

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

Date of decision: 09.05.2018

1. CRM-M-17297-2014 (O&M)

Sukhdial Kaur Gill and others

...Petitioners

Versus

Rajwinder Kaur @ Raj Kaur

...Respondent

2. CRM-M-33956-2015 (O&M)

Dalbir Singh Gill

...Petitioner

Versus

Rajwinder Kaur @ Raj Kaur

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. D.S. Randhawa, Advocate,
for the petitioners.

Mr. Jagdish Manchanda, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. This Court proposes to decide the above referred two criminal miscellaneous petitions by this common order as facts are the same. For the sake of brevity facts are being noticed from **CRM-M-17297-2014**.

2. The instant petition has been filed under Section 482 Cr.P.C. seeking to challenge order dated 29.01.2014 by which the petitioners have been summoned to face trial under Sections 406, 498-A IPC.

3. In brief, the facts are that the marriage of Rajwinder Kaur @ Raj Kaur respondent was solemnized with Dalbir Singh Gill son of petitioner No.1 and brother of petitioner Nos.2 to 4 on 10.02.2006 as per Sikh rites and ceremonies at Rajpura. Petitioner No.2 is the brother of the husband of the complainant, who was working in Mumbai at the time of marriage of the respondent and thereafter is working in Dubai. Petitioner No.3 is the married sister-in-law of the respondent and a British citizen after her marriage in 1992, while petitioner No.4 is also a married sister-in-law of the respondent, who is living at Bhopal after her marriage which took place on 05.10.1997. After the marriage, respondent complainant (respondent for short) resided with petitioner No.1 and her son Dalbir Singh Gill in Gandhinagar, Gujarat. Dalbir Singh Gill, the husband of the respondent was a cricketer of repute playing with Sachin Tendulkar under-15 Cricket Team, however, he met with a severe accident in the year 2002 and became severally handicapped. This was the second marriage for respondent. There were domestic quarrels between the respondent with petitioner No.1 and her husband on petty issues and respondent wanted to reside separately from petitioner No.1. She got separate accommodation along with her husband Dalbir Singh Gill. Thereafter, she gave a complaint case 17559 of 2007 against petitioner No.1 under Sections 498-A, 323 IPC and Sections 3 & 7 of Prevention of Dowry Act, on which basis an FIR was registered at Sector 21, Police Station Gandhinagar only qua petitioner No.1. Petitioner No.1 faced trial in Court of Chief Judicial Magistrate, Gandhinagar under the aforesaid Sections, however, came to be acquitted by order dated

09.05.2008. On account of the fact that a false case was registered against petitioner No.1, rest of the petitioners, namely petitioner Nos. 2 to 4 were not on talking terms with the respondent thereafter. The respondent and her husband Dalbir Singh Gill son of petitioner No.1 started residing at H. No. 39, Chandralok Society, Village Vavol, Tehsil and District Gandhinagar in a house owned by Sh. Harshadbhai Rawal and in the month of May, 2009 shifted to Bungalow No. 32, Meghdhanush Society, InfoCity, Gandhinagar. Petitioner No.1 thereafter left for England to visit her daughter petitioner No.3 and returned on 06.03.2010 and on return went to the house of her son Dalbir Singh Gill to visit, but was denied entry. Subsequently, she gave an application to the Women Police Station, Sector 16, Gandhinagar and with their help, was able to get into the house and was shocked to see her son sleeping on a cot, who told her that he had been locked in that room for the past one month and respondent was not allowing him to go outside the house and used to beat him. With the help of the police, the petitioner No.1 managed to get her son Dalbir Singh Gill admitted in Civil Hospital, Gandhinagar. This matter garnered a lot of media attention. Then petitioner No.1 registered an FIR No.29 dated 5.4.2010 against the respondent under Sections 342 & 323 IPC at Police Station Sector 7, District Gandhinagar City and respondent was arrested on 04.04.2010. Respondent then left Gandhinagar along with her father and all belongings. Since the Condition of the son of petitioner No.1 was pathetic and he could hardly walk, and was in depression, with the help of Cricketer Sachin Tendulkar a surgery was conducted upon him. As a counter-blast to the FIR registered at the behest

of petitioner No.1, an FIR no 18 dated 4.5.2011 u/s 406, 498 A IPC was registered at PS Kheri Gandian District Patiala. Petitioner Nos. 1 & 2 applied for anticipatory bail, which was allowed to petitioner No.1 but petitioner No.2 was arrested on 21.02.2012 and later on released on regular bail. The matter was investigated and a cancellation report prepared. However, a protest petition was filed and by order dated 29.01.2014, the said protest petition was allowed and the petitioners have been summoned to face trial under Sections 406, 498-A IPC. Aggrieved, the instant criminal miscellaneous petition has been preferred.

4. Husband of Rajwinder Kaur @ Raj Kaur, namely, Dalbir Singh Gill has filed an independent petition i.e. **CRM-M-33956-2015** which was ordered to be heard along with the present petition.

5. Learned counsel for the petitioners submits that petitioner No.1 had already been exonerated in the FIR registered under Sections 498A, 323 IPC and Sections 3 & 7 of Prevention of Dowry Act, registered at Sector 21, Police Station Gandhinagar, in which petition there was no whisper of any allegation against rest of the petitioners or even the husband, while submitting that after registration of the FIR, petitioner No.1 started residing separately and was not joint in residence. It is also argued that the summoning order qua petitioner Nos. 2, 3 & 4 in **CRM-M-17297-2014** is liable to be set aside as they have falsely been implicated in the aforesaid case. They in fact are the married sisters-in-law and married brother-in-law of the respondent, residing separately and having no dealings in the day-to-day married life of the respondent-complainant. It is argued that the brother-

in-law was working and residing in Mumbai and thereafter working in Dubai, whereas the sisters-in-law were married and residing in their own matrimonial homes much prior in time to the marriage solemnized between their brother and the respondent. It is also argued that the summoning order is violative of Section 202 Cr.P.C. insofar as all the petitioners are residing out of the jurisdiction of Judicial Magistrate Ist Class, Rajpura and without following the procedure as prescribed under Section 202 Cr.P.C. the summoning order itself is not sustainable.

6. Per contra, learned counsel appearing on behalf of the respondent urged that the petitioners have not availed their remedy of approaching the Sessions Judge under Section 397 Cr.P.C. and, therefore, this Court would have no jurisdiction to entertain the said criminal miscellaneous petition. It is also submitted that a fraud has been played upon the respondent since the physical condition of Dalbir Singh Gill was not disclosed to her. It is submitted that the marriage between the parties was celebrated with great pomp and show and *Istridhan*/dowry articles were given beyond the capacity by the parents of the complainant in the year 2006 but the husband and the present petitioners were not satisfied and there was a demand for bringing more dowry.

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

8. Admittedly, a marriage was solemnized between the parties as far back in the year 2006 and this was a second marriage that of both Dalbir Singh Gill and Rajwinder Kaur @ Raj Kaur- respondent. It is also admitted

fact that the husband suffered a grievous injury in an accident in the year 2002 leaving him physically handicapped. As per the record available, it is not in dispute that respondent filed a criminal miscellaneous case No. 17559 of 2007 against petitioner No.1 alone under Section 498(k), 323 of IPC and under Section 3 of the Prevention of Dowry Act and after detailed evidence being led, the Chief Judicial Magistrate, Gandhinagar came to the conclusion that the alleged torture on account of demand of dowry are not proved while holding that prima facie it appears that the dispute between the parties is a property dispute rather than a simple family dispute. It is also available on the record that the respondent herein had locked the son of petitioner No.1 in the house and had mentally and physically tortured him by not giving adequate food and water for a considerable period of time and it was the neighbors who fed him. It transpires that petitioner No.1 and the police went to the accommodation of the respondent where her son was residing, and he was found locked in the said premises. He could hardly walk and he was lifted and carried to the hospital in a police van. This entire incident stood video recorded and a statement was made in this regard before the Court in FIR No. 29 dated 05.04.2010 under Sections 342 & 323 IPC at Police Station Sector 7, District Gandhinagar City at the behest of petitioner No.1 against the respondent. It is also not disputed that this incident was carried in the newspapers in Ahmedabad. A divorce petition was also filed thereafter by Dalbir Singh Gill, which stands allowed by the Family Court at Gandhinagar by order dated 14.07.2014 wherein it is being held that the respondent-wife has treated the husband with extreme cruelty

and has also violated the fundamental rights of the husband under Article 21 of the Constitution of India on account of the fact that she had imprisoned him without any justification.

9. The argument raised that there has been non-compliance of Section 202 Cr.P.C. is sustainable. Section 202 Cr.P.C. reads as under :-

“Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub- section (1) is made by a

person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer- in- charge of a police station except the power to arrest without warrant.”

10. As per Section 202 Cr.P.C. an inquiry has to be held by the Magistrate when the accused resides beyond its jurisdiction. It becomes incumbent upon the Magistrate to carry out an inquiry or investigation under Section 202 Cr.P.C. before issuing process. In this regard reliance is placed upon the judgment rendered in ***National Bank of Oman vs. Barakara Abdul Aziz and Anr., (2013) 2 SCC 488***, para 9 of which reads as under :-

“The duty of a Magistrate receiving a complaint is set out in [Section 202](#) of the Cr.P.C. and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this Section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under [Section 202](#) of the Cr.P.C. is different from the investigation contemplated in [Section 156](#) as it is only for holding the Magistrate to decide whether or not there is sufficient grounds for him to proceed further. The scope of enquiry under [Section 202](#) of the Cr.P.C. is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint –

*(i) on the materials placed by the complainant before the Court
(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and
(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the*

accused may have.”

Similarly in ***Abhijit Pawar versus Hemant Madhukar Nimbalkar 2017 (1) RCR (Criminal) 405***, the Supreme Court has held that amended provisions of Section 202 Cr.P.C cast an obligation on the Magistrate to apply his mind, carefully and satisfy himself that the allegations in the complaint when considered along with the statements recorded, the enquiry conducted therefrom, would prima facie constitute the offence for which the complaint is filed, while further holding the requirement of conducting an enquiry or directing investigation before issuing process is, therefore, not an empty formality.

11. It is evident that the said procedure had not been followed and, therefore, there is non-compliance of Section 202 Cr.P.C. rendering the summoning order a nullity. The question arises whether the matter should be remanded back to the trial Court to pass fresh orders in compliance with Section 202 Cr.P.C. or to proceed to exercise inherent powers under section 482 Cr.P.C. and quash the FIR being an abuse of the process of law as has been claimed in the instant petition.

12. In the case of ***State of Haryana and others vs. Bhajan Lal and others, 1992 Supreme Court Cases (Cri) 426***, the Apex Court has reiterated the principle that the Courts can exercise their inherent jurisdiction of quashing a criminal proceeding, only when the allegations made in the FIR/ complaint do not disclose the commission of any offence and make out a case against the accused. In the 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, while discussing the various decisions of the Apex Court, the broad principles which emerge from the precedents on the subject, have been summarized in the following propositions :

“(i) [Section 482](#) preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of [Section 320](#) of the Code of Criminal Procedure, 1973. The power to quash under [Section 482](#) is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under [Section 482](#), the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground

that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under [Section 482](#) and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice;

and

(x) There is yet an exception to the principle set out in propositions (viii) and clause. It

(ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

13. In the instant case, petitioner No.1 has already been acquitted in case FIR registered under Sections 498A, 323 IPC and Sections 3 & 7 of Prevention of Dowry Act, registered at Sector 21, Police Station Gandhinagar, holding that it was prima facie a dispute over a property and not on account of demand of dowry. Interestingly enough the husband Dalbir Singh Gill was not named in the complaint filed in 2007. Once petitioner No.1 has been acquitted, there is no justification in a second complaint being instituted against her. This Court also can not loose sight of the fact that after petitioner No.1 had been acquitted, the parties, namely the respondent and son of petitioner No.1 started residing separately from the rest of the family and there would be no occasion for any interference in their married life thereafter. Cruelty at the hands of the respondent has actually been established in the decree of divorce that was granted by the Courts at Gujarat and, therefore, Section 498-A and 406 IPC again would

not be sustainable against the husband Dalbir Singh Gill.

14. As regards, petitioner Nos. 2 to 4, it is an admitted fact that the sisters-in-law were married much prior to the time marriage between the respondent and Dalbir Singh Gill, and petitioner No.2 was residing separately since he was working in Mumbai and later on shifted to Dubai. The Hon'ble Supreme Court in ***Preeti Gupta & Another vs. State of Jharkhan & Another, 2010(7) SCC 667*** took note of the fact that large number of complaints are not bona fide and are instituted as a pressure tactic by roping all family members which certainly seems to be the case herein. Paragraphs Nos. 28 & 29 of the ***Preeti Gupta & Another*** case (supra) read as under :-

“28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

29. The courts are receiving a large number of cases emanating from [section 498-A](#) of the Indian Penal Code which reads as under:-

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.--For the purposes of this section, 'cruelty' means:-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause

grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

15. An argument has been raised that the petitioners herein are being declared proclaimed offender and, therefore, the remedy available with them is to surrender before the Court concerned. This argument is again not sustainable. I am of the considered view that the summoning order itself is not sustainable on account of the fact that there is non-compliance of Section 202 Cr.P.C. Petitioner No.3 is a resident of Britain, petitioner Dalbir Singh Gill is residing in Gujarat whereas the others are residents of Dubai, England and Bhopal. If the very summoning order itself is not sustainable, all subsequent proceedings including declaring the petitioners to be proclaimed offender would be nonest. This issue regarding whether the High Court can quash an FIR/complaint if a person is a proclaimed offender, has been dealt with by a Division Bench of this Court in case ***Sudo Mandal @ Diwarak Mandal V. State of Punjab 2011 (2) RCR (Criminal) 453*** and Single Bench of this Court in cases ***Sanjay Sarin V. State (Union Territory, Chandigarh) 2013 (3) RCR (Criminal) 138*** as well as ***Deepak Arora V. State of Haryana and another 2015 (7) RCR (Criminal) 649*** has held that criminal proceedings including the order declaring a person as proclaimed offender can be quashed when there is a compromise between the parties.

16. Therefore, this Court has no hesitation in invoking its inherent powers under section 482 Cr.P.C in allowing the instant petition. Consequently, the order dated 29.01.2014 by which the petitioners have been summoned to face trial under Sections 406, 498-A IPC is quashed along with the protest petition dated 21.03.2014 and complaint No. 15A dated 26.05.2011 and subsequent proceedings arising therefrom.

17. Both the petitions stand allowed.

18. A photocopy of this order be placed on the file of the connected case.

09.05.2018

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes.

Whether reportable

No.