

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

CRM-M-34568 of 2017 (O&M)

Date of decision: 14.11.2017

Gurdev Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Sahil Soi, Advocate for the petitioner(s).

Ms. Gulnoor Ghuman, AAG, Punjab.

None for respondent No.2.

Jitendra Chauhan, J. (Oral)

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of FIR No.14 dated 25.09.2008, registered under Sections 406 and 498-A of the Indian Penal Code (for short 'IPC'), at Police Station NRI, SBS Nagar, District SBS Nagar and all consequential proceedings arising therefrom.

It is contended that the marriage between the parties has already been dissolved by way of mutual consent. The petitioner is father in-law of the complainant/respondent No.2. The son of the petitioner and respondent No.2 have been residing abroad and do not intend to come to India. Though, the cancellation report has been prepared by the police in the matter qua the petitioner but the same has not been presented in the

Court.

The learned State counsel informs that the husband is settled abroad and he has already been declared a proclaimed offender.

Heard.

In **State of Haryana and others** Vs. **Ch. Bhajan Lal and others**, 1991(1) RCR (Crl.) 383, Hon'ble the Supreme Court has framed the following guidelines:-

“(a). 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;

(b) 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 Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) 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;

(d) where the allegations in the FIR 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 Section 155(2) of the Code;

(e) 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;

(f) *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;*

(g) *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.”*

In, M/s Hybrid Seeds and Pesticides, Abohar Vs. State of Punjab, 1997(3) RCR (Criminal) 768, it has been held as under:-

“Where allegations in the complaint did constitute a cognizable offence justifying registration of 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. A critical study of the above guidelines would show that the present case is one which involves a disputed question of fact and would require some evidence in order to adjudicate the plea of the petitioners and in these circumstances the provisions of section 482, Cr.P.C., cannot be invoked.”

In the instant case, the main accused i.e. husband has been declared a proclaimed offender; the challan is yet to be presented and keeping in view the fact that the petitioner has been specifically named in the FIR, there is nothing on record to suggest that the allegations in the FIR did not constitute a cognizable offence justifying registration of 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. The cancellation report, if any, is yet to pass the judicial scrutiny and since disputed facts are involved in this case, if this petition is allowed, it would cause prejudice to the case of the prosecution, therefore, no case for quashing the FIR is made out at this stage.

Dismissed.

14.11.2017
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No