

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

CRM-M-26781-2011 (O&M)

Date of decision: 29.9.2017

Gurmel Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.PS Hundal, Sr. Advocate with
Mr.Jashandeep Singh, Advocate for the petitioners

Mr.NK Banka, DAG, Punjab

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

JITENDRA CHAUHAN, J.

The present petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of First Information Report No.42 dated 23.3.2010, registered under Sections 498-A, 406 and 420 of the Indian Penal Code at Police Station Phillaur, District Jalandhar.

As per prosecution version, a written complaint No.219-PTD dated 13.3.2010 addressed to the Deputy Inspector of General, Jalandhar was made by complainant Sukhwinder Kaur with regard to cheating and misappropriation of dowry articles by the petitioners and their son Avtar Singh and other in-laws of her daughter Pardeep Kaur. At the time of marriage, a huge amount was spent on the marriage by the

complainant but her in-laws were not satisfied and coerced and harassed her to bring more dowry. The accused misappropriated the dowry articles entrusted to them.

Learned counsel for the petitioners submitted that the petitioners are the parents- in -law of daughter of the complainant, who has been residing in Canada and never came to India to substantiate the allegations levelled in the FIR. Moreover, a decree of divorce has been passed by the Court of Queen's Bench of Alberta at Edmonton vide order dated 15.2.2012 (Annexure P5). Earlier also an enquiry was conducted by Superintendent of Police (D), Jaladhar, wherein it was found that a false case had been got registered by Sukhwinder Kaur- respondent No.2. In the third enquiry conducted by SP (Hq.), Hoshiarpur, it was found that a case was made out against the petitioners and their son, but said enquiry was conducted without examining the daughter of respondent No.2, the alleged the victim as she never came to India to substantiate the allegations made in the First Information Report. The daughter of respondent No.2 stayed at her matrimonial home for less than two months. The larger part of the occurrence had taken place in Canada. In her statement before the Queen's Bench of Alberta at Edmonton, Annexure P4, the victim did not level any allegation against the petitioners.

On the other hand, learned counsel for the State as well as learned counsel for respondent No.2 submitted that the final report under Section 173 Cr.P.C. has already been filed. As per the enquiry conducted

by the SP (HQ), Hoshiarpur, a case under Sections 498A, 406 and 420 IPC is made out against the petitioners and their son.

I have heard the learned counsel for the parties and perused the case file.

Certain facts are not in dispute. The marriage of son of the petitioners, namely Avtar Singh was solemnized with Pardeep Kaur, daughter of respondent No.2 on 8.2.2006 at Gurudwara Panj Tirath, Village Jhandu Singh, District Jalandhar as per Sikh Rites and Ceremonies. It was got registered on 30.12.2007 at Phillaur. A son was born out of the wedlock on 24.9.2008 and he is living with her mother at Canada.

It is the case of the petitioners that Pardeep Kaur was earlier married with someone else and the said fact was not disclosed to the petitioners before marriage to their son. After some time, Pardeep Kaur went to Canada and started residing there. Avtar Singh son of the petitioners also joined her in Canada in the month of May, 2009. Due to temperamental differences, they could not live together. In the month of February, 2010, mother of Pardeep Kaur came to India and lodged the present false First Information Report against the petitioners and their son.

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.

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.”

This court in **Lakhwinder Singh vs. State of Punjab 2000**

(4) RCR (Crl.) 104, summed up the principles of law with regard to the scope of Section 482 Cr.P.C. while quashing of criminal proceedings:-

- (i) Wholesome jurisdiction conferred upon High Court by Section 482 Criminal Procedure Code cannot be narrowed, confined or put in a strait-jacket.
- (ii) Inherent power can always be exercised by High Court to prevent abuse of process of court or to otherwise secure ends of justice. The only constraint on High Court is that since the power under Section 482 Criminal Procedure Code is very wide, it should be exercised with great care and caution.
- (iii) High Court should not shy away from exercising this power when accused persons are being prosecuted in the guise of prosecution.
- (iv) Proceedings initiated and continued for oblique motive or to wreak vengeance on other party are liable to be quashed. Proceedings are also liable to be quashed if even on the allegations being accepted in toto, prima facie no offence is made out.
- (v) There is no absolute bar to the entertainment of a

petition under Section 482 Criminal Procedure Code only on the ground that charges have been framed.”

In Harmanpreet Singh Ahluwalia and others vs. State of Punjab and others 2009(2) RCR (Crl.) 956, Hon'ble the Supreme Court held as under:-

“Furthermore, the large part of offence, if any, has been committed only in Canada. Why the father of respondent No.3 had to come from Canada to Jalandhar to lodge an FIR is difficult to comprehend. Respondent No.3 and the first informant do not say that the inquiry report submitted by the Superintendent of Police on the representation made by the appellant No.2 was incorrect. It has also not been stated that as to on what material, the charge-sheet had been submitted. We, in the peculiar facts and circumstances to this case, have absolutely no doubt in our mind that the allegations contained in the FIR had been made with an ulterior motive to harass the appellants. Continuance of the criminal proceedings against them would, therefore, amount to abuse of process of the Court.”

Analysing the facts of the present case on the touchstone of the ratio of the law laid down in the aforesaid authorities, even if the

allegations contained in the First Information Report are taken at their face value, no offence is made out against the petitioners, who were parents-in-law of Pardeep Kaur. It is manifestly clear that larger part of the offence, if any, had been committed in Canada and the present FIR has been maliciously instituted with an ulterior motive by the mother of said Pardeep Kaur, who had come from Canada. The alleged, victim Pardeep Kaur never visited India to substantiate the allegations levelled against the petitioners in the First Information Report. Moreover, a decree of divorce has been passed by a Court of competent jurisdiction at Canada. The action on the part of the complainant is indeed *mala fide*.

Accordingly, the Court feels that the petitioners have made out an exceptional case to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C. to prevent the abuse of the process of the Court.

In the upshot, the present petition is allowed. First Information Report No.42 dated 23.3.2010, registered under Sections 498-A, 406 and 420 of the Indian Penal Code at Police Station Phillaur, District Jalandhar and all consequential proceedings arising therefrom are hereby quashed qua the present petitioner (s).

29.9.2017
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No