

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

Date of decision: July 20, 2017

1. CRM-M-26369-2016

Parveen

...Petitioner

Versus

State of Haryana

...Respondent

2. CRM-M-29474-2016

Bhalender & Another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Perdhuman Yadav, Advocate,
for the petitioners.

Ms. Harpreet Kaur, AAG, Haryana.

Mr. K. S. Dadwal, Advocate,
for the complainant.

JAISHREE THAKUR, J.

1. This common order shall dispose of above noted two petitions as the issue involved therein is identical. However, the facts have been extracted from CRM-M-26369-2016.

2. These two petitions have been filed under Section 482 Cr.P.C. for setting aside the order dated 15.07.2016, passed by the Additional Sessions Judge, Sonapat, vide which the revision petition of the State has been accepted and the order of discharge dated 14.06.2013, passed by the

Court of JMIC, Sonapat, has been set aside.

3. In brief, the facts are that one Manjeet Dagar son of Sh. Ombir Singh, resident of Malikpur, Chaura Road, near Jaffarpur, Delhi married with Nidhi, d/o Ishwar Singh Dahiya, resident of Sonapat, on 14.03.2009. After the solemnization of the marriage, problems arose between Nidhi and her husband which resulted in her lodging a case against her husband Manjeet Dagar, father-in-law Ombir, mother-in-law Sheela, elder brother of her husband Bhalender, Shakuntala-mother-in-law of Bhalender and some other persons as FIR No. 310 dated 12.08.2009 under Sections 312, 315 and 120-B of the IPC and Sections 3, 4, 5 and 6 of the MPT Act at Police Station Bahadurgarh. Thereafter, another FIR was lodged bearing No. 36 dated 04.11.2009, under Sections 498-A, 406 and 34 of the IPC against Manjeet-husband, Bhalender (Jeth), Dipika (Bhalender's wife), Ombeer Singh (father of Manjeet and Bhalender), Sheela Devi (mother of Manjeet) and Parveen Kumar (husband of the sister-in-law).

4. In the FIR, it was submitted that all the accused were guilty of demanding dowry with allegation that Dipika (Jethani), accused No. 3, snatched away all the ornaments and clothing of the complainant and that the complainant was not allowed to use these clothes. It was further alleged that Parveen (*petitioner in CRM-M-26369-2016*) put the demand of the price of a car to be deposited in his account which amount was deposited in his account. It is alleged that the car would have to be purchased in the name of accused No. 1 as dowry article but instead of that, he purchased the car in his name and in this fashion he induced the father of the complainant to give him Rs. 4,10,000/-. In FIR No. 36 dated 04.11.2009, under Section 498-A, 406 and 34 of the IPC, the petitioners filed an application for their

discharge on the ground that they were innocent and have no concern in any manner as they were living separately. It was contended that the petitioner Parveen was serving in BSF and had purchased the car from the BSF quota on the request of the father of the complainant so that they would be able to avail of a concession and the car would be cheaper as against the market price. The application for discharge of the petitioners was allowed by the learned JMIC, Sonapat by holding that there was gross misuse of the provisions of Section 498-A of the IPC as there was a tendency to implicate all family members of the husband, while also noting the argument that an amount has been deposited in the account of Parveen in order to avail of concession of the BSF quota. It was further noted that the car had been bought and the same was found by the Investigating Officer parked in the matrimonial home of the complainant but she had refused to take it back. It was also noted that applicant-Parveen had given a payment of Rs. 4,10,000/-, under protest, in the Court of Sh. K. C. Sharma, the then ASJ, Sonapat, during the hearing of the anticipatory bail. It was also noted as under:

“Seventhly, the documents also reveals that even after receiving the amount of Rs. 4,10,000/-, the complainant with ulterior motive had moved an application dated 05.03.2010 to DGP, BSF, New Delhi against accused No. 6 levelling the allegations against him that he had misappropriated the above said amount of Rs. 4,10,000/- for the purchase of car, which shows that she just wants to implicate all the family members of her husband in this case. Hence, no prima facie case is made out against accused No. 2, 3 & 6 and accordingly, they are hereby discharged. Now, to come up on 14.08.2013 consideration, if any on the charge against accused No. 1, 4 and 6 or otherwise, for framing charge against them.”

5. Against the order of discharge, a revision petition was filed which was accepted by the Additional Sessions Judge, Sonapat on

15.07.2016 holding that the case was at the stage of framing of charge. Learned Additional Sessions Judge held that the challan had been submitted by the police against all accused after investigation and the defence version, put up by the respondents at the time of framing of charges, could not be taken into consideration. It was further held that documents regarding residence of Bhalender and Dipika were not even proved or laid in the defence to establish the factum that they were not joint in mess. The version of Parveen, the petitioner herein, was not taken into account. Aggrieved against setting aside the order of discharge, the instant petitions have been filed.

6. Mr. Perdhuman Yadav, learned counsel for the petitioners, contends that the allegations raised in the FIR are not sufficient to initiate any proceeding against the petitioners herein. It is argued that the only allegation raised against Parveen (*petitioner in the first petition*) is that he induced the father of the complainant to purchase a car for which a sum of Rs. 4,10,000/- was deposited in his account and instead of purchasing the car in the name of the husband of the complainant, the car was purchased in his own name and hence he had misappropriated a sum of Rs. 4,10,000/-. It is further argued that other than a statement made that Dipika (*petitioner No. 2 in the second petition*) has utilized the *Istridhan* of the complainant, no specific allegation has been raised against her and no allegation whatsoever has been made against Bhalender. Counsel for the petitioners relies upon a judgment rendered in ***Arnesh Kumar vs. State of Bihar, AIR 2014 SC 2756***, wherein the habit of roping in all family members in matrimonial disputes has been deprecated by the Apex Court. He further relies upon the judgment rendered in ***Preeti Gupta & another vs.***

State of Jharkhand & another, AIR 2010 SC 3363.

7. Per contra, learned counsel for the complainant urges this Court that there is no infirmity in the order so passed as there are specific allegations made out in the complaint against petitioner-Parveen that he had induced the father of the complainant to deposit a sum of Rs. 4,10,000/- in his account in order to buy a car which had been bought in his own name and specific allegations against other accused as demand of dowry and misusing the *Istridhan* have also been raised. Learned counsel for the complainant relies upon a judgment rendered in ***Sonu Gupta vs. Deepak Gupta and another, 2015 2 RCR (Criminal) 32*** to argue that it is only at the stage of framing of charge that an accused can seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against the accused. He further relies on ***Telu Ram vs. State of Haryana, 2011(2) RCR (Criminal) 162***; ***Chander Kalan vs. Rameshwar and others, 2010(4) RCR (Criminal) 687***; ***Sanghi Brothers (Indore) Pvt. Ltd. vs. Sanjay Choudhary and others, 2008(4) RCR (Criminal) 640*** and ***Deepti @ Arati Rai vs. Akhil Rai & others, 1995(3) RCR (Criminal) 638***.

8. I have heard learned counsel for the parties and with their assistance have perused the record of the case as well as the judgments relied upon.

9. The case as set up by the petitioners herein is that there is no specific or sufficient allegation in the FIR to summon the petitioners. The case of the complainant is that a sum of Rs. 4,10,000/- was deposited in the account of Parveen in order for him to buy a car in the name of the husband of the complainant, whereas, the car was bought in his own name and allegations as raised against other petitioners, namely Bhalender and Dipika,

are to the extent that Dipika utilized the *Istridhan* of the complainant and omnibus allegations against all the accused are that they demanded dowry. The Investigating Officer found that the car, which had been purchased, was lying parked in the matrimonial home of the complainant and when she was asked to take the car, she refused to do so. Parveen has already deposited a sum of Rs. 4,10,000/-, though under protest, in the Court of Sh. K. C. Sharma at the time of getting anticipatory bail and the said money has been taken by the complainant.

10. Argument raised by the counsel for the petitioners that the money had been deposited in the account so that the complainant and her father could avail of a concession in buying a car through BSF quota would have merit. It is known that in case a car is bought under a quota, it could not have been bought directly in the name of the complainant or in the name of the husband of the complainant. The car would have necessarily be registered in the name of buyer availing of the said concession. The very fact that the car was lying at her matrimonial home would be evidence that the car was purchased for use of the complainant. To show his bonafide, the petitioner had also deposited a sumo of Rs. 4,10,000/- before the Court at the time of getting anticipatory bail which amount has been taken by the complainant, which is not disputed.

11. As regards the other two petitioners, though there is an allegation that petitioner-Dipika had utilized the *Istridhan* of the complainant, there is no other specific allegation regarding demand of dowry. In fact, a reading of the FIR would show that the main allegations are against the immediate family members of the husband i.e. father-in-law and mother-in-law, who are already facing trial.

12. The judgment rendered in *Sonu Gupta's case (supra)* as relied upon by the counsel for the complainant is distinguishable and would not be applicable to the instant case, which arose out of allegations of forgery. In that case, there was a protracted litigation between the parties and the husband of the appellant forged the certain documents purported to have been written by the appellant and in connivance with the police got a weak FIR registered against himself in which he obtained general bail and then initiated divorce proceedings. The appellant approached the High Court and the matter was remanded back to the JMIC to produce alleged documents which could prove forgery. It was on that stage that an application was filed by the husband therein seeking discharge which application was dismissed.

In *Sonu Gupta's case (supra)*, the Apex Court held that:

“8. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.”

It was in view of this background that the order dismissing the discharge application was upheld.

13. The law as settled in *Pepsi Food Ltd. And another vs. Special*

Judicial Magistrate, 1997 4 RCR 761 lays down the well settled principle that summoning of an accused is a serious matter. The law as laid down in ***State of Haryana and ors. vs. Bhajan Lal & others, 1991 (1) RCR (Criminal) 383*** subsequently followed in ***Thermax Ltd. & others vs. K. M. Johny & others, 2011(4) RCR (Criminal) 406*** upholds the power to quash criminal prosecution where such proceedings are instituted with malafide or ulterior motive. Various judgments have held that it is for the Courts to examine materials collected in investigation and decide if prosecution is to continue or not.

14. In ***Umesh Kumar vs. State of Andhra Pradesh and another, (2013) 10 SCC 591***, the Apex Court held as under:

“27. The scheme for inquiry/trial provided under the Cr.P.C. is quite clear. After investigation, report under Section 173(2) Cr.P.C. is to be submitted before the competent court i.e. magistrate having jurisdiction in the matter and the magistrate may take cognizance under Section 190 Cr.P.C. However, it is still open to the magistrate to direct further investigation under the provisions of Section 173(8) Cr.P.C. If the case is triable by the Court of Sessions, the magistrate would commit the case to the said court under Section 209 Cr.P.C. It is for the court to examine whether there is sufficient material collected during investigation and filed along with the charge sheet that a prima facie view can be taken to proceed against the accused and in view thereof, frame charges under Section 228 Cr.P.C. At this stage the remedy available to the accused is to ask for discharge under Section 227 Cr.P.C. In case charges are framed the accused has to face the trial, charges can be added/alterd at any stage of the trial, before the pronouncement of the judgment to suit the evidence adduced before the court, under the provisions of Section 216 Cr.P.C. The only legal requirement is that a witness has to be recalled as provided under Section 217 Cr.P.C. when a charge is altered or added by the court.”

15. High Court of Delhi in ***Bhupinder Singh Patel vs. CBI, 2008 SCC Online Del 711***, which was also affirmed by the Apex Court in ***Rajat***

Prasad vs. CBI, (2014) 6 SCC 495, observed as under:

“30. The learned Counsel for the parties fully conscious of the well settled principles on the law governing framing of charges brought to the notice of this Court various precedents in *Niranjan Singh Karam Singh Punjabi, Advocate v. Jitender Bhimraj Bijjaya and Ors.* ; *Union of India v. Prafulla Kumar Samal and Anr.* ; *Dilawar Balu Kurane v. State of Maharashtra* ; *Soma Chakravarty v. State through CBI* ; *Om Wati (Smt) and Anr. v. State through Delhi Admin. And Ors.* ; *State of Orissa v. Debendra Nath Padhi* ; *Neeraj Gupta and Ors. v. CBI* 2007 V Ad (Cri.) (DHC) 517 where the court has repeatedly held that the Court at the stage of framing charges has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under Section 227 of the Code the Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

16. On a conjoint reading of the judgments passed and the law settled therein, this Court has no hesitation in setting aside the orders passed by the Additional Sessions Judge and upholds the discharge order. Merely on account of the fact that an amount of Rs. 4,10,000/- was deposited in the account of Parveen towards a car in order to avail a benefit of the concession of BSF quota, the petitioner can not be held guilty for demand of

dowry. The fact that the car is not in the possession of the petitioner-Parveen, as the car was found by the Investigating Officer parked in the matrimonial home of the complainant, is a factor that can not be ignored. Moreover, the amount was deposited at the time of the engagement, before the marriage took place, it would itself not constitute a demand for dowry. The car could only have been purchased in the name of the petitioner since he was the person who was serving in BSF and was eligible to avail of the said concession. As regards the allegations against the petitioners in **CRM-M-29474-2016**, they are general in nature and the learned JMIC on evaluation of the application, documents and the Challan rightly came to the conclusion that no case is made out against them.

17. In view of above, these petitions are allowed and the order dated 15.07.2017 passed by the Additional Sessions Judge is hereby set aside upholding the order dated 14.06.2013 passed by the JMIC, Sonapat.

July 20, 2017

Ansari

**(JAISHREE THAKUR)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*