

In the High Court of Punjab and Haryana at Chandigarh

CRM-M-19855-2015 (O&M)

Date of Decision: 26.02.2018

Kastoori Lal Dhir and another

...Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. L.M. Gulati, Advocate
for the petitioners.

Mr. Rahul Rathore, DAG, Punjab.

Mr. S.S. Behl, Advocate
for respondent No.2.

ANITA CHAUDHRY, J

In this petition, the petitioners are seeking quashing of FIR No.56 dated 15.09.2014 registered under Section 376 of IPC and Section 4 of POCSO Act 2012 and Sections 328/ 420/ 467/ 468/ 471/ 506 and 120-B IPC at Police Station Daresi, Ludhiana, District Ludhiana.

Pleadings are complete.

The petitioners are the parents of Pawan Dhir. They claimed that they have a separate mess and separate business. A complaint was lodged by respondent No.2 containing allegations of fraud, forgery and rape against Pawan Dhir and his parents. The allegations were that the complainant's father has a Utensils shop in Meena Bazar, Ludhiana and the main accused Pawan was working in the Jewellery shop in a shop opposite to their shop. It was claimed that Pawan had become friendly with the

complainant's mother and he become a regular visitor to their shop and house. The complainant has alleged that Pawan used to meet her often and gained her confidence. In January, 2014 Pawan told the complainant that he had constructed a new house in Rishi Nagar, Ludhiana and asked her to see it. In good faith the complainant (aged 17 years old) went to see the house along with Pawan. The allegations are that Pawan forcefully sexually assaulted her without her consent. The complainant remained under extreme shock and stress. On reaching home she did not disclose the incident to her mother. Thereafter, Pawan started threatening her saying that he had made a video of the entire act and would make it public in case the matter was reported to the police or to her parents. The complainant alleged that Pawan used to keep a pistol with him and threatened to kill her and started exploiting and said that he would make her owner of the Jewellery shop if she kept quiet. The complainant further alleged that under these circumstances, he sexually assaulted her few more times. The complainant gathered courage and told the entire incidents to her mother and decided to report the matter. It was also alleged that Pawan was in criminal conspiracy with his parents had played fraud and forgery. It was claimed that Pawan had borrowed Rs.4 lacs and 20 tolas of gold from the complainant's mother in August, 2013 on the pretext of putting their share in a wholesale Jewellery business but he did not start the business nor returned the money and gold. The mother of the complainant asked the complainant to return the money and gold and he expressed his inability and stated that he would execute sale deed of his house in favour of the complainant's mother's name. On 02.03.2014, he showed a stamp paper of Rs.500 and said that he was selling the house to his mother and took them to the office of the Tehsildar

at Transport Nagar Ludhiana and made them sign some papers without making them read and they were told that it was a sale deed. The allegations are that the accused Pawan Dhir told them that there was some mistake in the sale deed and they would have to execute another sale deed and he again took them to the office of the Tehsildar and made them sign some documents which were not read over to them. Later on they came to know that instead of transferring the house in the name of the complainant's mother, he had transferred the shops of the complainant's mother in the name of his sister. The allegations are that they did not receive any amount and the sale deeds was an act of fraud and forgery and all the accused has connived with each other.

The police filed the challan against Pawan and his parents.

The petitioners are seeking quashing of the FIR *qua* them on the allegations that there were no allegation against them and the fact was that the mother of the complainant namely Jeewan Bala had sold 3 shops in lieu of Rs.38 lacs to their son and those shops were purchased in the name of his daughters and one shop in the name of Rashmi Sachdeva a family friend of their son and the sale deed were registered on different dates and they had also executed a Will and a General Power of Attorney. It was pleaded that the mother of the complainant after taking the amount started blackmailing him and was asking for more money and the sale was voluntary and a false FIR had been lodged naming them as well. It was pleaded that the complainant had earlier filed a complaint against their son but she voluntary withdrew that complaint and made a statement (Annexure P-6).

The State filed the reply and took the plea that there were

allegations of rape, fraud and forgery against the son of the petitioners and the allegations against the petitioner were that Pawan had acted in connivance with his parents and cheated the complainant's family. It was pleaded that preliminary inquiry was held and challan had been presented on 23.11.2015. Charge had not been framed and the extraordinary jurisdiction of the Court could not be invoked and the petitioners can raise their defence at the appropriate stage.

Counsel appearing for respondent No.2 states that he adopts the reply filed by the State.

I have heard both the sides.

Learned counsel for the petitioners contends that the main allegations are against their son and are false. The counsel refers to the sale deed on the records and urges that the property had been sold and the complainant side has received the sale consideration reflected in the sale deed and thereafter the complainant wanted more money and got a false FIR registered and the only role given to them is that the parents were in conspiracy with their son.

Counsel appearing for the complainant urges that those are not the only allegations against the petitioners and a supplementary statement was given. The counsel further submits that challan has been presented and charge has been framed and the petitioners played active role. The counsel further submits that the complainant had gone to the petitioner's house and had threatened her.

The State was asked whether supplementary statement had been given by the complainant. On instructions, he says that there is no supplementary statement in the file sent by the police.

Responding to the submission, counsel for the petitioner contends that even if the challan has been filed or charge framed there is no absolute bar to entertain the petition under Section 482 Cr.P.C. and each case has to be examined on its own facts and the case in hand there is just one line against them that the parents were in conspiracy with their son.

The conceded position is that the challan has been presented and charge had not been framed when the petition was filed. On hearing the rival contentions and on going through the records minutely, I am of the view that the complainant has no case so far as the petitioners are concerned the only allegations against the petitioners are that they were also in conspiracy with their son. If at all any supplementary statement has been made it would only be an improvement to enlarge the scope. Lately, there is tendency to involve the entire family when there is dispute even with one of them and this is one of those cases. There are no specific allegations against the petitioner. The complainant had not explained in what manner the petitioner's had conspired with their son. The FIR *prima facie* discloses a case of over implication involving the family of the main accused which is just to settle scores.

While exercising jurisdiction under Section 482 Cr.P.C. the High Court does not ordinarily embark upon an inquiry whether the evidence is reliable or not but when the allegations in the FIR do not constitute a cognizable offence and does not disclose the commission of any offence by some of the persons than it is a fit case where the proceedings should not be allowed to go on. Mere filing of challan would not put a bar and the proceedings can be quashed if the facts so demand. The complainant had named the parents of the main accused just to put pressure on the son.

In '*Harjinder Kaur and others versus State of Punjab 2004(4) R.C.R. (Criminal) 332*', it was held that even though challan had been filed and charge had been framed yet there was no absolute bar to entertain the petition under section 482 Cr.P.C. and each case has to be examined on its individual facts.

In the light of the above discussion, it is held that it is a fit case for exercising inherent of powers to quash the criminal proceedings and the FIR so far as the present petitioners are concerned.

Petition is allowed. The present FIR is quashed as against the petitioners. Nothing contained hereinbefore would have a bearing on the merits of the case so far as other accused is concerned.

(ANITA CHAUDHRY)
JUDGE

February 26, 2018

ps-I

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No