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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32486-2015 [O&M]

Date of Decision:- July 25, 2017

Manjinder Kaur and another Petitioners

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Naveen Sharma, Advocate,
for the petitioners.

Mr. Raj Birinder Singh Chahal,
Addl. Advocate General, Punjab

SHEKHER DHAWAN, J.

Present petition under Section 482 of Code of Criminal Procedure [Cr.P.C.] is for quashing of FIR No. 27 dated 12.03.2015 registered under Sections 3, 4 and 5 of Immoral Traffic [Prevention] Act, 1956 [for short, "the Act"] at Police Station Division No.1, Ludhiana City qua the petitioners.

2. Facts relevant for the purpose of decision of present petition; that on the basis of a secret information, the aforesaid FIR was recorded and raid was conducted on Hotel Ankit. The secret information was to the extent that Parminder Singh son of Harbhajan Singh, owner of Hotel Ankit through his Manager, Sushil Kumar son of Hoshiar Singh was indulging in flesh-trade on large scale and by offering rooms to the customers. On the basis of said secret information, raid was conducted. At that time, both the

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present petitioners were apprehended red-handed from Room No. 101. Another couple namely, Rachhpal Singh alias Pala and Harpinder Kaur d/o Manjit Singh was also apprehended in objectionable position from Room No. 103 of the said hotel. On the basis of investigation, final report under Section 173 Cr.P.C. has already been filed and the trial of the case is going on.

3. Learned counsel for the petitioners contended that present petitioners have been falsely implicated in this case. Both of them are major and are related to each other being cousins. [petitioner no.1 is daughter of maternal uncle of petitioner No.2]. More so, the petitioners have been engaged to each other and their marriage was fixed by families of both the petitioners in the month of January, 2015 and affidavits [Annexures P/2] were also sworn in by their parents in this regard. On the said date, petitioner No.2 had come to Ludhiana to meet her fiancée, i.e., petitioner No.1 and was staying in the said hotel when the alleged raid was conducted and continuation of proceedings on the basis of said FIR against the present petitioners is absolutely illegal and same shall result into mis-carriage of justice. In support of his contention, learned counsel for the petitioners placed reliance upon judgments of this Court in **Sukchain Singh and another Vs. State of Punjab, 2013(7) R.C.R. (Criminal), 1899; and Renu Bansal Vs. U.T. Chandigarh, 2009(3) R.C.R. (Criminal) 217.** Therefore, the present FIR and all subsequent proceedings arising therefrom be quashed qua the present petitioners.

4. Learned State counsel contended that the present petition is not maintainable because the FIR has been registered against different

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persons including the present petitioners. More so, the petitioners were caught red-handed at the time of raid conducted on the basis of secret information. Even the plea taken by the petitioners that they were engaged to each other and they were going to be married is contradictory in itself as the petitioners are taking plea that they are related to each other being cousins and being within the prohibited degree of relationship, they cannot perform the marriage. More so, all these pleas can be taken at the time of trial. There are no grounds for quashing of FIR.

5. Having considered the submissions made by learned counsel for the parties and going through the facts of the present case and the judgments referred to by learned counsel for the petitioners, this Court is of the considered view that there are no grounds for quashing of present FIR for more than one reason. Firstly, the present petition for quashing has been filed by the petitioners whereas, there are other accused in the present FIR. As regards the facts of present case, the compromise has not been effected with other accused persons. Partial quashing is not appropriate in the present case. Such a view was taken by this Court in **Navdeep Kumar and another Vs. State of Haryana, 2014 SCC OnLine P&H 21520** and **Manohar Singh @ Manohari Vs. State of Punjab and others, 2012 SCC OnLine P&H 22578**. Further, the plea raised by the petitioners regarding marriage and relationship is apparently contradictory and appears to have been taken as an after-thought so as to take the defence. More so, all these pleas can be taken at the time of trial and this itself shall not be a ground for quashing of FIR. It is well settled principle of law that inherent power conferred on this Court under Section

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482 Cr.P.C. has to be exercised sparingly with circumspection and in rare cases and that too 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 made in the FIR, 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. Such a view was taken by Hon`ble Apex Court in **Union of India Vs. Bajanlal**, AIR 1992 SC 604 and it was observed as under:-

“ In following categories of cases, the High Court may in exercise of powers under Art.226 or under S.482 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.

- i) 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.
- ii). 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(I) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.
- lii). 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

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make out a case against the accused.

- iv). 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.
- v) 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.
- vi) 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.
- vii) 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.
- Viii). 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.”

6. Further, a close scrutiny of the entire material placed on record would reveal that the case of the present petitioners does not fall within any one of the categories mentioned by the Hon`ble Supreme Court, thus dis-entitling them to claim quashing of the FIR.

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7. In view of the above, the judgments cited by learned counsel for the petitioners are of no help to them as the facts of the present case are distinguishable from the same.
8. The present petition stands dismissed.

July 25, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned	Yes
Reportable	Yes