

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

**CRM-M-38690 of 2011
Date of Decision: May 03, 2016**

Gurdev Singh Sidhu and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Navkiran Singh, Advocate
for the petitioners.

Mr. J.S. Brar, AAG, Punjab.

FATEH DEEP SINGH, J.

The petitioners, who are accused in case bearing FIR No.35 dated 18.03.2011 under Sections 498-A, 120-B IPC pertaining to Police Station, Ghall Khurd, District Ferozepur have invoked the jurisdiction of this Court under Section 482 Cr.P.C. seeking quashment of FIR Annexure P/1. The contentions in brief are that a marriage between one Kirandeep Kaur and Hardeep Singh had taken place on 7.3.2010 at Ferozepur and that the petitioners being maternal grandfather, maternal uncle, wife of maternal uncle and sister of the boy have attended this marriage alleging that after the boy and the girl went to Canada there arose a matrimonial disaccord leading to the registration of the present FIR by the grandfather of the girl who resides in India namely Balwinder Singh. The premise on the basis of which this invocation has been made is that some of the petitioners reside abroad and have no role to play in this matrimonial issue between the couple and that the other co-accused namely Hardev Singh, Kulwinder Kaur

and Gurdev Singh have already been acquitted vide judgment and order dated 26.11.2013 passed by the learned Judicial Magistrate 1st Class, Ferozepur and has sought prayer in question on that very grounds. Learned State counsel has opposed the prayer and has filed reply taking the plea that the petitioners have already been declared as proclaimed offenders and, therefore, are not entitled to any relief and further that it is the evidence which will determine the very culpability of the petitioners.

Appreciating the arguments of the two sides as is the well enunciated principle of law for exercise of powers under Section 482 Cr.P.C. as laid in the case of **State of Haryana and others vs. Ch. Bhajan Lal and others AIR 1992 S.C. 604** whereby, their Lordships of the Apex Court have enunciated the following principles:-

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 F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under 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 made 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 of 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.

Furthermore, it is further held that such exercise of powers are to be sparingly done as a rarity. Reverting back to the instant case, admittedly as per the contentions of the learned State counsel which cannot be refuted by the learned counsel for the petitioners that the petitioners have been declared as proclaimed offenders after adopting due process under Section 82 and 83 Cr.P.C. and that being absconders from law who have instead tried to circumvent the due process of law and evading their arrest and not putting in appearance before the Court in pursuance to legitimate process issued by the Court shows that the conduct of the petitioners neither bonafide nor truthful. By their own act and conduct in keeping away themselves from Court in view of the well established principle of law as has been laid down in **2006 Vol III RCR (Criminal) 240 T. Moosa vs. Sub Inspector of Police Vadakara Police Station** disentitles them to any relief. Thus, the petitioners who have shown reticence and have not appeared for the last more than 06 years cannot seek sympathy of this Court.

In the light of the submissions of the two sides the pleas that have been further raked up are more based on evidence as to the very role of each of the petitioners in the commission of the offence

when evidently the FIR lodged by the grandfather of the girl has attributed to each of the petitioners a specific role in the commission of crime. Evidently, the evidence that has been collected in the light of the contentions of the State counsel right from the inception of the FIR and the investigations clearly attribute to each of the petitioner role in commission of the offence. Since there are specific allegations of demand of dowry, physical as well as mental cruelty to the bride, on the face of it, dehors any relief to the petitioners. Being a question of appreciation of evidence and that Courts in exercise of powers under Section 482 Cr.P.C. are not supposed to appreciate the evidence which is only within the jurisdiction of the trial Court and which powers cannot be usurped under Section 482 Cr.P.C. as there is no exceptional circumstance and, therefore, there appears no merit in the instant petition otherwise as well.

In the light of what has been detailed and discussed above, the instant petition being wholly meritless needs to be dismissed and, thus, stands dismissed. Since inordinate delay has already been occasioned, directions are issued to the petitioners to immediately within fortnight submit themselves to the Court below and to facilitate the recourse of law.

(FATEH DEEP SINGH)
JUDGE

May 03, 2016
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