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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22641-2014 [O&M]

Date of Decision:- July 31, 2017

Charanjit Kaur and another

....Petitioners

Versus

State of Punjab etc.

....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Vivek K.Thakur, Advocate,
for the petitioners.

Mr. Rahul Rathore, D.A.G., Punjab.

Mr. P.S.Sullar, Advocate,
for respondents No. 2 and 3.

SHEKHER DHAWAN, J.

Present petition under Section 482 of Code of Criminal Procedure [Cr.P.C.] is for quashing of FIR No. 229 dated 5.12.2013 (Annexure P/6) registered under Sections 420, 406 and 120-B IPC at Police Station Sultanpur Lodhi, District Kapurthala and report [Annexure P/7] under Section 173 Cr.P.C. and subsequent proceedings arising therefrom.

2 Facts relevant for the decision of the present petition; that in April, 2009, Daljit Kaur, petitioner No.2 had gone to Australia on Study Visa. The marriage of petitioner No. 2 was performed with Hardeep Singh, respondent No.3 on 31.10.1999 and for that purpose, petitioner

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No.2 came to India in September, 2009. After performance of marriage, petitioner no. 2 had gone to Australia on 29.12.2009. Efforts were made to obtain visa of Hardeep Singh, respondent no. 3 as well, but Australian Government refused visa to him on 29.3.2010 (Annexure P/1). Petitioner No. 2 again applied for visa of respondent No. 3, but same was refused again by Australian Government on 15.04.2011 (Annexure P/3). In December, 2011, petitioner No. 2 again came to India for her brother's wedding and had gone back to Australia on 9.1.2012. As respondent No. 3 could not get the visa, petitioner No. 2 got a decree of divorce in Australia and respondent No. 2 got registered the present FIR on 5.12.2013 against the petitioners, i.e., after four years of the marriage.

3. Learned counsel for the petitioners contended that respondent No. 2 has got registered the present FIR on totally incorrect facts and because of his political connections whereas, there was no occasion for the present petitioners to commit the alleged offences punishable under Sections 420, 406 and 120-B IPC and as such, the present FIR be quashed because the continuation of any proceedings on the basis of such false and frivolous FIR shall be miscarriage of justice. In support of his arguments, reliance has been placed on the decision of Hon`ble Supreme Court in **Madhavrao Jiwajirao Scindia V. Sambhajirao Chandrojirao Angre and others, 1988 (1) RCR (CrI.) 565.**

4. Learned counsel for the respondents contended that in fact, petitioner No. 2 had performed marriage with Hardeep Singh, respondent No. 2 on 31.10.2009 as per Sikh rites and at that time, complainant Dharam Singh, respondent No.2, had given 16 tolas of gold to to

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petitioner No.2. She had also received a sum of Rs.7.00 lakhs including visa fee from time to time. After performance of marriage, petitioner No. 2 came back India twice and stayed in their house and on the pretext that her brother's marriage was going to be performed, she had taken 6 tolas of more gold from them. Thereafter, petitioner No.2 did not make any phone call for a period of over one year. It was on 1.1.2013 that they received a letter from Australia indicating that there was some divorce order from Australian Court. Respondent No. 2 tried to contact Charanjit Kaur, petitioner No. 1 herein, (mother of petitioner No.2), but she was not available and their house was found locked. Thereafter, he took up the matter with the Sarpanch of their village as well, but to no effect and as such, the present FIR was got registered against the petitioners.

5. Learned counsel representing respondents No. 2 and 3 also contended that there are no grounds for quashing of present FIR. More so, the FIR was registered on the basis of enquiry conducted by senior police officers on the complaint made by respondent No.2 and the present petition be dismissed.

6. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that most of the facts are no disputed that Daljit Kaur, petitioner No.2 got married with respondent No. 3 on 13.10.2009. Efforts were made by petitioner No.2 so as to arrange visa for respondent No. 3 but his visa was refused by the Australian Government twice and the circumstances were beyond the control and power of the petitioners in any way.

7. There is nothing on the file to establish the entrustment of 16

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tolas of gold and 6 tolas of gold by private respondents to petitioner No.2 at any point of time and that being so, there is no question of breach of trust as well.

8. There is another aspect of the matter. Even if, the contention of the private respondents is taken to be correct, still 16 tolas of gold given at the time of marriage is *Istri dhan* of petitioner No. 2 and there is no question of breach of trust or cheating as a married woman is absolute owner of *istri dhan* property and can deal it with any manner. Such a view was taken by Hon`ble Supreme Court in **Pratibha Rani Vs. Suraj Kumar and another, 1985(1) R.C.R. (Criminal) 539.** If the entire allegations are taken into consideration, the very basis of the complaint/FIR lies on incorrect facts and because of the fact that the complainant was aggrieved of refusal of visa of his son, respondent No. 3 which was not within the control and power of petitioner No.2 or petitioner No.1 in any way. Thus, it would not be expedient and in the interest of justice to permit the prosecution to continue as this would amount to abuse of the process of Court.

9. It is well-established principle of law that inherent powers conferred on this Court under Section 482 Cr.P.C. has to be exercised to correct patent illegalities of when some miscarriage of justice is done. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed, because they are initiated illegally, vexatiously or without jurisdiction and where the allegations, 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

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against the accused. Such a view was taken by Hon`ble Supreme Court of India in in Madhu Limaye v. State of Maharashtra, 1978 AIR (SC) 47.

10. In view of the above, the present petition is accepted and FIR No. 229 dated 5.12.2013 (Annexure P/6) registered under Sections 420, 406 and 120-B IPC at Police Station Sultanpur Lodhi, District Kapurthala and all subsequent proceedings arising therefrom, stand quashed.

11. The petition stands allowed in the above terms.

July 31, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned	Yes
Reportable	Yes