

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

CRM-M-44000 of 2015 (O&M)

Date of decision: 26.10.2017

Gulshan Ahuja and another

...Petitioners

Versus

Bharti

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Talwinder Singh, Advocate for the petitioners.

Jitendra Chauhan, J. (Oral)

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of complaint No.182 dated 22.07.2013 (Annexure P-1), titled as “Sunil Ahuja and others Vs. Bharti”, under Section 12 of the Protection of Women from Domestic Violence Act, 2005, pending before the Court of SDJM, Batala.

It is contended that petitioner No.1 is paternal uncle whereas petitioner No.2 is the younger brother of complainant/respondent's husband and has nothing to do with the dispute in question. In fact, respondent and co-accused/main accused had been residing separately. The petitioners have been falsely roped in by the complainant being the relative of the main accused.

Heard.

Since the allegations made in the complaint are to be determined by the Court below after considering the evidence led by the parties, therefore, at this stage, the prayer made in the present petition cannot be entertained. In **State of Haryana and others Vs. Ch. Bhajan Lal and others**, 1991(1) RCR (Cr.) 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.”

There is nothing on record to suggest that whether the

petitioners have been summoned and are facing proceedings in the complaint or not. Therefore, no case for quashing of complaint is made out.

Dismissed.

26.10.2017
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(JITENDRA CHAUHAN)
JUDGE

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