

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

Crl. Misc. M-13315-2016 (O&M)
Date of Decision: December 6, 2018

Krishan Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rahul Vats, Advocate,
for the petitioner.

Mr. P.P. Chahar, DAG, Haryana.

Mr. Ashwani Verma, Advocate
for respondent No.2.

JAISHREE THAKUR, J.

1. This petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of FIR No. 06 dated 02.02.2016 registered under Sections 377 and 506 of Indian Penal Code at Women Police Station, Fatehabad (Haryana) and the Final Report under Section 173 of the Code of Criminal Procedure submitted by the police in this case and all subsequent proceedings arising therefrom.

2. In brief, the facts of the case as alleged are, that the marriage was solemnised between Krishan Kumar (petitioner) and the respondent no.

2-complainant (hereinafter referred to as '**respondent no. 2**' for short) on

25.02.2001 according to Hindu rites and rituals and out of this wedlock a female child was born. It was alleged in the FIR that after marriage respondent no 2 was subjected to beatings and she was forced to unnatural sexual intercourse and when she denied the same, the petitioner used to extend threats to murder her and to turn her out of the matrimonial house. It is further alleged that on 07.08.2015 she was subjected to forcible unnatural sexual intercourse. She informed her mother about the said abuse and thereafter a panchayat was held. In the said panchayat, her husband declined to rehabilitate her which led to filing of complaint. During investigation, the statement of respondent no. 2 was recorded and she was subjected to medical examination from the Civil Hospital, Fatehabad and consequently a final report was submitted. Aggrieved with the aforesaid FIR and the final report dated 09.03.2016 filed under Section 173, the instant petition has been filed.

3. Mr. Rahul Vats, learned counsel appearing on behalf of the petitioner, contends that the allegations as set out in the FIR are totally false and Sections 377 and 506 IPC have been invoked only in an attempt to harass the petitioner. It is contended that the marriage between the petitioner and the respondent no 2 had been performed in February 2001 and till the registration of the FIR i.e. on 02.02.2016 no allegations of the respondent no2 being subjected to forcible carnal intercourse against the order of nature had ever been raised. It is further contended that on a previous occasion respondent no 2 had lodged FIR No.24 dated 24.09.2015 against the petitioner and his family members under Sections 323, 406, 506 and

498-A of the IPC and the said FIR had been registered at Police Station Fatehabad, which allegations on investigation had been found to be false and a cancellation report was submitted by the police. In the FIR No.24 registered on 24.09.2015, there was no reference to the commission of the alleged offences under Sections 377 and 506 of the IPC by respondent No.2. Furthermore, respondent No.2 had filed an application under Section 125 of the Code of Criminal Procedure (for short '**the Code**') seeking maintenance and even in the said application, no such allegation had been raised. Apart from, instituting proceedings under Section 125 of the Code for maintenance, respondent No.2 had also invoked the provisions of the Protection of Women from Domestic Violence Act, 2005 wherein too, there is no mention of allegations that any offence under Sections 377 and 506 IPC had been committed. In fact, the petitioner herein had filed a petition under Section 13 of the Hindu Marriage Act seeking a decree of divorce against respondent no 2, which was duly contested. In the reply filed no allegations regarding the commission of the alleged offences had been raised. Learned counsel for the petitioner also argues that the MLR of the complainant was performed on 02.02.2016 and there were no injuries found over her body thus falsifying the stand. Apart from the aforesaid contentions, learned counsel for the petitioner argues that the statement of the complainant had been recorded in a complaint case filed by the petitioner against the respondent and her family members wherein she had stated that on 06.08.2015, a quarrel had taken place between her and the petitioner and thereafter she had left the house on 06.08.2015 with her father

and in case she had left the house on 06.08.2015, there was no occasion for any offence to have been committed as stated on 06.08.2015.

4. Per contra, Mr. Ashwani Verma, learned counsel appearing on behalf of the respondent no. 2, contends that she has been ill treated right through her matrimonial life by the petitioner herein who gave her beatings. It is also argued that the petitioner herein had subjected the respondent to cruelty on account of demand of dowry and had also subjected her to unnatural sex which led to the registration of the FIR. It is submitted that this Court ought not to interfere in the said proceedings since the matter has been investigated and a challan has been put up.

5. I have heard learned counsel for the parties and have also perused the pleadings on record.

6. At the very outset, it is taken note that the respondent No.2-complainant has chosen not to file any reply to controvert the allegations as set out in the petition. An appearance has been put in by the learned counsel for the respondent as far back as on 05.10.2016 and despite last opportunity having been granted to file a reply by order dated 16.01.2017 reply has not been filed till date. Only oral submissions have been made.

7. There is no dispute about the fact that the marriage was solemnised between the parties as far back as 2001 and there is also nothing on the record to establish that there was any complaint filed by the respondent till the year 2015 when she approached the police Station Fatehabad in FIR dated 24 dated 24.09.2015 invoking Sections 323, 406, 506 and 498-A IPC against the petitioner and his family members.

8. A reading of the FIR dated 24 dated 24.09.2015 invoked under Sections 323, 406, 506 and 498-A IPC, which is available on the record as Annexure P-3, reveals that allegations have been raised regarding demand of dowry and cruelty. The FIR registered on 24.09.2015 makes no mention of the fact that she had been subjected to un-natural sexual intercourse during her marriage let alone on 06.08.2015. If such was the case, there was no one stopping the respondent from alleging the same when the FIR was registered in September 2015. Even the two petitions—one, under Section 12 of the Domestic Violence Act dated 20.08.2018 and second one for maintenance on 26.08.2015, are silent about any such occurrence having taken place. Even the statement recorded by the SHO on 27.08.2015 which is available on the record as Annexure P-8, (which statement was recorded pertaining to a complaint filed by the petitioner), only mentions that a dispute arose between her and the petitioner on 06.08.2015, again without any mention of unnatural sexual intercourse. It is worth mentioning that the respondent-complainant on three occasions in the different petitions filed made no mention about the unnatural sexual intercourse.

9. It appears that the complainant-respondent No.2 made vast improvements in her allegations while getting the FIR registered on 02.02.2016 by stating therein that she had been subjected to trauma of unnatural sexual intercourse. There is nothing available on the record to substantiate the fact that the allegations as set out in the FIR are true and correct. The respondent had every opportunity to deny the said allegations by filing a counter to the petition but for reasons best known to her, she has

avoided doing so.

10. A contention has been raised by the counsel for the respondent that after investigation has been completed and challan presented, this Court should not interfere in the said matter. However, this argument is without any merit. It is settled law that the inherent power of the High Court under Section 482 of the Code of Criminal Procedure should be used sparingly. The Hon'ble Apex Court in the case of **State of Maharashtra through CBI v. Vikram Anatrai Doshi and Ors. (2014) 15 SCC 29** has observed that powers under Section 482 of the Code must be exercised sparingly, carefully and with great caution. It is well settled by a catena of judgments that the High Court if satisfied that continuation of proceedings would amount to an abuse of the process of law can quash FIR while exercising extra-ordinary powers under Section 482 of the Code. Reference can be made to the judgments rendered in ***State of Haryana and others vs. Ch. Bhajan Lal and others, 1991(1) R.C.R. (Criminal) 383*** and in a latest pronouncement in the case of **Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others vs. State of Gujarat and another, (2017) 9 Supreme Court Cases 641.**

11. In the instant case too, this Court is of the opinion that respondent was silent when she got the FIR No. 24 registered invoking Sections 323, 406, 506 and 498-A IPC or in other proceedings initiated by her. All the proceedings that were instituted by her are after the alleged offence and they are silent to any such occurrence. Even in the statement recorded before the SHO on 27.08.2015, which is subsequent to the date of

the alleged offence, there is no mention that she had been subjected to unnatural sexual intercourse. It appears that the respondent No.2 has set up the story only with an aim to harass the petitioner herein. Since there is no medical evidence available to support her claim or even a reply to controvert the facts as stated, this Court has no hesitation in quashing the FIR and the final report submitted.

12. For the reasons stated above, this petition is allowed and FIR No. 06 dated 02.02.2016 registered under Sections 377 and 506 of Indian Penal Code at Women Police Station, Fatehabad (Haryana) and the Final Report under Section 173 of the Code of Criminal Procedure submitted by the police in this case and all subsequent proceedings arising therefrom are quashed.

December 6, 2018
Seema/prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No