

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

**CRM-M-11761-2006 (O&M)**

**Date of decision: 18.01.2017**

**Dr. Sandeep Malhotra and others**

**...Petitioners**

**Versus**

**State of Haryana and another**

**...Respondents**

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. J.S. Bedi, Senior Advocate,  
with Mr. Sunil Sihag, Advocate,  
for the petitioners.

Mr. D.R. Singla, DAG, Haryana,  
for respondent No.1-State.

Ms. G.K. Mann, Advocate,  
for respondent No.2.

**Ritu Bahri, J.**

This petition under Section 482 Cr.P.C. has been filed for quashing of FIR No.13 dated 20.01.2006, under Sections 498-A, 406, 323 read with Section 34 IPC, registered at Police Station, Rajender Park, Sector 5, Gurgaon (Annexure P-15).

Hon'ble the Supreme Court, vide judgment dated 15.04.2010 passed in Criminal Appeal No.801 of 2010 (arising out of SLP (Crl.) No.4554 of 2008), has set aside the judgment dated 22.02.2008 passed by this Court in CRM-M-1176-2006, whereby FIR had been quashed qua Dr. Sandeep Malhotra and others (petitioners) on the ground that only allegation against them in the FIR was that the husband of the complainant in conspiracy with them, had given beatings to the complainant on 20.12.2003 and had smashed her head with washbasin. However, with regard to the

same incident, a complaint dated 14.01.2004 (Annexure P-9) was made by

Ritu Malhotra to the In-charge, Police Post, Saproon, Solan (Himachal Pradesh), whereby allegations were levelled against her husband and nothing was mentioned about the petitioners or any other family members. The allegation of demand of dowry and harassment was made against her husband, Dhiraj Malhotra and nothing was alleged against other members of her in-laws family.

In the background of complaint (Annexure P-9), the allegations in the present FIR were taken to be exaggerated to implicate all other members of in-laws family. Accordingly, the petition was allowed and FIR qua the petitioners was quashed. However, at that time, the charge had been framed and this aspect had not been dealt with by this Court while quashing of the FIR.

Learned senior counsel for the petitioners has argued that after passing of the order dated 22.02.2008 in CRM-M-1176-2006, decree of divorce has already been granted to the husband of the complainant on the ground of cruelty. Findings given in the decree of divorce with regard to cruelty, which was meted out to the husband of the complainant, will be binding on the criminal proceedings in a matrimonial dispute as well. Reliance has been placed on a judgment passed by Hon'ble the Supreme Court in **State of Haryana and others Vs. Ch. Bhajan Lal and others**, 1991 (1) RCR (Criminal) 383, whereby some guidelines have been issued for quashing of criminal proceedings. It has been observed that where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same does not disclose the commission of crime, the High Court, under Section 482 Cr.P.C., can quash the proceedings. He has further referred to the decision given by Hon'ble the Supreme Court in

**Janata Dal Vs. H.S. Chowdhary and others**, 1992 (4) Supreme Court Cases 305, whereby it has been observed that the High Court, while exercising extraordinary jurisdiction, can quash the proceedings at any stage.

Ms. G.K. Mann, learned counsel for respondent No.2, has referred to the judgment passed by Hon'ble the Supreme Court in **Bharat Parikh Vs. Central Bureau of Investigation and another**, 2008 (10) Supreme Court Cases 109, whereby it has been held that after framing of charges, the material produced before the Court while exercising powers under Section 482 Cr.P.C., cannot be considered by the High Court for quashing the proceedings. Only in exceptional circumstances as enumerated in **Bhajan Lal's** case (supra), the proceedings can be quashed.

After hearing learned counsel for the parties, this petition deserves to be allowed. In **Bharat Parikh's** case (supra), charges were framed under Sections 420, 468, 471, 477-A read with Section 120-B IPC and Section 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988. Thereafter, an application for reopening of the proceedings and discharge was made by the accused. This application was dismissed by holding that once a charge was framed, the Magistrate has no power under Section 227 or any other provision of the Code of Criminal Procedure to cancel such charge and to discharge the accused. Thereafter, the accused approached the Bombay High Court by invoking the provisions under Section 482 Cr.P.C. for quashing the proceedings. The Bombay High Court dismissed the revision application. On appeal, Hon'ble the Supreme Court, in para 17, 18 & 19 of the judgment observed as under:-

“17. Of the two propositions raised in this appeal, the first proposition has been completely answered in *State of Orissa v. Debendra Nath Pandhi*, (2005) 1 SCC 568 regarding the trial court's power to recall its order framing

charge against an accused. Having regard to the language of Sections 207 and 227 of the Code of Criminal Procedure, while framing charges the trial court can only look into the materials produced by the prosecution while giving an opportunity to the accused to show that the said materials were insufficient for the purpose of framing charge. The decision in *Satish Mehra v. Delhi Admn.*, (1996) 9 SCC 766 having been overruled in *Debendra Nath Pandhi's* case, the contention of Mr. Desai that the Magistrate should have reopened the matter on the basis of the documents produced by the prosecution at the instance of the accused, is no longer *res integra*. The question of discharge by the learned Magistrate after framing of charge does not, therefore, arise, notwithstanding the submissions advanced with regard to denial of natural justice and a fair and speedy trial as contemplated under Article 21 of the Constitution, which have no application whatsoever to the facts of this case.

18. With regard to the second proposition regarding the High Court's powers to look into materials produced on behalf of or at the instance of the accused for the purpose of invoking its powers under Section 482 of the Code for quashing the charges framed, it has to be kept in mind that after the stage of framing charge evidence has to be led on behalf of the prosecution to prove the charge, if an accused pleads not guilty to the charge and/or charges and claims to be tried. It is only in the exceptional circumstances enumerated in *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 that a criminal proceeding may be quashed to secure the ends of justice, but such a stage will come only after evidence is led, particularly when the prosecution had produced sufficient material for charges to be framed.

19. As observed in *State of Orissa v. Debendra Nath Pandhi*, (2005) 1 SCC 568, at the stage of framing charge, roving and fishing inquiry is impermissible and a mini trial cannot be conducted at such stage. At the stage of framing of charge the submissions on behalf of the accused have to be confined to the material produced by the investigating agency. The accused will get an opportunity to prove the documents subsequently produced by the prosecution on the order of the Court, but the same cannot be relied upon to reopen the proceedings once charge has been framed or for invocation of the High Court's powers under Section 482 of the Code of Criminal Procedure.”

The facts of **Bharat Parikh's** case (supra) are not applicable to the facts of the present case, as that was a case, where an application for discharge had been made after framing of charges. However, in the present case, there is matrimonial dispute between the parties. When the petitioners

filed this petition for quashing of the FIR, challan had already been presented. The only allegation against the petitioners, who are distant relations, was that they had conspired with the husband of the complainant and thereafter, he had given beatings to her and banged her head against the washbasin. It is not the case of the complainant that the petitioners were present in the house when the said beatings were given. After the gap of one month, the complainant made allegations of harassment and cruelty only against her husband. No allegation was made with regard to the role of the present petitioners, who are *massi, massar*, brother and sister-in-law of the husband of complainant. Apart from the above said allegation in the entire FIR, no specific allegation of cruelty has been attributed to the petitioners. After filing of the challan, charges have been framed with regard to the above said allegations. The agony of facing a criminal trial by an ordinary person in a matrimonial dispute has been the subject matter of consideration in a number of cases. In the matrimonial disputes, the proceedings can be quashed even after framing of charges.

At this stage, reference can be made to a judgment passed by this Court in **Harjinder Kaur and others Vs. State of Punjab**, 2004 (4) RCR (Criminal) 332, where criminal proceedings were quashed qua sister-in-law even after framing of charge. While quashing the proceedings, it has been observed as under:-

“19. No doubt, after being summoned as additional accused to face trial, charge has also been framed against the present petitioners vide Annexure P-7, yet there is absolutely no bar to entertain the petition under Section 482 Cr.P.C. only on the ground that the challan has been presented or even the charges have been framed. Each case has to be examined on its own facts. The Apex Court has examined the ambit and scope of the power under Section 482 Cr.P.C. read with Article 227 of the Constitution in the case of **M/s Pepsi Foods Ltd. and another v. Special Judicial Magistrate and**

**another, 1997 (4) RCR (Crl.) 761 (SC)**, and observed as under:

“It is settled that High Court can exercise its power of judicial review in criminal matters. In ***State of Haryana and others v. Bhajan Lal and others, 1991 (1) RCR (Crl.) 383 (SC)***, this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the Court. Exercise of such power would depend upon the facts and circumstances of each case, but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is 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. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but it is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution to be exercised in using these powers.

In **Rakesh Kumar and others Vs. State of Punjab and others, 2009 (2) RCR (Criminal) 565**, this Court was examining a case, where the FIR had been lodged against husband, his four brothers, unmarried sister and mother-in-law. After considering the case, charge sheet against all the accused, except husband and mother-in-law was quashed. While quashing the proceedings, it has been observed as under:-

“13. In the present case, the petitioners are the brothers, their wives and sister of the husband of the complainant. A perusal of the FIR (Annexure P-1) reveals that all the allegations are general in nature. So far as the entrustment of dowry articles is concerned, the memos of recovery of dowry articles (Annexure P-3 to P-6) reveal that dowry articles were recovered from

the husband and mother-in-law of the complainant. It has been averred that the complainant had been tortured by all the accused for not bringing a Santro car and by calling her *baanj*. It has also been averred in the FIR that petitioner Nos. 1 and 4 along with Mukesh Kumar, husband of the complainant, had given beatings to the complainant under the influence of liquor. However, no specific date has been mentioned nor the nature of injuries suffered by the complainant has been disclosed in this regard.

14. In *Kans Raj v. State of Punjab and others, 2000 (2) RCR (Criminal) 596 (SC)*, their Lordships of the Apex Court have observed that a tendency has been developed for roping in all the relations in dowry cases and if it is not discouraged, it is likely to affect case of the prosecution even against the real culprits. The efforts for involving the other relations ultimately weaken the case of the prosecution even against the real accused.”

In *Suraj Rani Vs. State of Punjab & another*, CRM No. M-26684 of 2009 (decided on 28.05.2010), this Court quashed the proceedings in an FIR registered under Sections 406 and 498-A IPC, as only vague allegations had been levelled against all the family members jointly. While quashing the proceedings, it was held that the order framing of charge was formal, short and cryptic.

“8. Moreover, there is no allegation with respect to entrustment of dowry articles to the petitioner nor is there any allegation of any specific demand of dowry. Hon’ble the Supreme Court, in the case of *Ramesh v. State of Tamil Nadu* reported in 2005 (3) S.C.C. 507, in para 6, held as under :-

“6. Before we proceed to deal with the two contentions relating to limitation and territorial jurisdiction, we would like to consider first the contention advanced on behalf of the appellant-Gowri Ramaswamy. Looking at the allegations in the FIR and the contents of charge-sheet, we hold that none of the alleged offences, viz., Sections 498-A, 406 of the IPC and Section 4 of the Dowry Prohibition Act are made out against her. She is the married sister of the informant’s husband who is undisputedly living in Delhi with her family. Assuming that during the relevant time, i.e., between March and October, 1997, when the 6th respondent (informant) lived in Mumbai in her marital home, the said lady stayed with them for some days, there is nothing in the complaint which connects her with an offence under Section 498-A or any other offence of which cognizance was

taken. Certain acts of taunting and ill-treatment of informant by her sister-in-law (appellant) were alleged but they do not pertain to dowry demand or entrustment and misappropriation of property belonging to the informant. What was said against her in the FIR is that on some occasions, she directed the complainant to wash W.C and she used to abuse her and used to pass remarks such as “even if you have got much jewellery, you are our slave.” It is further stated in the report that Gowri would make wrong imputations to provoke her husband and would warn her that nobody could do anything to her family. These allegations, even if true, do not amount to harassment with a view to coercing the informant or her relation to meet an unlawful demand for any property or valuable security. At the most, the allegations reveal that her sister-in-law Gowri was insulting and making derogatory remarks against her and behaving rudely against her. Even acts of abetment in connection with unlawful demand for property/dowry are not alleged against her. The bald allegations made against her sister-in-law seem to suggest the anxiety of the informant to rope in as many of the husband’s relations as possible. Neither the FIR nor the charge-sheet furnished the legal basis to the Magistrate to take cognizance of the offences alleged against the appellant Gowri Ramaswamy. The High Court ought not to have relegated her to the ordeal of trial. Accordingly, the proceedings against the appellant Gowri Ramaswamy are hereby quashed and her appeal stands allowed.”

A Division Bench of this Court in *Vishwa Nath Vs. Union of India and others*, CWP No.14368 of 1998 (decided on 27.11.2000), was examining a petition under Article 226 of the Constitution of India, which was filed for quashing of FIR under Section 295-A IPC. In that case, the accused had allegedly committed an offence by writing article titled as '*Dharam Ke Ujjawal Paksh Ki Ujjwalta*'. Apart from quashing of FIR, accused-petitioner had also sought quashing of order dated 16.03.1999, vide which, the State Government had granted sanction under Section 173 Cr.P.C. for his prosecution. The Division Bench held that sanction to prosecute the petitioner under Section 196 Cr.P.C. was not mere a formality.

applying its mind to the entire material relating to the case. The power to grant sanction cannot be delegated by simply approving draft note prepared by the office subordinate. Further, the evidence collected during investigation did not disclose the offence under Section 295-A IPC, which requires that there should be deliberate and malicious act intended to outrage religious feelings of other class by insulting its religion or religious belief. In the absence of any material to show that publication had been made with intention to outrage the religious feelings of Hindu Community, the order dated 16.03.1999 granting sanction for prosecution of the petitioner under Section 196 Cr.P.C. read with Section 295-A IPC was quashed.

In the facts of the present case, allegations against the present petitioners pertain to only one incident, which took place on 20.12.2003 when the complainant was beaten by her husband and her head was banged with washbasin. The allegation against the present petitioners was that on 19.12.2003, they had conspired with her husband for inflicting injuries to her. In the backdrop of complaint dated 14.01.2004 (Annexure P-9), the allegation of conspiracy would not be made out and hence, there was no evidence with regard to cruelty, which can be attributed to the present petitioners, so that they should face the agony of criminal trial.

Learned counsel for respondent No.2 is not disputing that a decree of divorce has already been granted on 06.04.2009 on the ground of cruelty to the wife.

In the light of the above discussion, this Court is of the view that the petitioners have been roped in the present case merely because they are close relatives of the husband of complainant. No useful purpose would be

served in prolonging the litigation between the parties, as continuation of criminal proceedings would amount to an abuse of the process of Court. Hence, in the facts and circumstances of the case, it would be just and expedient to quash the criminal proceedings initiated on the basis of FIR (Annexure P-15) along with order of framing of charge.

Accordingly, FIR No.13 dated 20.01.2006, under Sections 498-A, 406, 323 read with Section 34 IPC, registered at Police Station, Rajender Park, Sector 5, Gurgaon, is quashed with all consequential proceedings arising therefrom qua the petitioners.

Petition stands allowed accordingly.

18.01.2017  
ajp

(RITU BAHRI)  
JUDGE

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No