

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

**Crl. Misc. No. M-36722 of 2016(O&M)
Date of decision : 17.10.2016**

Harvinder Kaur & Ors.

... 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

**Present: Mr. B.R. Rana-I, Advocate
for the petitioners.**

ANITA CHAUDHRY, J.

The petitioners are seeking quashing of FIR No. 04 dated 14.01.2016, registered under Section 406 read with Section 120-B IPC, Police Station Dehlon, District Ludhiana and consequent proceedings conducted therein, including order and charge-sheet dated 26.05.2016.

The complainant-respondent No.2 is the husband of petitioner No.1 and petitioners No.2 and 3 are parents of petitioner No.1 while petitioner No.4 is her brother. Petitioner No.1 was married to respondent No.2 on 20.02.2011. Respondent No.2 had gone to Canada after the marriage. While leaving, he had entrusted his ATM card and pass-book. The allegations in the FIR are that petitioner No.1 in connivance with petitioners No.2 to 4 fraudulently withdrew a sum of Rs.3,50,000/- from his account.

The contention of learned counsel for the petitioners is that after the withdrawal of the amount, which was with the consent of the

complainant, petitioner No.1 had gone to Canada and lived with the complainant and once the complainant had condoned the said act of the petitioners, continuation of criminal proceedings initiated later, is an abuse of process of law. He had further argued that the FIR was lodged immediately after the filing of the petition under Section 125 Cr.P.C. by petitioner No.1, as a counter-blast. He has further urged that the trial Court had erred while framing charges against the petitioners under Sections 406 read with Section 120-B IPC.

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

In the considered opinion of this Court, the facts of the case are not such that warrant interference of this Court under Section 482 Cr.P.C. The powers under Section 482 Cr.P.C. have to be exercised sparingly and with circumspection, that too in rarest of rare cases. Broad guidelines have been framed by the Hon'ble Apex Court for exercise of powers under Section 482 Cr.P.C. in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, AIR 1992 SC 604, which read as under:-

“105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of

myriad kinds of cases wherein such power should be exercised.

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 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 F.I.R. 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.”

In **Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque**, AIR 2005 SC 9, the Hon’ble Supreme Court referred to several judgments and observed as follows:

“The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in

a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. It if appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that even there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings.”

Similar view point has been reiterated by the Hon’ble Apex Court in **State of Madhya Pradesh v. Awadh Kishore Gupta , (2004) 1 SCC 691**

There is nothing on record to show that as to when the amount was withdrawn and when the wife had gone abroad. It is for the trial Court to see whether the act was condoned. It is a disputed question of fact. It will have to be shown that the withdrawal was with the consent of the complainant. The police after enquiry has filed the challan and on the basis of material collected by the investigating agency, the petitioners have been

charged. Only because petitioner No.1 had filed a petition under Section 125 Cr.P.C., does not necessarily give rise to presumption that the impugned FIR had been lodged as a counter-blast. It is for the petitioners to prove that the complaint to the police is the outcome of personal vendatta. No findings in this regard can be recorded in these proceedings. Any observations made by this Court may prejudice either parties. The case does not fall under any of the parameters, referred to above, warranting interference by this Court in exercise of powers under Section 482 Cr.P.C.

No ground for quashing is made out and the petition is dismissed. Whatever has been said hereinabove is without prejudice to the case on merits. The petitioners will be at liberty to raise all the pleas before the appropriate forum and at the appropriate stage.

October 17,2016

Jiten

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No