

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

Crl. Misc. M 30540 of 2015 (O&M)
Date of decision: 22.11.2016

Gurmeet Kaur and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Jatin Khurana, Advocate,
for the petitioners.

Ms. Bhavna Gupta, DAG, Punjab.

Mr. Gurvir K Gill, Advocate,
for respondent No.2.

JAISHREE THAKUR, J.

This petition has been filed under Section 482 of the Code of Criminal Procedure seeking for quashing of FIR No. 167 dated 27.9.2013 (Annexure P/1) registered under Sections 498-A and 406 IPC at Police Station Sadar Fazilka, District Fazilka, and all subsequent proceedings arising therefrom qua the petitioners.

A complaint was filed with the SSP Fazilka by respondent No.2, alleging that her marriage was performed with Gursewak Singh on 18.2.2011, as per Hindu rites. At the time of marriage, dowry was given, which included a TV, a Fridge, an Almirah, a Cooler, two trunks, 7 tola of gold, one Hero Honda motorcycle and other household goods with a total

sum of Rs. 4.50 lakhs being spent on her marriage. After about three months of marriage, there was a change in the behavior of her husband who started demanding more dowry and made a demand for a car and Rs. 1,50,000/- in cash, in order to start a new business. Since she was unable to fulfill this demand, she was thrown out of her matrimonial home. On the basis of the said complaint, a FIR was registered against the petitioners herein and mother-in law and father-in- law of the complainant.

The instant petition has been filed at the behest of Gurmeet Kaur, who is sister of the husband of the complainant as well as by Paramjit Singh, who is brother of the husband of the complainant. It is alleged that a perusal of the FIR would show that there is no specific allegations against the present petitioners and if there is any allegations, it is for a demand of dowry of a car and for a sum of Rs 1,50,000/-for starting the business by accused No.1 who is the brother of the petitioners.

I have heard learned counsel for the parties and have also perused the FIR that has been registered.

The allegations, as made out, reveal that the marriage was performed between the complainant and accused on 18.2.2011 and dowry was given, which included a T.V., a fridge, an almirah etc. A total sum of Rs. 4.50 lakhs was spent on the marriage. A bare reading of the FIR would show that there is no specific allegations of demand of dowry at the behest of the petitioners herein. The only allegation, if any, is against the husband Gursewak Singh that a demand was raised to bring a car and Rs. 1,50,000/- in cash, in order to start a new business. There is not even a whisper in the complaint as to any specific entrustment of the dowry articles in the hands

of the petitioners herein. In fact, there is no such specific averment in the entire complaint qua the petitioners herein regarding the harassment meted out to the complainant/respondent No.2 with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security. All the allegations are general in nature and no date and time with regard to demand of dowry articles has been mentioned. Even it has not been mentioned as to what and when the demand was made by the present petitioners. The petitioners have been implicated only on the basis of general allegations.

It has been noticed by the Hon'ble Apex Court in several cases that there has been now an increase tendency in roping every members of the family while registering a case which arises out of the matrimonial dispute and this practice has been deprecated time and again.

In a case reported as **2003 (2) RCR (Crl.) 888 B.S. Joshi Versus State of Haryana**, it was observed that the object of introducing Section 498-A in the Indian Penal Code was to prevent the torture of a woman at the hands of her husband or relatives. The Hon'ble Apex Court went on to hold that if the FIR, as it stands, does not disclose specific allegations against the accused, more so against the co-accused, specially in a matter arising out of the matrimonial bickering, it would be a clear abuse of process of law and judicial process to mechanically send the named accused in the FIR to undergo trial. It was further held that it is well settled principles laid down that in case an FIR does not disclose the commission of offence, the Court would be justified in quashing the proceedings.

In Madhu Limaye v. The State of Maharashtra [1977] 4

SCC 551 a three-Judge Bench of Hon'ble the Apex Court held as under:

“... In case the impugned order clearly brings out a situation which is an abuse of the process of the Court, or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. Such cases would necessarily be few and far between. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. The present case would undoubtedly fall for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, that the invoking of the revisional power of the High Court is impermissible.”

In **Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors. 1988 (1) R.C.R. 565** the Hon'ble Apex Court observed in para No. 7 as under:

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique

purpose and where in the opinion of the Court, chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

In State of Haryana and Ors. v. Bhajan Lal and Ors. 1991 (1) R.C.R.383

Hon'ble the Apex Court, in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure (for short, 'Cr.P.C.') under Chapter XIV and of the principles of law enunciated by the Supreme Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.P.C., gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise 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 made 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.

There are a catena of judgments, one such case being **Preeti Gupta and another Vs. State of Jharkhand and another 2010 (4) RCR (Crl.) 45**

where 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.

Even in the instant case herein, a bare reading of the FIR, as such, does not disclose commission of offence under Sections 498-A/406 IPC, as there are no specific allegations of either demand or entrustment of dowry qua the petitioners. Therefore, in the facts and circumstances of the case, this Court is of the considered opinion that continuing of proceedings against the petitioners in 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.

Resultantly, this petition is allowed and the FIR No. 167 dated 27.9.2013 registered under Sections 498-A and 406 IPC at Police Station Sadar Fazilka, District Fazilka and all subsequent proceedings arising therefrom qua the petitioners are quashed qua the petitioners.

22.11.2016
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned Yes

Whether reportable No