

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-40877 of 2014

Date of decision : May 17, 2016

Nimshe and another

....Petitioners

versus

The State of Union Territory, Chandigarh and another

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. CL Pawar, Advocate, for the petitioners
Mr. GS Chahal, Addl. PP, UT Chandigarh
Mr. NS Shekhawat, Advocate, for respondent No.2

Fateh Deep Singh, J. (Oral)

In this petition under section 482 of the Code of Criminal Procedure (in short, Cr.P.C.), the unfortunate petitioners happens to be wife and husband respectively who had voluntarily on their free will and accord being major had undergone marriage with each other on 11.2.2013 against wishes of respondent no. 2-complainant Renu Bala Gautam mother of the wife.

The factual matrix is to the effect that Nimshe petitioner no. 1 and Gaurav Sian petitioner no. 2 out of their love for each other decided to enter into a wedlock which was not to the liking of respondent no. 2 mother

of the girl. Faced with the threat of the parents of the girl the couple earlier filed Criminal Misc. No. M-5363 of 2013 for police protection which stood disposed off vide orders dated 18.2.2013 (Annexure P/3) by this Court. Subsequent thereto the complainant-mother of the girl filed a written complaint before the Senior Superintendent of Police, Chandigarh for registration of the FIR against five persons namely the two petitioners, father and mother of petitioner no. 2-the husband and one Krishan Shastri. The allegations levelled by the complainant therein were to the effect that while seeking protection of the Court, the present petitioners had supported their claim on the basis of a marriage certificate dated 11.2.2013 purported to have been issued by Krishan Shastri. Allegations were levelled that the complainant came to know that this document was false and forged and has been used as genuine by the petitioners as the President of Pracheen Shiv Mandir, Ram Darbar, Chandigarh had given a certificate that such a marriage certificate was never issued by their Mandir and there was no such Pujari by the name of Krishan Shastri, on the basis of which the police had registered against all these five persons the present case by way of FIR No. 195 dated 17.10.2013 under sections 193, 420, 467, 468, 120-B IPC, Police Station North, Chandigarh, Annexure P/1. It is against this launching of prosecution, the petitioners are aggrieved and have sought quashment of the same.

It is worth-while to refer here that in between the complainant

had earlier sought modification of the orders of this Court Annexure P/3 and this Court passed orders dated 3.2.2014 dismissing the same. This was followed by another petition under section 340 Cr.P.C. by the complainant before this Court which too stood dismissed vide orders dated 10.11.2014.

Heard Mr. CL Pawar, Advocate, for the petitioners, Mr. GS Chahal, Addl. PP, UT Chandigarh and Mr. NS Shekhawat, Advocate, for respondent No.2 and perused the records.

No doubt it is well settled position of law that provisions of section 482 Cr.P.C. are to be sparingly used in the rarest of rare case to meet the ends of justice and which is the position of law laid down in the case of **State of Haryana and Ors. Vs Ch. Bhajan Lal Ors., 1991(1) RCR (Criminal) 383** where it was held that such a power can be exercised to prevent abuse of process of any court or otherwise to secure the ends of justice. It has been enumerated though not exhaustively but illustratively as to the following eventualities:-

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- “(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 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.”

By virtue of this petition, a societal challenge has come forth as to the very plight of run-away couples. On account of our society still being predominantly of feudalistic leaning and does not readily accepts such

challenges of modern way of life where grown up children are not allowed to have their recourse to life as per their preferences and choices. In the instant case how a disgruntled mother bent upon taking vengeance from her daughter remaining quite in-oblivion that she too is a woman and has sought to unleash torture upon the daughter and her husband who are major grown up and are meekishly seeking benevolence of this Court along with their child who is only a few months old.

In a similar situation before this Court in CRM-M-3242 of 2013 , faced with this situation this Court vide its judgment dated 23.9.2015 by seeking support of a Full Bench view of the Hon'ble Delhi High Court reported in **Court on its own motion (Lajja Devi) vs State, 2012 (4) RCR (Civil) 821** has justified invoking these inherent powers under the provisions of section 482 Cr.P.C. This Court has held that in such a situation the ends of justice certainly justifies interference by this Court in exercise of its powers under section 482 Cr.P.C.

Looking from another angle in the light of the arguments that have been put forth by the counsel of the two sides the very allegations contained in the FIR Annexure P/1 shows that the only grouse that is sought to be agitated by the prosecution is that the couple has procured a false marriage certificate dated 11.2.2013 Annexure P/2 and which issuance of certificate has been denied by the President of the Mandir by another certificate. A look at Annexure P/2 shows that the said certificate has been

issued by Krishan Shastri, Sanskararta (Priest who solemnized the marriage) and thus has no relevance with the certificate purported to have been issued by the President, Pracheen Shiv Mandir, Ram Darbar and rather it is the Priest who by virtue of having solemnized marriage could have been the best person to acknowledge fact of this marriage. It is readily accepted by Mr. Shekhawat counsel for complainant-respondent no. 2 that this marriage certificate was never considered or was an evidence considered so by the Court leading to its order Annexure P/3 and therefore, it was not in any manner considered as evidence by the Court and therefore, the allegations that the orders of protection Annexure P/3 were procured on the basis of such a forged and fabricated document does not materialises. Even if it is so, section 340 Cr.P.C. provides the procedure for trial of offences under section 193 IPC and which by virtue of First Schedule of Cr.P.C. makes it to be a non-cognizable offence and therefore, by that analogy only a complaint lies to the court and the police cannot usher in for such an allegation by registering an FIR and investigating it. More-so to the mind of this Court, even if the allegations so levelled by the counsel for the complainant/State are to be taken on the face of it, there can be no occasion of cheating as neither there has been any wrongful gain or wrongful loss to anyone. In the absence of such a substantive evidence to support these allegations even no offence under section 467 IPC is deemed to be made out much less under section 468 IPC and therefore, the element of criminal

conspiracy also vanishes into the blue.

Thus from it all ensues that the registration of the present FIR is nothing but a convenient tool in the hands of the complainant with an ulterior motive to spoil the very prospectus of the matrimonial alliance between the couple and thus, is a pure and pure nothing but misuse of the process of the court. This Court is satisfied that if such a prosecution is allowed to move ahead certainly will lead to not only denial of legitimate right of the couple to chose a life partner but also would be nothing short of seeking aid of the law in wrecking a personal vengeance which law forbids. This Court needs to clarify that by the exercise of such powers, this Court does not intend to encourage such relations which certainly are a cause for social turmoil. Having regard to this special circumstances and that it is out and out misuse of the process of law by apparent dominant party not only to subvert the rights which the Constitution guarantees but also are to subjugate the poor couple for which this Court needs to show indulgence.

In the light of the aforesaid, the instant petition is allowed. Proceedings by way of FIR No. 195 dated 17.10.2013 under sections 193, 420, 467, 468, 120-B IPC, Police Station North, Chandigarh, Annexure P/1 and all consequences arising thereof are hereby quashed.

May 17, 2016
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(Fateh Deep Singh)
Judge

Whether referred to Reporter ? Yes/No