

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

Date of Decision : 16.12.2016

1. CRM-M-42051-2014 (O&M)

Balwinder Kumar

.....Petitioner

Versus

State of Punjab & another

.....respondents

2. CRM-M-411-2015 (O&M)

Rawinder Kaur

.....Petitioner

Versus

State of Punjab & another

.....respondents

Present : Mr. P.K. Ganga, Advocate,
for the petitioner.

Mr. Navdeep Singh, DAG, Punjab,
for respondent No.1-State.

None for respondent No.2.

JAISHREE THAKUR, J.

1. By this common order two petitions i.e. **CRM-M-42051-2014** and **CRM-M-411-2015** are being proposed to be disposed of arising out of the same FIR. For brevity facts are being extracted from **CRM-M-42051-2014**.

2. In brief, facts are that the complainant Suman Rani was married to Amarnath s/o Bant Singh in the year 2005. It is alleged by the petitioner

that various disputes arose between the couple due to temperamental differences. The complainant was also having grievance against the brother-in-law (Jija) of Amarnath, namely Avtar Singh. The petitioner in **CRM-M-42051-2014** is the maternal uncle of the husband of the complainant whereas petitioner in **CRM-M-441-2015** is the mother-in-law of the complainant. There was a civil dispute between Rawinder Kaur, mother-in-law of the complainant against complainant Amarnath, husband of the complainant and Rawinder Kaur's son and father of the complainant Shiv Nath which lead to the filing of a suit in 2011 seeking permanent injunction for restraining them from interfering in the possession of her house . By an interim order dated 16.05.2012 issued in favour of Rawinder Kaur petitioner herein, the Civil Court ordered for stay of dispossession and interference in the suit property till the final disposal of the suit. The complainant appeared through her counsel and suffered a statement before the learned Civil Court on 15.11.2013 that she would not interfere in the peaceful possession of Rawinder Kaur and on basis of that statement the suit was dismissed as withdrawn. It is also contended that on account of various disputes that were pending between Rawinder Kaur, she disowned her son Amarnath and his wife, namely Suman Rani @ Suman Khilpa by issuing a public notice in daily newspaper "Chardikala Patiala" and in a counter blast, the present FIR has been lodged.

3. Learned counsel for the petitioner herein submits that a reading of the FIR in question would show that the basic grievance is towards the person named as Avtar Singh. In the FIR it is alleged that one Avtar Singh has taken possession of a shop and got their house sold. It is further argued

that Amar Nath (her husband) has got married with some other girl and it is he who is fully responsible for destroying her matrimonial home.

4. Per contra, learned counsel for the respondent complainant submits that the allegations in the complaint leading to the registration of the FIR are such that an offence under Section 498-A IPC is made out.

5 I have heard learned counsel for the parties and have gone through the records of the case.

6. Section 498-A IPC reads as under :-

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means—

- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”*

7. Any person being husband or relative of husband of a woman subjecting her to cruelty, is liable to be punished with imprisonment for a

term which may extend to three years and shall also be liable to fine. For the purposes of Section 498A IPC the term cruelty has been defined to mean as any willful conduct which is of such a nature as is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; harassment of the woman with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or harassment meted out to her on account of failure by her or any person related to her to meet such demand.

8. In the instant case, reading of the FIR shows that the grouse, if any, is against one Avtar Singh who has great influence over her husband. It is the said Avtar Singh, as per the allegations made, who introduced her husband Amar Nath with some girl and at the same time took over possession of the shop and also the house . A compromise was arrived at wherein her husband admitted to the complainant being his wife and the children belonging to him and further agreeing that he would keep his wife, the complainant herein, and children with him and fulfill all their needs. It is alleged that Amar Nath backed out of the compromise and got married with another girl by the name of Manpreet Kaur and was residing at another place. It was stated that Avtar Singh had destroyed her home and she prayed for restoration of the same.

9. A reading of the said FIR and the allegations made therein would not constitute any offence triable under Section 498A IPC. For the said section to be invoked there has to be such a conduct meted out to the woman which would be likely to drive her to commit suicide or to cause

grave injury or danger to life, limb or health (whether mental or physical). The cruelty which has been defined under Section 498A IPC would also be the harassment meted out to a woman at the hands of the relatives of the husband with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security. This does not seem to be made out in the said FIR. The entire reading of the FIR only depicts that there is one Avtar Singh who has great influence over the husband of the complainant, who has influenced him enough to sell shop/house. There are no specific details as to how the petitioner herein who is the maternal uncle of the husband of the complainant, has acted in any manner which would drive the complainant to commit suicide or to cause her great danger. Nor is there any averment to the effect that there has been any unlawful demand of property/movable valuable security to be brought by the complainant herein. Similarly, there is no such allegation in the complaint/FIR against the petitioner Rawinder Kaur who is the mother-in-law of the complainant. The FIR is without any details and bald allegations have been made therein. Therefore, the ingredients of Section 498A IPC are not made out.

10. In a case ***B.S. Joshi Versus State of Haryana, 2003 (2) RCR (Crl.) 888***, 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 Supreme 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.

11. 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 Supreme 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 IPC, as there is no specific allegations of either demand or any harassment made out qua the petitioners.

12. The question that would arise is whether this Court should interfere under Section 482 Cr.P.C. in quashing of the FIR. In a catena of cases it has been held that the High Court who exercise this power under Section 482 Cr.P.C. to prevent abuse of process of law. In ***State of Haryana and Ors. v. Bhajan Lal and Ors. 1991(1) R.C.R.383*** 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.*

13. 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 in question 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.

14. Thus, this petition is allowed and FIR No. 10 dated 03.03.2016 under Sections 363, 366 of the Indian Penal Code, registered at Police

Station Tibber, District Gurdaspur and all subsequent proceedings arising out of the same are quashed qua petitioners.

16.12.2016
SP

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : *Yes*

Whether reportable : *No*