

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

**CRM No.M-15391 of 2016
Decided on: 24.03.2017**

Gurwinder Singh and another

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

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

Ms. Dimple Jain, AAG, Haryana.

Mr. Akashdeep Singh, Advocate
for respondent No.2.

REKHA MITTAL, J.

The present petition has been filed under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') for quashing of FIR No.52 dated 06.02.2015 under Sections 323, 341, 506 of the Indian Penal Code (in short 'IPC') (offence under Section 498-A and 494 IPC added later) registered at Police Station Sirsa Sadar, District Sirsa and the proceedings emanating therefrom.

Counsel for the petitioners has submitted that marriage of the petitioners was performed on 04.03.1994 and two sons were born out of the wedlock on 01.01.1996 and 15.11.1999. Marriage of the complainant with brother of petitioner No.2 was solemnized in the year 1999. Petitioner No.1 is a government employee posted as Constable in Punjab Police since 29.10.1993. Balwinder Kaur received information that her brother had been beaten up by some persons. She along with

Balwinder Singh reached village Mirjapur and found that Sukhbir Singh, husband of the complainant/respondent No.2 has been brutally beaten up. The injured was admitted in the hospital and on the statement of petitioner No.2, FIR No.164 dated 07.06.2014 for offence under Sections 323, 324, 326, 307, 506, 148 and 149 IPC was registered against brother of respondent No.2 namely Ajmer, Jasmer, etc. at Police Station Ellenabad. Thereafter, respondent No.2 in connivance with her family members and police officials got lodged false FIR No.52 dated 06.02.2015 under Sections 323, 341 and 506 IPC at Police Station Sirsa Sadar, District Sadar by concocting a false story.

Counsel would submit that the present FIR was lodged by the complainant as a counter blast to FIR No.164 dated 07.06.2014 and with an intent to wreck vengeance by implicating entire family of the husband in the false FIR. It is further argued that no offence is made out against the petitioners even if the contents of the FIR are taken as correct on its face value. Further submitted that on due investigation of the FIR, offence under Sections 323, 341 and 506 IPC has been deleted but offence under Sections 498-A and 494 IPC has been added. It is further argued that the petitioners are leading a happy married life along with their children. Ajaib Singh – accused in FIR No.164 dated 07.06.2014 is a retired Deputy Superintendent of Police and real uncle of respondent No.2. Virsa Singh real uncle of respondent No.2 is also a police official and both of them are bent upon to torture, harass and humiliate the petitioners. It is prayed that the FIR and proceedings emanating therefrom are liable to be quashed to prevent abuse and misuse of process of law.

Counsel for respondent No.2 while refuting contention of counsel for the petitioners would argue that Sukhbir Singh, husband of respondent No.2 is maintaining illicit relations with one Rani and thus guilty of committing offence punishable under Section 498-A IPC. It is argued that both the petitioners are privy to said illicit relationship of Sukhbir Singh with Rani, therefore, they are liable to face trial for offence under Section 498-A IPC. In addition, it is argued that the petitioners had been talking to said Rani on mobile, sufficient to prove prima facie that they have entered into a conspiracy with Sukhbir Singh in regard to Sukhbir Singh's maintaining illicit relationship with Rani. The last submission made by counsel is that in the report submitted under Section 173(2) Cr.P.C., there is reference to call details from March to July, 2014 pertaining to mobile No.093550-33272 of Balwinder Kaur, 093550-33271 of Darshan Kaur, 99921-98705 of Rani, 98132-30138 of Sukhbir Singh and 094173-71002 of Kulwinder Singh and communication/talks inter se on these mobile numbers. In addition, it is argued that the disputed questions of fact cannot be adjudicated upon under Section 482 Cr.P.C. and required to be decided by the trial Court on the basis of evidence.

Counsel for the State has echoed the arguments advanced by counsel for respondent No.2.

I have heard counsel for the parties and perused the records.

It is pertinent to mention at the outset that the entire controversy in the present petition pivot around the offence under Section 498-A as, admittedly, offences under Sections 323, 341 and 506

IPC in regard whereof the FIR was initially registered already stand deleted. Counsel for the parties, on a pointed query raised by the Court, have fairly informed that offence under Section 498-A lodged against Sukhbir Singh and others pertains to allegations of extra marital relationship of Sukhbir Singh with one Rani. Perusal of the report submitted under Section 173(2) Cr.P.C. would make it evident that in the said report, on the last page, there is reference that since March/April to July, 2014 there were telephonic conversations between Balwinder Kaur, Darshan Kaur, Rani, Sukhbir Singh and Kulwinder Singh through mobile Nos.93550-33272, 93550-33271, 98962-30138, 99921-98705 & 98132-30138 and 94173-71004 respectively. It has further been mentioned that all these facts can be verified through the call details of these mobile numbers.

On 14.02.2017, an order was passed by this Court and a relevant extract therefrom reads as follows:-

“Neither counsel for the petitioners nor respondent No.2 are very sure if any record of call details was obtained during investigation much less how it has been dealt with.

Counsel for respondent No.2 prays for time to go through the records of the trial Court and make submissions in this regard.”

Today, (on the adjourned date) counsel for respondent No.2 has informed that though record of the call details from these mobile numbers is a part of the challan presented by the prosecution but there is no evidence on record as to whom these mobile numbers belong to in order to connect that there was any communication inter se the

petitioners and Rani with whom Sukhbir Singh, husband of respondent No.2 allegedly developed illicit relationship. In absence of any such evidence that the petitioners had been communicating with said Rani, no offence is made out against the petitioners for subjecting them to rigmarole of criminal trial. In this view of the matter, criminal proceedings against the petitioners are nothing but abuse and misuse of process of law and liable to be quashed.

For the foregoing reasons, the petition is allowed. FIR No.52 dated 06.02.2015 under Sections 323, 341, 506 IPC (offence under Section 498-A and 494 IPC added later) registered at Police Station Sadar, Sirsa and proceedings emanating therefrom are ordered to be quashed only qua the petitioners. Nothing stated hereinbefore shall cause prejudice to trial pending against other accused.

24.03.2017
yakub

(REKHA MITTAL)
JUDGE

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