

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

Crl. Misc. M-37046 of 2014 (O&M)
Date of Decision: September 05, 2017

Samar Preet Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. J.S. Dhaliwal, Advocate
for the petitioner.

Mr. Abhaypal Singh Gill, AAG Punjab.

Mr. Gaurav Singla, Advocate
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

This is a petition that has been filed under Section 482 Cr.P.C.
for quashing of FIR No.134 dated 10.12.2013, registered under Sections
406, 498-A of Indian Penal Code at Police Station Women Cell Patiala,
District Patiala.

2. The allegations in the FIR are as under:-

*“To, The Hon'ble SSP, Patiala. Subject:- Application for
taking action against Gangandeep Singh Muti son of
Nirmal Singh Muti, resident of House No.1214, Gali No.2,
Gurbaksh Colony, Patiala. Sir, It is respectfully
submitted that I Lakhbir Singh son of Santa Singh am
resident of Nidhana, Tehsil Guru Harsahai, District*

Ferozepur. That the marriage of my daughter Baljit Kaur Rattanpal whose marriage was solemnized with Gagandeep Singh Muti son of Nirmal Singh Muti, resident of H.No.1214 Gali No.12, Gurbax Colony, Patiala on 27.11.2006. My daughter has got P.R. of Canada and after the marriage she had taken Gagandeep Singh Muti to Canada and whose mediation was done my Massar (maternal uncle) and Massi (Maternal aunt) of Gagandeep Singh who are now residing at Canada and their names are Kirpal Singh and the name of his wife of Charanjit Kaur and that at present Charanjit Kaur is living with her sister in H.No.1214, Gali No.12, Gurbax Colony, Patiala. Now I have come to know from reliable sources that she is here only for $\frac{3}{4}$ days and thereafter she will return back. That after the marriage Gagandeep Singh Muti and his family after going back to Canada started harassing my daughter on the pretext of dowry because before the marriage of Gagandeep Singh Muti, the Samarjit Kaur Gill daughter of Amarjit Singh and the name of her mother Jaswinder Kaur Gill resident of House No.190-B, Gali No.2, Dashmesh Nagar-A, Patiala and now Gangadeep Singh Muti without giving divorce to my daughter is living with Simarjit Kaur Gill and she has taken her from Patiala. All these persons in connivance with each other have played fraud with my daughter as well. My daughter has a son namely Lakhnoor Singh aged Lakhnoor Singh aged about 4/5 years. Lakhnoor Singh has been kept by his grand parents at Patiala and they are not giving the son of my daughter to her. Lakhnoor Singh is a citizen of Canada. I have spent an amount of Rs.20,00,000/- on the marriage of my daughter. Hence, the son of my daughter my kindly be got returned to her at the earliest possible so that no harm be done to

him and her husband Gagandeep Singh Muti, father-in-law Nirmal Singh Muti, sister-in-law Harpreet Kaur Muti, Massar Kirpal Singh Bodal and Massi Charanjit Kaur who has now come to India and other girl Samarpreet Kaur Gill, father Amarjit Singh Gill, mother Jaswinder Kaur Gill who are present are living with Samarpreet Kaur Gill and Gagandeep Singh Muti at Canada, legal action may kindly be taken against them for committing fraud and justice be provided to my daughter and whole family. I shall be highly grateful to you. Sd/- Lakhvir Singh.”

3. On the basis of the FIR, the petitioner was summoned as an accused to face trial. Since the petitioner did not put in appearance, she was declared as proclaimed person by the court at Patiala on 09.06.2014. Aggrieved, the instant petition has been filed.

4. Mr. Jasbir Singh Dhaliwal, counsel appearing on behalf of the petitioner submits that petitioner has wrongly been summoned in the FIR in question. It is argued that the petitioner is not a relation of the husband of the daughter of the complainant nor is a person, who has been mentioned in the FIR as a person who was entrusted with dowry or has made a demand of dowry. It is argued that the allegations that have been made do not constitute any offence under Sections 406, 498-A of Indian Penal Code qua the petitioner. It is further argued that the petitioner is now a resident of Canada and the order declaring her as proclaimed person not sustainable, since no proper service was effected upon her under the FIR.

5. Per contra, Mr. Gaurav Singla, counsel appearing on behalf of respondent No.2 and Mr. Abhaypal Singh Gill, AAG Punjab, appearing on

behalf of respondent No.1-State vehemently contend that there are serious allegations qua the petitioner in the FIR, as she was in illicit relationship with Gagandeep Singh Muti and therefore, no ground is made out to quash the FIR.

6. I have heard counsel for the parties and perused the record of the case.

7. Admittedly, the instant FIR has been lodged under Sections 406, 498-A of Indian Penal Code at Police Station Patiala at the behest of father of Baljit Kaur Rattanpal. A bare reading of the FIR would not reflect that any offence under Section 406, 498-A of Indian Penal Code is made out against the petitioner. The name of the petitioner is reflected only in the context “*now Gagandeep Singh Muti without giving divorce to my daughter is living with Samarjit Kaur Gill and he has taken her from Patiala.*” Other than that there is no iota of averment in the FIR that there was any entrustment of istridhan with the petitioner herein. As held in ***Rashmi Kumar vs. Mahesh Kumar Bhada (1997) 2 SCC 397***, Section 406 of Indian Penal Code can be invoked when a wife entrusts her istridhan property with the dominion of that property to her husband or any other member of the family and the same is dishonestly misappropriated or the same is converted to his or her own use by such person and they would be guilty of criminal breach of trust. Since the allegations do not mention that any istridhan was entrusted to the petitioner, Section 406 of Indian Penal Code is certainly not made out. The court can also not lose sight of the fact that the petitioner herein is not a family member or related to the husband of the daughter of the complainant. Section 498-A of Indian Penal Code was incorporated to

punish the husband or relative of husband of a women, subjected to cruelty for the demand of dowry, which again is not present in the instant case, since the petitioner herein is not related to the husband of daughter of the complainant.

8. An argument has been raised that the petitioner herein cannot invoke Section 482 Cr.P.C. to quash the proceedings, since she has been declared as proclaimed offender by an order dated 09.06.2014.

9. This argument does not seem to be sustainable, in view of the fact that nothing seems to be produced on the record that an effort was made to serve the petitioner at Canada. A reading of the FIR would itself indicate that the complainant had mentioned the residence of the petitioner to be in Canada. Even otherwise, once the proceedings in the FIR are held to be an abuse of process of law, proceedings initiated thereunder are also liable to be quashed.

10. The Hon'ble Supreme Court in ***State of Haryana and others vs. Bhajan Lal and others, AIR 1992 SC 604***, while illustrating the category of cases in which inherent powers under Section 482 Cr.P.C. can be exercised either to prevent abuse of the process of law or otherwise to secure the ends of justice, it was held that 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, inherent powers under Section 482 Cr.P.C. can be exercised.

11. Therefore, once the ingredients of Sections 406, 498-A of Indian Penal Code are not made out, the entire proceedings under the FIR

are held to be nothing, but an abuse of process of law, therefore, this court has no hesitation in quashing of the same.

12. Consequently, this petition is allowed and FIR No.134 dated 10.12.2013, registered under Sections 406, 498-A of Indian Penal Code at Police Station Women Cell Patiala, District Patiala and all subsequent proceedings arising out of the same are quashed qua the petitioner.

13. The petition stands allowed accordingly.

September 05, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No