

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. M-16494 of 2015 (O&M)
Date of Decision: 05.7.2017**

Amit Duggal

.....Petitioner

Versus

Shikha

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. A.K.Lamdharia, Advocate
for the petitioner.

Mr. Arnav Sood, Advocate
for the respondent.

ANITA CHAUDHRY, J

This petition has been filed under Section 482 Cr.P.C. for quashing the complaint and the summoning order.

Some facts are necessary. The respondent was working with Tech Mahindra in 2007. She came in contact with the accused sometime in 2008 on the social site. They had number of meetings. With the passage of time their meetings became more frequent. The complainant married an NRI in October 2008 and went abroad in May 2009. She returned to the country in September 2009 as her relationship went into a rough patch. The complainant during her stay abroad remained in touch with the accused. On her return they started meeting again. Accused No. 1 used to come to her rented accommodation and proposed marriage in December 2009. She declined but he kept pursuing her. He persuaded her to leave her job as his

her to his parents. The allegations in the complaint are that on 31.12.2009 on New Year eve, the accused came to her house in Chandigarh and took her to a hotel in Sector-43 where a soft drink laced with an intoxicant was served. Later she found herself in a hotel room in Sector-42. The accused wanted to have physical relation but she refused but she was gagged and the accused forced himself upon her and thereafter threatened her not to disclose the incident. The accused took her to Iskcon Temple and promised to marry her. The complainant left her job in Chandigarh and returned to her parents. In 2010 she started working again but on the persuasion of the accused she left the job again and returned to her parents. The allegations are that the accused refused to perform marriage and blackmailed her and threatened to show the video clips.

The trial Court recorded preliminary evidence and summoned only accused No. 1. The complaint as against the parents was dismissed.

The petitioner has filed this petition seeking quashing of the complaint and the summoning order. His plea is that a story has been concocted and false allegations had been made. It was pleaded that before approaching the CJM, Hoshiarpur the respondent had initially made a complaint to SSP, Hoshiarpur which was investigated and it was observed that the police at Hoshiarpur had no jurisdiction as the occurrence had taken place in Chandigarh but the complainant chose to file a complaint at Hoshiarpur. It was pleaded that contradictory allegations have been made in the different complaints and the proceedings are an abuse of the process of Court. It was pleaded that the respondent could not have made any proposal during the subsistence of her marriage and there was no medical evidence to support the false allegations. It was pleaded that the complainant was

married and he was unmarried.

The respondent in her reply pleaded that she was yet to lead evidence and would produce the conversations and the recordings. It was pleaded that the complaint was not an encyclopedia and Annexure P-3 did not contain all the facts. It was pleaded that the petitioner had raped her by putting some intoxicant in her drink and gagged her. She alleged that promise of marriage was made but now he was backing out. The allegations which were made in the complaint were reiterated. It was pleaded that no scientific evidence was available as rape was committed in the year 2009 and as the petitioner had assured marriage therefore she did not disclose the incident to anyone.

Counsel for the petitioner contends that the respondent was earlier married to someone from whom a settlement was affected and she received some consideration and she had given an affidavit which they have placed on the record today. It was urged that the respondent married an NRI and went abroad and the marriage is still subsisting and there was no occasion for the petitioner to propose marriage and false allegations have been levelled and there is no medical evidence. It was urged that the complainant had wrongly filed the complaint at Hoshiarpur as no cause of action accrued there and it was just a pressure tactic.

The submission on the other hand was that it is for the trial Court to examine the correctness of the allegations and the allegations are serious. On a query, counsel for the respondent admits that the respondent had not taken divorce from her husband and her marriage still subsists.

The petitioner has been summoned to face trial under Section 376 IPC. The allegations relate to an incident which took place in 2009.

The complaint has been filed in 2014 with no medical record. The complainant had not placed on record any document or recorded conversations to support the allegations. The complainant is a married woman and during the subsistence of her marriage she asserts that they have entered into a relationship. The allegations are that the marriage was proposed to her but the petitioner did not keep his word. The petitioner could not have married the complainant as she was already married.

The petitioner is seeking quashing of FIR. It is necessary to notice the principles laid down in ***State of Haryana vs. Bhajan Lal, 1992 Supp(1) Supreme Court Cases 335*** which read as under:-

“The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently chennelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

(1) Where the allegations made in the first information report or the complainant/respondent No.2, 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 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 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 specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.

(7) Where a criminal proceeding is manifestly attended with

mala fide and/or where the proceedings 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.”

From the above it is clear that the powers possessed by the High Court under Section 482 Cr.P.C. are wide but the power requires great caution in its exercise and facts of each case have to be examined. On a reading of the complaint it is clear that the complainant had married for the second time and her marriage is still subsisting. She is married to a person who is residing abroad. The complainant returned few months after her marriage and again contacted the petitioner. Admittedly, she has not taken divorce. Her plea that there was a false promise of marriage by the petitioner gets falsified. There could be no marriage during the subsistence of her marriage. The complainant is major and old enough to understand the consequences of her relationship. She is living in a live in relationship during the subsistence of her marriage. It is an act of adultery on her part. It is a case of consent and is not covered under Section 375 of the Indian Penal Code. The present case does not fall under any of the clauses. It cannot be said to be a case where the complainant has been exploited. She was aware of the consequences of her action. She chose to revive her relationship with the petitioner even after her marriage. The complainant was not innocent or naive that she did not know the consequences of her act. It is a fit case where the complaint should be quashed to prevent the misuse of criminal justice system for personal vengeance. The complaint has been filed with an ulterior motive. It is a fit case where the extraordinary powers under Section 482 Cr.P.C. should be exercised.

The petition is allowed. The complaint and the summoning order and any subsequent order passed therein is quashed.

(ANITA CHAUDHRY)
JUDGE

July 05, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No