

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

CRM-M-17652-2016

Date of decision: 7.12.2017

Snehlata

...Petitioner

Versus

Hiteshi and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mrs.Pratibha Yadav, Advocate for the petitioner

Mr.Mukesh Yadav, Advocate for respondent Nos. 1 and 2

Ms.Dimple Jain, AAG, Haryana

JITENDRA CHAUHAN, J.

The present petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of Criminal Complaint No.1 dated 4.3.2016 (Annexure P8) titled “Smt.Hiteshi and another vs. Manish Kumar and another” pending in the Court of learned Chief Judicial Magistrate, Rewari and all consequential proceedings arising therefrom.

The brief facts of the case are that a complaint under the Protection of Women from Domestic Violence Act, 2005 was filed by respondent No.1- daughter-in-law of the petitioner. The marriage of son of the petitioner was solemnized with respondent No.1 in the year 2003. Out of the wedlock, a female child was born on 3.8.2004. The allegations were levelled that the father of respondent No.1 had given enough dowry

in the marriage as per his capacity and Rs.4.25 lakh through FDR. The family of the petitioner began to torture and taunt respondent No.1 on the issue of dowry. At times, they kept the respondent hungry and used to give her meals only one time in a day. They used to ask the respondent to go back to her parental house and would send her entire istridhan and dowry articles later on. During the pregnancy, respondent No.1 was not provided any medical assistance or treatment by the petitioner. During the month of December, 2005, she was given beatings by the family of the petitioner and ousted from her matrimonial home alongwith her minor daughter. A claim for maintenance under Section 125 Cr.P.C. was made.

The petitioner is the mother-in-law of respondent No.1 and grand mother of respondent No.2.

Learned counsel for the petitioner submits that a complaint on the similar set of facts under Section 12 of the Protection of Women from Domestic Violence Act 2005 was filed after four years from the date respondent No.1 had left the matrimonial home, at Bahrar, Alwar (Rajasthan). When the case was fixed for arguments and final disposal on 25.1.2016, it was got dismissed as withdrawn. During the pendency of the said complaint, another complaint was filed before learned Chief Judicial Magistrate, Rewari on 22.9.2014, which was also dismissed as withdrawn. The petitioner has no concern with her son. Her son has not been residing with her since 1997. Husband of respondent No.1 had already been disinherited by the husband of the petitioner during his life

time by way of a public notice. Learned counsel further contends that only to harass the petitioner, she has been made party in the complaint. She is a septuagenarian.

On the other hand, learned counsel for respondent Nos.1 and 2 submits that the complaints filed at Bahrar and Rewari were dismissed as withdrawn with liberty to file fresh one. There are specific allegations of harassment against the petitioner on account of demand of dowry.

I have heard the learned counsel for the parties.

Hon'ble the Supreme Court in the case of **State of Haryana and others vs. Ch.Bhajan Lal and others** reported as **AIR 1992 Supreme Court 604** has held as under :-

“In following categories of cases, the High Court may in exercise of powers under Art.226 or under S.482 of Cr.P.C. may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However power should be exercised sparingly and that too in the rarest of rare cases.

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 S.156 (1) of the Code except under an order of a Magistrate within the purview of S.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 F.I.R. 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 S.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.

8) Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases enumerated above, calling for exercise of extraordinary powers or inherent powers, quashing of FIR was not justified.”

Similarly, in the case of **Madhavrao Jiwaji Scindia vs. Sambhajirao Chandojirao Angreb** reported as **1988(1) RCR 565 : AIR 1988 SC 709**, Hon'ble apex Court propounded the law regarding the exercise of the inherent jurisdiction under Section 482 of the Code by the High Court in such like matter as under :-

“The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear

in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and whether in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceedings even though may be at a preliminary stage.”

Hon'ble the Supreme Court in the case of **Kailash Chandra Agarwal & Anr. Vs State of U.P. & Ors.**, 2014 AIR (SCW) 6152 noticed that the complaint did not attribute specific role to the relatives of the husband and it was quashed, by referring to the judgment in the case of **Kans Raj Vs. State of Punjab & Ors.** ((2000) 5 SCC 207), which reads thus:

"5.....A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the

parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case."

Reverting to the instant case, the husband of respondent No.1 had already been disinherited by the husband of the petitioner way back in the year 1997. The petitioner never stayed with her son. Earlier, respondent No.1 had filed a similar complaint at Bahrar (Rajasthan), which was dismissed as withdrawn. During the pendency of the said complaint, another complaint was filed by respondent No.1-complainant, which was also dismissed as withdrawn. The present complaint was filed after 11 years from the date when respondent No.1 had left the matrimonial home. In the complaint, there is no mention as to since when she had been residing with the petitioner. A bare perusal of Annexure P12, shows that in a petition filed by respondent No.1 under Section 125 Cr.P.C., while appearing as AW1, she has admitted that she had been residing at Village Jakhrana, District Alwar with her father and her daughter was also studying in a private school at Jakhrana, whereas the petitioner is a permanent resident of Dharuhera, District Rewari. The Court feels that the present complaint is attended with mala fide and have been maliciously instituted at Rewari against the widowed mother-in-law with an ulterior motive for wreaking vengeance and therefore, it is a fit case for the Court to exercise its powers under Section 482

Cr.P.C. to quash the present complaint qua the petitioner.

Accordingly, the present petition is allowed. Criminal Complaint No.1 dated 4.3.2016 (Annexure P8) titled “Smt.Hiteshi and another vs. Manish Kumar and another” pending in the Court of learned Chief Judicial Magistrate, Rewari and all consequential proceedings arising therefrom are hereby quashed qua the present petitioner.

7.12.2017
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?	Yes	/	No
Whether reportable?	Yes	/	No