

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

Crl. Misc. M-13866-2018 (O&M)
Date of Decision: December 19, 2018

Sandeep Kumar and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. S.P.S. Sidhu, Advocate
for the petitioners.

Ms. Rajni Gupta, Sr. DAG, Punjab.

Mr. P.S. Ahluwalia, Advocate
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of the complaint No. 147/15 dated 20.07.2015 under Sections 406, 498-A, 323, 12-B of Indian Penal Code pending in the Court of JMIC Patiala as well as summoning order dated 20.01.2018 passed by JMIC Patiala .

2. The brief facts of the case as alleged in the complaint filed are that a marriage was solemnized between Pardeep Kumar and Complainant -respondent No.2 (hereinafter called the respondent no. 2) on 29.01.2012 and out of this wedlock, a child was born on 23.11.2013. A reading of the

complaint would reveal that even after giving sufficient dowry (spending approximately Rs.30 Lacs), the behaviour of the accused petitioners towards the respondent no 2 was inimical on account of having brought inadequate dowry. The respondent no 2 shifted to Chattisgarh along with her husband in February 2012 on account of his work and stayed there for four months. Even during that period the behaviour of her husband/accused-Pardeep Kumar did not change and thereafter Pardeep Kumar joined employment at Rajpura . It is alleged that the respondent no.2 joined as Assistant Professor at Sukhmani Engineering College, Derabassi and started living in her in-laws house at Panchkula. It is alleged that the accused-petitioners started taunting her for demand of dowry and on 13.05.2014, they gave beatings to her, due to which her parents took her to Patiala. On 18.05.2014, there was also a demand of ₹25 lakhs from her parents for construction of first floor of the house by the mother- in-law and sister- in- law. Thereafter she gave an application to Women Cell Patiala and SSP Patiala, on which the accused-petitioners were called and they tendered their apology. The complainant/respondent No.2 then started living in a rented accommodation in Zirakpur along with her minor son. She came to know that her husband-Pardeep Kumar had transferred the flat No. 302, 3rd floor, Tower-A, Imperial Residency, Village Peermushalla Zirakpur in the name of his sister-Monika (Petitioner No.3) on 28.08.2014. Thereafter FIR No.50 dated 17.06.2015 was registered by the police under Sections 406, 498-A of IPC against her husband. Since she gave a complaint against all the accused persons but the police registered FIR against her husband only, therefore, she made a complaint before the CJJD, Patiala for registration of case against all the accused persons i.e. husband and his family

members. Vide order dated 23.02.2017, the JMIC Patiala found that no ground is made to summon other family members of the accused-Pardeep Kumar and ordered to summon the husband only to face trial for the offences punishable under Section 406/498-A IPC. Thereafter the complainant challenged the order dated 23.02.2017 in the Revisional Court. The Additional Sessions Judge, Patiala (Exclusive Court for heinous crimes against Women) vide order dated 30.10.2017, set aside the order dated 23.02.2017 and remanded the case to the trial Court to re-consider the matter in view of the observations made in the order and evidence led by the complainant and further directed the trial Court to pass a fresh speaking order as per the settled law. Thereafter, the JMIC Patiala vide order dated 20.01.2018 on the basis of the oral and documentary evidence, found sufficient grounds to proceed against the accused-petitioners herein and summoned them to face trial under Sections 406/498-A IPC. The present petition has been filed to quash the aforesaid orders dated 20.01.2018 (Annexure P-6) and the complaint dated 20.07.2015 (Annexure P-3).

3. Mr. S.P.S Sidhu, learned counsel for the petitioner submits that the impugned order suffers from infirmity that the matter has already been investigated thoroughly on a complaint filed by the petitioner to the Deputy Superintendent of Police, Investigation, Patiala and an investigation was undertaken by the Assistant Inspector General of Police, Patiala, who concluded on 15.12.2016 that petitioners are innocent in the instant case. On the basis of the said investigation FIR came to be registered only against the husband Pradeep Kumar and the petitioners were kept in column no 2. It is also argued that the respondent from her own averments stayed with her husband and lived in her matrimonial for a short duration and the question

of demanding dowry and subjecting her to physical abuse would not arise.

4. Per contra Mr. Preetinder Singh Ahluwalia learned counsel for the complainant respondent no 2 contends that there is sufficient evidence available for the court to have summoned the petitioners to face trial in the complaint case. It is argued that the husband of the complainant and the son of the petitioner no 2 has fled the country and is not facing proceedings under the FIR having been declared as a proclaimed offender. It is contended that before the husband of the petitioner left for Canada, he transferred his movable and immovable properties in favour of his family members in order to thwart the legitimate claim of the respondent and the minor child.

5. I have heard the counsel for the parties and also perused the case laws as cited by them.

6. Admittedly the marriage between the respondent complainant and the son of petitioner no 2 is not in dispute and neither is the birth of the child. The question that needs to be addressed is whether there is sufficient material available to proceed against the petitioners who are the close relatives of the husband of respondent no 2.

7. The complaint that has been filed is a detailed and an exhaustive one on very similar lines as the FIR No.50 dated 17.06.2015 registered by the police under Sections 406, 498-A of IPC. The FIR was ultimately registered only against the husband Pradeep Kumar who has since then been declared as a proclaimed offender.

8. An argument has been raised that the petitioners herein had been investigated and kept in column 2 in the Final report submitted in FIR No

50 dated 17.06.2015 and therefore once exonerated the complaint case against them was not maintainable. Initially the complaint was dismissed by the JMIC by order dated 30.10.2017 holding that no offence was made out, which order was challenged in revision petition. The Revisional court remanded the matter back to the trial court which order was not challenged. It is thereafter, the JMIC on appreciating the preliminary evidence led found they are sufficient grounds to proceed against accused No. 2 to 5. the petitioners herein.

9. In the complaint it has specifically been stated that she was tortured by Kiran Bala wife of Sh. Brij Lal and Monika daughter of Brij Lal arrayed as accused No. 3 on account of not bringing sufficient gold at the time of solemnization of marriage. There is a specific allegation that the accused No. 3 and 4, namely Kiran Bala and Monika demanded a sum of ₹25 lakhs from her parents for construction of 1st floor of the house while further submitting that the said persons also refused to allow the complainant the use of the *Istridhan* and misappropriated the same. The testimony is supported by witnesses and documentary evidence, one of them being the inquiry report Annexure-R 2/6 dated 19.8.2015 where it was held that the allegations were proved. A perusal of the said inquiry would reveal that even the In-charge women Counselling Cell Patiala and Deputy Superintendent of Police, Investigation, Patiala had found Pradeep Kumar, Kiran Bala and Monika guilty of offences under section 498A/406 IPC. It was when a complaint was filed by the petitioners that another Inquiry was conducted by SP headquarters, Patiala on the basis of which the case was

registered only against Pradeep Kumar.

10. At the stage of summoning of an accused person, the Magistrate is required to apply his judicial mind to find out whether prima-facie the case is made out for summoning the accused persons. At this stage, the magistrate is not required to consider the defence version or material or arguments, nor is required to evaluate the merits of the material or evidence of the complainant. The magistrate must not undertake the exercise of evaluating the evidence at the stage of summoning to conclude whether the materials available before it would lead to conviction or not. The law in this regard is well-settled in “Sonu Gupta vs Deepak Gupta and others 2015(2) RCR (Criminal) 32”. Even in a recent case of “Rakhi Mishra Versus State Of Bihar and Others 2017 (4) RCR (Criminal) 52” the Hon'ble Supreme Court in similar circumstance held that the High court ought not to have interfered by exercising powers under section 482 Cr.P.C.

11. The power under section 482 Cr.P.C is to be exercised sparingly and in exceptional circumstances, when *prima facie* a case is not made out. As held in **Rakhi Mishra (supra)** “The test applied by this court for interference at the initial stage of the prosecution is whether the uncontroverted allegations prima facie establish a case.” In the case in hand there are specific allegations as set out in the complaint, evidence on the record as well as the statements recorded for the JMIC to have formed an opinion that the petitioners should be summoned to face trial.

12. Therefore, finding no infirmity in the order so passed this petition stands dismissed. However any observation made herein are not to be

construed as an opinion on the merits of the case, which is to be decided independently on the basis of evidence adduced by parties.

December 19, 2018
seema

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No