

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. M-18552 of 2016
Date of Decision: 09.8.2018**

Gulshan Nischal

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sandeep Sharma, Advocate
for the petitioner.

Ms. Jaspreet Kaur, AAG, Punjab.

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

ANITA CHAUDHRY, J

The instant petition is for quashing of FIR No. 60 dated 1.8.2014 registered under Sections 498-A IPC, Police Station Women Cell, District Jalandhar City (Annexure P-1) and all the consequent proceedings arising out of the same.

Respondent No. 2 has placed some documents on the file which are taken on record.

The petitioner claims that he is the uncle of the husband. Giving the relationship it has been pleaded that Arun (co-accused) was the son of the brother of the petitioner. Sunita was married to Arun in June 2011. The petitioner alleges that no specific role has been attributed to him and he has been named just to harass and victimize the entire family and no article was entrusted to him nor he was a beneficiary and had been falsely

implicated. It was pleaded that the petitioner was living in house No. 282, Ward No. 10, Garden Colony, Mission Road, Pathankot and the co-accused were living separately. It was explained that this was the ancestral house but he had purchased it. The petitioner had also annexed the Aadhar cards of all the accused including himself. The petitioner claimed that the complainant had given 4-5 complaints to the police earlier but compromises were effected but later on they backed out from the compromise and these facts are mentioned in the complaint. It was pleaded that he was not even present when the compromise was effected and the dispute was between the husband and wife and his implication was an abuse of process of law. It was pleaded that the husband had filed divorce petition and the wife failed to appear and *ex parte* decree of divorce was passed and the complainant had filed an application for setting aside the decree.

Respondent No. 2-complainant in the reply pleaded that the petitioner was living with the other co-accused in the same house and they constituted a joint family as the father-in-law of the complainant and the petitioner were real brothers. It was pleaded that challan had been presented and the case was fixed for prosecution evidence and statements of some witnesses have already been recorded. It was pleaded that in the complaint filed under the Domestic Violence Act, the petitioner was also arrayed as a respondent and he had admitted that he was living in house No. 282, Garden Colony, Mission Road, Pathankot. It was pleaded that specific and date wise allegations have been levelled against all the accused. The complainant had also referred to the statement made by the investigating officer during trial.

I have heard both the sides.

Counsel for the petitioner submits that general and vague

allegations have been levelled against the petitioner, uncle (chacha) of Arun. It was urged that the petitioner was living separately and Aadhar cards of the petitioner and rest of the accused had been appended. It was contended that it was the second marriage of the girl and her first husband had died. It was also contended that the complainant has roped in all the relatives but has not made specific allegations against the petitioner and it was a fit case where the powers under Section 482 Cr.P.C. should be invoked to quash the FIR qua the petitioner.

The submission on behalf of respondent No. 2 is that they had placed on record the statements made in the Court. Counsel refers to the statement of ASI Sarabjit Singh and urged that the investigating officer had submitted that all the accused were living together. The counsel also refers to the statement made by Sunita PW-3 where she had named the petitioner and she had also referred to the dowry entrusted to each of the accused.

State counsel urges that challan has been presented and it should be left to the trial Court to find out the involvement of the petitioner.

Before proceeding further it is necessary to notice the principles laid down in **State of Haryana** vs. **Bhajan Lal**, 1992 Supp(1) **Supreme Court Cases 335** which read as under:-

“The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently chennelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

(1) Where the allegations made in the first information

report or the complainant/respondent No.2, 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.

- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.*
- (3) 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.*
- (4) 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 Magistrate as contemplated under Section 155(2) of the Code.*
- (5) 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.*
- (6) 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 specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.*
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings are 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.”

From the above it is clear that the powers possessed by the High Court under Section 482 Cr.P.C. are wide but the power requires great caution in its exercise and facts of each case have to be examined.

The question that arises is whether the FIR and the subsequent report under Section 173 Cr.P.C. and the charge sheet can be quashed in exercise of the powers under Section 482 Cr.P.C.

In catena of judgments, the Courts have viewed the seriousness of the implication and over-implication of the relations of the husband by exaggerating the allegations in the cases of matrimonial discord. It is relevant to refer to some of them.

In the case of ***Geeta Mehrotra & Anr. Vs. State of U.P. & Anr. 2012(4) RCR (Crl.)***, the Hon'ble Apex Court quashed the FIR against the sister and brother of the husband by observing as under:-

“...It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives or the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.”

In the case of ***Kans Raj Vs. State of Punjab & Ors., 2000(2)***

tendency had developed for roping all the relations in dowry cases and if it was not discouraged, it was likely to affect the case of the prosecution even against the real culprits.

In ***Anita & Ors. Vs. State of Punjab, 2003(4) RCR (Criminal) 313***, when a first information report was lodged by the wife under Sections 498-A and 406 of the Indian Penal Code against the entire family members of the husband, this Court exercising its powers under Section 482 Cr.P.C. had quashed the FIR and had observed that there was a tendency to involve all the relatives of the husband when the relations between the husband and the wife become strained.

In ***Arnesh Kumar Vs. State of Bihar & Anr. 2014(3) RCR (Crl.) 527***, the Hon'ble Apex Court observed that the fact that Section 498-A IPC is a cognizable and non-bailable offence had lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives and the simplest way to harass is to get the husband and his relatives arrested under this provision.

In the case of ***Preeti Gupta & Anr. Vs. State of Jharkhand & Anr. 2010 AIR (SC) 3363*** the Hon'ble Apex Court observed that a serious relook of the entire provisions of Section 498-A IPC was warranted by the legislation. It was observed that exaggerated versions of the incident are reflected in a large number of complaints and the tendency of over implication is also reflected in a very large number of cases. In that case the Hon'ble Apex Court quashed the criminal proceedings against brother and sister of husband, living separately.

Admittedly, this is the second marriage of the complainant.

The petitioner is the uncle of the husband. The petitioner had approached

this Court before the charge was framed and charge was ordered to be subject to the final outcome of this petition. The trial Court has framed the charge and case is fixed for prosecution evidence. The FIR can still be quashed even after the charges have been framed if it is found that the allegations in the FIR are absurd and inherently improbable and cannot be taken at the face value and accepted in its entirety and even where the criminal proceedings are manifestly attended with malafides and instituted with ulterior motive of wrecking vengeance on the family of the husband.

On perusal of the FIR it can be seen that the dowry articles which are said to have been given, were to the parents, brother and bhabi of the boy. There was no entrustment to the petitioner. General allegations have been made that whatever money was given by the complainant's parents the whole amount was kept by the accused in their possession. The complainant refers to two complaints earlier to the police and the allegations are that since the accused had assured that they would not demand any dowry and would not beat her therefore the matter was settled and a compromise was arrived at and she started living separately with her husband in November 2013. The complainant had narrated one incident which occurred on 24.11.2013 when the complainant was living with her husband in a separate accommodation regarding which a complaint was given. The complainant has further stated that in the FIR a compromise was effected therein and the couple started living together but again in February 2014 with the consent of the whole family her husband gave a beating to her and fled from the house. There is no specific instance or incident or accusation directed at the petitioner. General and vague allegations have been levelled against the petitioner. The name of the petitioner figures in the

opening complaint where names of all the relatives had been mentioned. It is clear that the petitioner had been named only to harass the husband and his family members. It has been seen that there is a tendency in matrimonial cases to falsely implicate the in-laws family. The allegations in the FIR are vague and exaggerated made to rope the relatives of the husband because the relations between the couple had become strained. It is a fit case where the Court should step in and quash the FIR and the subsequent proceedings as they have been instituted with an ulterior motive of wreaking vengeance upon the petitioner.

The petition is allowed. Consequently, the aforesaid FIR and all consequent proceedings arising therefrom are quashed qua the petitioner.

**(ANITA CHAUDHRY)
JUDGE**

August 09, 2018
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No