner and submits that specific allegations regarding demand of dowry and harassment are there against the petitioner. He further submits that the factum of divorce has not been ascertained.

Heard the arguments of learned counsel for the parties and have also perused the allegations levelled in the FIR as well as other documents available on the file.

Admittedly, the marriage between the petitioner and daughter of the complainant took place on 13.11.2007. The FIR, in question, was registered under Sections 406, 420, 498-A and 120-B IPC against the present petitioner, his father-Jaspal Singh Shahi, his brother-Kamaljit Singh Shahi and his sister-Amanpreet Kaur Shahi. Except the petitioner, remaining accused were found innocent during inquiry. Challan was presented against the present petitioner only. Although, notice was issued to respondent No.2 but in spite of service, none has come present. Initially, a complaint was made to Senior Superintendent of Police, Fatehgarh Sahib on 19.01.2011 but no allegations of rape, maltreatment or giving of any beatings by any family member of the petitioner were levelled. The daughter of the complainant stayed only for one day in her in-law's family and immediately after that, she returned to Canada. The said complaint was investigated into by Inspector Lakhvir Singh of the Economic Offences Wing, Fatehgarh Sahib. The complainant had also suffered a statement stating therein that he does not want any action to be taken on the complaint moved by him. The said complaint was filed after recording the

statement of the complainant on 31.03.2011. Thereafter, another complaint was filed by complainant-respondent No.2 on the very next day, which was also investigated into by the same Officer of Economic Offences Wing i.e Lakhvir Singh. Both the parties stayed in Canada and thereafter, some differences arose between them. A divorce petition was filed and it was allowed by the Superior Court of Justice in Canada on 28.03.2011. The said judgment has not been challenged so far by the daughter of the complainant. Thereafter, on coming to India, the petitioner came to know about pendency of the complaint registered against him. As per case of the petitioner, it was a love marriage and no dowry was given at the time of marriage. It is also not disputed that the daughter of the complainant remained in the company of the petitioner in India and the complaint was filed by respondent No.2 on the basis of statement made by him. A detailed inquiry was conducted by SP(D), Fatehgarh Sahib and nothing was found in the allegations qua other family members of the petitioner. They were declared innocent and the challan was presented against the present petitioner only. The veracity of allegations made in the complaint have already been investigated into and the complaint was filed. The present FIR has been registered by the complainant after grant of the divorce and that judgment of divorce has not been challenged by his daughter.

Certain parameters/grounds have been laid down in **Ch. Bhajan Lal's** case (supra) for exercise of powers under Section 482 Cr.P.C to prevent the abuse of process of any Court or 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.

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.
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 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.
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.”

The case was adjourned on the request of learned State counsel as the factum of divorce was to be ascertained by the Investigating Officer. In spite of granting various opportunities, the same has not been verified so far. Respondent no.2 has not appeared to contest his case in

spite of issuance of notice to him.

Learned counsel for the respondent-State has not been able to show anything as to whether the judgment of divorce has been challenged by daughter of the complainant. The present FIR is not only the misuse of process of law but the same has been lodged just to harass the petitioner, whereas, the divorce has already been granted and daughter of the complainant is residing in Canada. The petitioner has also been stated to be settled in Canada along with his family members but because of the present FIR, he is presently staying in India. The case of the petitioner falls within the parameters as laid down in **Ch. Bhajan Lal's** case (supra). Moreover, all allegations were inquired into by the Investigating Agency and the complaint was filed after recording the statement of the complainant. How the second complaint, containing similar allegations, is maintainable, has not been mentioned by learned counsel for the respondent-State while opposing the submissions made by learned counsel for the petitioner. Even from bare perusal of contents of the allegations, it appears that no offence under Sections 406, 420, 498-A and 201 IPC is made out against the petitioner. Moreover, on the same set of allegations, the other family members of the petitioner were found to be innocent during investigation.

In view of the above, the present petition is allowed and FIR No.71 dated 23.07.2011 registered under Sections 406, 420, 498-A and 201 IPC at Police Station Khamano, District Fatehgarh Sahib qua petitioner-Manjit Singh Shahi is quashed.

24.02.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE