

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

CRM-M-14876-2016 (O&M)

Date of Decision: October 31, 2018

Amardeep Singh Johal

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. A.S. Gill, Advocate
for the petitioner.

Ms. Rajni Gupta, Sr. DAG, Punjab.

Mr. S.K.Bawa, Advocate
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

This is a petition that has been filed under Section 482 Cr.P.C. seeking quashing of the FIR No.35 dated 29.03.2012 registered under Sections 406, 498-A of the Indian Penal Code at Police Station Goraya, District Jalandhar and the consequent proceedings arising therefrom.

2. In brief the facts of the case are that a marriage was solemnized between the brother of the petitioner and Rajbir Kaur on 21.03.2007 according to Sikh religious rites. The present FIR was got registered on

29.03.2012 against the petitioner and his family members by respondent No.2 for harassment, demand of dowry and beatings in her matrimonial house. It is alleged that the petitioner herein has an evil eye against her and taunted her for not giving enough to him in the marriage and also instigated other family members against respondent No.2. It is further alleged that a demand of Sakoda car and ₹20,00,000/- was also made to respondent No.2 and for not fulfilling the said demand she was harassed and tortured by in-laws family.

3. Mr. A.S. Gill, learned counsel for the petitioner contended that the aforesaid FIR which is registered, is nothing but an abuse of the process of law with an attempt to harass the family members of the husband of the complainant who is already facing trial. It is argued that the petitioner herein is an Australian citizen and has been residing in Australia much prior in time to the wedding having been solemnized between the parties. It is also argued that the complainant has initiated proceedings under the Domestic and Family Protection Act, 1989 in Australia against her husband and eventually had also got a protection order against him and therefore, the petitioner herein has been roped in only on account of the fact that he is closely related to the complainant's husband. It is also argued that subsequent to proceedings under the Domestic and Family Violence Act, the parties have already obtained a decree of divorce.

4. Reply to the instant petition has been filed by the respondent-State. Mr. S.K. Bajwa, learned counsel appearing on behalf of respondent No.2 and Ms. Rajni Gupta, Sr. D.A.G. Punjab argued that there are serious allegations leveled in the FIR that had been registered. It is argued that the

challan has already been presented under Section 173 Cr.P.C. and the petitioner, who had earlier been declared as a P.O. is already facing trial. It is argued that there are specific allegations in the said FIR regarding harassment meted out by the complainant-respondent No.2 herein and therefore, there is no ground made out for quashing of the said FIR.

5. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case.

6. Admittedly a marriage took place between the brother of the petitioner and the complainant in the year 2007. After marriage, the parties resided together for a short duration in Australia and while residing there, the complainant had made a complaint under the Domestic and Family Violence Act against her husband in Australia.

7. A reading of the FIR would reflect that there is an allegation of giving gold ring worth 3 tolas to the petitioner herein at the time of the marriage, with a further allegation that the petitioner had an evil eye upon the complainant and it is he who instigated the in-laws of the complainant against her on the ground that insufficient dowry had been given. Thereafter, there are general allegations that have been set out that the complainant had been harassed on the ground of not meeting the demand of dowry i.e. bringing a Sakoda car to the matrimonial home. It is further contended that she came to India to attend an engagement ceremony of her brother-in-law namely the petitioner as well as to attend the wedding ceremony and at both times she was subjected to a demand of dowry and threats that in case the said demand was not fulfilled she would be eliminated. Though there is an allegation made out in the FIR that the

petitioner herein was instrumental in instigating the family members for asking for more dowry and that there is an allegation that the petitioner had an evil eye upon the complainant. This Court cannot lose sight of the fact that the petitioner herein is a permanent resident of Australia and was residing separately from them in Australia. In the domestic violence case that had been filed in Australia, there was no such mention of any harassment or demand of dowry by the brother-in-law namely the petitioner herein. Even if there was some kind of instigation at the hands of the petitioner herein, the petitioner would not have benefited from the said demand since he was not in joint residence nor would have been a beneficiary of the car had the same been given.

8. There are catena of judgments passed by the Apex Court as well as by this Court wherein proceedings qua the relatives of the husband had been quashed on the ground that this is a growing tendency to come out with the inflated and exaggerated allegations roping in each and every relative of the husband. In this regard, reliance can be placed upon judgments passed by Supreme Court in ***Preeti Gupta and another Vs. State of Jharkhand and another, 2010(7) SCC 667***, in which the Supreme Court has observed as under:-

“18. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent powers should not be exercised to stifle a legitimate prosecution, but the Court’s failing to use the power for advancement of justice can also lead to grave

injustice.

19. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.”....

“29. Admittedly, Appellant No.1 is a permanent resident of Navasari, Surat, Gujarat and has been living with her husband for more than seven years. Similarly, Appellant No.2 is a permanent resident of Goregaon, Maharashtra. They have never visited the place where the alleged incident had taken place. They had never lived with respondent No.2 and her husband. Their implication in the complaint is meant to harass and humiliate the husband’s relatives. This seems to be the only basis to file this complaint against the appellants. Permitting the complainant to pursue this complaint would be an abuse of the process of law.”

9. In ***B.S. Joshi and others Vs. State of Haryana and another***, **2003(4) SCC 675** the Supreme Court has observed that:-

“If for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power. Thus, the High Court in exercise of its

inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.”

10. Recently, in the case of **Rajesh Sharma and others Vs. State of U.P. and another (Criminal Appeal No.1265 of 2017, decided on 27.07.2017)** the Hon’ble Supreme Court has observed that “...*there is need to check the tendency to rope in all family members to settle a matrimonial dispute. Omnibus allegations against all relatives of the husband cannot be taken at face value when in normal course it may only be the husband or at best his parents, who may be accused of demanding dowry or causing cruelty. To check abuse of over implication, clear supporting material is needed to proceed against other relatives of a husband.*”

11. In view of the foregoing discussion and ratio of law laid down by the Hon’ble Supreme Court in **Preeti Gupta and another Vs. State of Jharkhand and another, B.S. Joshi and others Vs. State of Haryana and another, Rajesh Sharma and others Vs. State of U.P. and another (Supra)**, this Court is of the considered view that there is no specific allegation/details against the petitioner, to constitute an offence under Section 406, 498-A of the Indian Penal Code.

12. Before parting with this judgment, it is also noted that there is also non-compliance of Section 188 Cr.P.C. insofar as no sanction has been taken to prosecute the petitioner, who is a citizen and resident of Australia.

13. Resultantly, the petition stands allowed and the FIR No.35 dated

29.03.2012 registered under Sections 406, 498-A of the Indian Penal Code at Police Station Goraya, District Jalandhar and all consequent proceedings arising therefrom qua the petitioner herein are quashed.

October 31, 2018

seema

(JAISHREE THAKUR)

JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No