

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

Crl. Misc. M 9605 of 2011 (O&M)
Date of decision: 28.11.2016

Gursewak Singh

...Petitioner

Versus

State of Punjab another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ranjan Lakhanpal, Advocate,
for the petitioner.

Mr. Mikail Kad, AAG, Punjab.

Mr. Vaibhav Narang, Advocate,
for respondent No.2.

JAISHREE THAKUR, J.

The present petition has been filed for quashing of FIR 54 dated 9.3.2010 under Sections 420, 406, 498-A and 120-B IPC registered at Police Station Sidhwan Bet, District Ludhiana (Rural).

In brief facts are that a complaint was filed by Nachhattar Singh that his daughter got married to one Jagtar Singh on 17.1.2007 in India. She being a permanent resident of Canada, returned to Canada after her marriage in 2007 and later on sponsored her husband, namely Jagtar Singh, who also migrated to Canada in September, 2008. However, on account of several differences, the parties separated on 9.12.2009 and a decree of divorce has been since granted in 2013.

The petitioner herein is the brother of Jagtar Singh and is

brother-in-law (Devar) of daughter of the complainant Nachhattar Singh. In the FIR, it is alleged by the complainant that a sum of ₹10 lakhs was spent on the marriage of his daughter with Jagtar Singh on 17.1.2007. On reaching Canada, his daughter was treated cruelly and his daughter was thrown out of her matrimonial home, while retaining *stridhan*. On investigation of the complaint, a recommendation was made to register a case against Jagtar Singh (son-in-law), his brother Gursewak Singh (petitioner herein) and their mother Surjit Kaur for harassing the girl and her family for dowry. Aggrieved against that, the instant petition has been filed, alleging that the impugned FIR does not disclose any offence of entrustment or demand of dowry.

Learned counsel for the petitioner argues that after the marriage, the daughter of the complainant went back to Canada and sponsored her husband and as such, the dispute, if any, that arose would be in Canada itself and not within the jurisdiction of this Court and should be dismissed for want of territorial jurisdiction. It is further submitted that initially the police had investigated the complaint and after investigation, it was found that nothing has happened in India and such a cancellation report was submitted.

Per contra, learned counsel for the respondent argues that the FIR has been registered and that the offences as such are made out. Therefore, there should be no interference by this Court.

I have heard learned counsel for the parties and with the help of

the learned counsel for the parties perused the record of the case.

Admittedly, the marriage of Charanjit Kaur and Jagtar Singh took place on 17.1.2007 and as per the statement of the complainant himself, his daughter sponsored her husband to Canada. A reading of the FIR does not show that there is any allegations as regards demand of dowry at the instance of the petitioner herein. The petitioner herein is a resident of the State of Punjab and was not residing along with the daughter of the complainant or her husband in Canada, so the question of his being involved in the alleged commission of offence does not arise. All the allegations are general in nature and no date and time with regard to demand of dowry articles has been mentioned. It has not even been mentioned as to what and when the demand was made by the present petitioner. The petitioner has been implicated only on the basis of general allegations, having no foundation. Furthermore, a bare perusal of the FIR would show that as per the allegations of the complainant himself his daughter after marriage went back to Canada and thereafter sponsored her husband to Canada. Therefore, when she did not live in India with her in-laws, then question of the alleged demand of dowry or harassment does not arise.

Chapter XIII of the Code of Criminal Procedure deals with the jurisdiction of the criminal courts in inquiries and trials. Section 177 Cr.P.C. states that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. Section 178 of Cr.P.C. reads as under:-

“178. Place of inquiry or trial. (a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed, partly in one local area and partly in another, or

c) where an offence, is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.”

For the purpose of constituting offence, the territorial jurisdiction has to be looked at. In the instant case, all the offences itself complained of arose in Canada and hence the FIR at Ludhiana would not be sustainable qua the petitioner.

Otherwise also, it has been noticed by the Hon’ble Apex Court that there is unfortunate tendency to rope in all members of the family of the husband when a matrimonial dispute arises and the relationship been soured between the parties.

In the instant case, the petitioner is the brother-in-law of the daughter of the complainant. The FIR has been lodged under Sections 420, 406, 498-A and 120-B IPC by the complainant, who is father of the Charanjit Kaur, alleging that he had spent about Rs. 10 lakhs on the marriage and the *stridhan* has been retained by his son-in-law.

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 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 petitioner. Therefore, in the facts and circumstances of the case, this Court is of the considered opinion that continuing of proceedings against the petitioner 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 54 dated

9.3.2010 under Sections 420, 406, 498-A and 120-B IPC registered at Police Station Sidhwan Bet, District Ludhiana (Rural) and all subsequent proceedings arising are quashed qua the petitioner.

28.11.2016
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No