

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

CRM-M-23133-2013

Date of decision: 13.07.2018

Prof. Sarab Nihal Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate, with
Mr. Vishal Deep Goyal, Advocate,
for the petitioner.

Mr. V.G. Jauhar, Sr. DAG, Punjab.

Mr. Ranjan Lakhanpal, Advocate,
for respondent No.2.

JAISHREE THAKUR, J.

1. This petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of FIR No. 65 dated 11.04.2012, under Sections 406, 498-A of the IPC and 3/ 4 of Dowry Prohibition Act, registered at Police Station Civil Lines, Patiala District Patiala.

2. In brief, the facts that can be culled out from the FIR are that a marriage was solemnized between the petitioner and the complainant-respondent No.2 on 15.10.2007 as per Sikh rites at Windsor (Ontario, Canada) and the same is registered there itself. Out of this wedlock a male child was born in 2009. The parties resided in between Toronto (Canada) and Gurugram till 30.03.2011. It is alleged in the FIR that soon after her marriage they came to India in

November, 2007 to attend a wedding at Chandigarh where she became aware of the fact that she had become a victim of criminal conspiracy for illegal demand of dowry. It is alleged that her husband and her in-laws were compelling her to bring a sum of rupees five crores for purchasing a house at Gurugram to which the complainant stated that neither she nor her parents have the capacity to meet this demand. It is further stated in the FIR that a sum of ₹ 50,00,000/- was handed over by her father to purchase a flat at Gurugram. She was also tortured and pressurized to bring money for Bentley car and when she was unable to fulfill this demand, she was turned out from her matrimonial home. Apart from raising various allegations of ill-treatment, it is also alleged that a flat No. 15-A GF, Sector 49, Lilac-I, Block-C Gurugram was purchased for a sum of ₹ 50,00,000/- that had been handed over by the father of the complainant and the same had fraudulently been bought by her husband jointly in his name. It is also alleged that after she reached at her parental home on 10.01.2011, her husband and in-laws came, apologized for their conduct and assured that in future they will not torture her on account of dowry. A written apology was also tendered to that effect. On 28.02.2011, she was taken by her husband and in-laws from her parental house for Gurugram but was not allowed to enter her matrimonial home. It is further submitted that she was being pressurized to sign blank papers so that her husband could transfer the entire property onto his name. Raising all allegations of cruelty and demand of dowry an FIR No. 65 dated 11.04.2012, under Sections 406, 498-A of the IPC and 3/ 4 of Dowry Prohibition Act, came to be registered at Police Station Civil Lines, Patiala District Patiala against the petitioner herein Sarab Nihal Singh,

Nau Nihal Singh, father-in-law and Gurbhajan Kaur, mother-in-law, which is a subject matter of these proceedings.

3. Dr. Anmol Rattan Sidhu, learned Sr. Advocate, assisted by Mr. Vishal Deep Goyal, Advocate, appearing on behalf of the petitioner herein contends that all allegations as set out in the FIR are not sustainable and are purely concocted events. In fact, the complainant had gone to Canada on a work permit and was residing with her maternal aunt in Canada. When the parties met, the complainant had already obtained a decree of divorce with mutual consent from her earlier husband, whereas the petitioner who was a divorcee twice over was already working in Canada. A prenuptial agreement was signed between the parties on 13.10.2007 in which it was stated that in case a dispute arose between the parties it would be settled in Canada itself.

4. Learned Senior counsel appearing on behalf of the petitioner submits that the marriage between the parties was simple and performed in Canada itself wherein only 12 persons attended the said marriage. It is also argued that it is the petitioner herein who bought a flat No. 15 GF LILAC-1, Sector-49, Gurugram, Haryana for a sum of ₹ 43,00,000/- through his NRO account maintained in IDBI Bank in India, in which flat he made the complainant co-owner. It is also argued that all allegations regarding demand of ₹ 3.5 crore and Bentley car are absolutely false and the same have already been investigated by the NRI, Commission. It is also argued that the matter was investigated on a complaint that had been filed in Gurugram against the petitioner to the Joint Commissioner of Police, Gurugram on 20.05.2011 alleging that the petitioner herein was demanding dowry and cash from the parents of the respondent-

complainant. The matter was thoroughly investigated and both the petitioner and his parents were cleared by the police in a detailed report submitted on 09.08.2011. A second complaint was filed before the IG Police, Patiala which was forwarded to Police Station Civil Lines, which resulted in the registration of the instant FIR. It is argued that the respondent-complainant herein has concealed the fact that similar allegations had already been levelled against the petitioner and his family members which allegations on a thorough investigation have been found to be false. It is in those proceedings that it had been established that the flat in question as claimed to have been purchased from cash received by the petitioner from the family members of the complainant was not so. In fact, the money had been transmitted in IDBI NRO account.

5. It is also argued that the Courts at Patiala do not have the jurisdiction to entertain the complaint since the parties neither resided together there nor was the marriage performed at Patiala. It is either the Courts in Canada (on the basis of pre nuptial agreement) or at Gurugram which would be competent to entertain the case. It is also argued that on the enquiry report of the NRI Wing it was recommended that Section 498-A IPC be deleted from the FIR and it is argued that the instant FIR has been registered only for the purposes of extortion and the same is an abuse of the process of law. In support of his arguments, learned counsel appearing on behalf of the petitioner relies upon the judgment rendered by the Hon'ble Supreme Court in ***State of Haryana and others vs. Ch. Bhajan Lal and others, 1991(1) R.C.R. (Criminal) 383*** to argue that the Courts have the jurisdiction to quash the FIR if allegations found

therein are unsubstantiated. He further relies upon the judgment rendered by this Court in *Kastoori Lal Dhir and another vs. State of Punjab and another'*, **CRM-M-19855-2015** on 26.02.2018 wherein the FIR was quashed. He further relies upon the judgment rendered by Hon'ble the Supreme Court in *Bhura Ram and Ors. vs. State of Rajasthan & Anr. 2008(2) R.C.R. (Criminal) 761* in support of his argument that the Courts at Patiala would not have the jurisdiction to entertain the complaint and the FIR ought to be quashed on that ground.

6. Per contra, Mr. Ranjan Lakhanpal learned counsel appearing on behalf of the respondent-complainant submits that the allegations in the FIR cannot be quashed at this stage. It is submitted that there is a specific demand for dowry and specific allegation of cruelty set out. It is argued that the petitioner was also divorced twice before contacting the said marriage with her in Canada. It is submitted that the courts in Patiala are competent to adjudicate the matter since she is residing there and the petitioner and his family members came to Patiala as well. It is argued that it is a matter of evidence which has to be led before the trial Court which is already seized of the matter since the challan has been presented. Moreover, since the petitioner has not challenged the challan, the instant petition cannot be entertained, while also submitting that criminal proceedings should be quashed only in the rarest of the rare cases. Reliance has been placed upon judgments rendered in *Manjula Sinha vs State of U.P. and others* (Criminal Appeal No. 861 of 2007 – arising out of SLP (Crl.) No. 1714 of 2006), *State of Bihar vs Raj Narain Singh, 1991 AIR (SC) 1308* and *G.C. Rohilla vs M/s Gian Rice and General Mills Kurukshetra, 2002(1) RCR*

(Crl.) 234 in support of arguments that the High Court should not interfere.

7. I have heard learned counsel for the parties and have perused the voluminous paper-book along with documents filed during the pendency of proceedings in the High Court.

8. Foremost question that arises for determination is whether this Court is competent to quash the FIR on the pleadings available before it, especially in view of the fact that challan has been presented, which has not been challenged as on date. In this regard, it is held that there are no fetters on the powers of the High Court under Section 482 Cr.P.C. to quash an FIR in case the allegations in the same are highly improbable and if the allegations are taken on their face value and accepted in their entirety, no prima facie case is made out against the accused. The law in this regard is well settled in ***State of Haryana and others vs. Ch. Bhajan Lal and others*** case (supra) wherein in the Apex Court has reiterated the principle that the courts can exercise its 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 a 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

(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.”

9. The question that would also arise in the instant case is whether the High Court would be competent to quash the FIR even though a challan has been presented and the same has not been challenged. This question came up for hearing in ***Kastoori Lal Dhir and another*** case (supra) wherein in similar circumstances the police had filed a challan against the petitioner therein and his parents and the Coordinate Bench of this Court held that mere filing of a challan would not put a bar and the proceedings can be quashed if the facts so demand. In the case of ***Harjinder Kaur and others vs. State of Punjab, 2004 (4) R.C.R. (Criminal) 332*** it has been held that even though the challan had been filed and charges had been framed, there is no absolute bar on the power of the High Court to entertain the petition under Section 482 Cr.P.C. and quash

the proceedings in case it is so warranted. In the instant case, it is during the pendency of the petition that challan came to be presented and, therefore, the petitioner had already invoked the jurisdiction of this Court seeking quashing of the FIR on the ground that it is nothing but an abuse of the process of Court. The case law as relied upon by the counsel for the respondent is distinguishable and not applicable to the facts of the present case especially in view of the judgment rendered in *State of Haryana Vs Bhajan Lal* case (supra) and *Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others vs. State of Gujarat and another* case (supra). Therefore, in view of the above, this question is answered against the complainant holding that the High Court would have ample jurisdiction to entertain the petition and quash the same should it be so warranted under Section 482 Cr.P.C.

10. An argument has also been raised by the counsel for the petitioner that the courts at Patiala would not have jurisdiction to try the case. In this regard, learned counsel for the petitioners places reliance upon *Y. Abraham Ajith and others vs. Inspector of Police, Chennai and another, 2004(3) R.C.R. (Criminal) 988* to substantiate that no cause of action has arisen in Patiala and if there is any demand of dowry or harassment, the jurisdiction to try the case would be at Canada as per the prenuptial agreement or at Gurugram where the parties resided and, therefore, any FIR or proceedings at Patiala are not sustainable. The argument would not have merit since the Hon'ble Supreme Court in *Sunita Kumari Kashyap vs. State of Bihar and another, 2011(3) R.C.R. (Criminal) 26*, wherein it has been held that when an offence is a continuing one and if it continues to be committed in more than one local area

as per Section 177, the Court having jurisdiction over any of such local areas is competent to inquire into and try the offence. With an allegation that the petitioner and his family came to Patiala and it was at Patiala that a sum of ₹ 50 Lakhs in cash was handed over and, therefore it is held that Courts at Patiala would have the jurisdiction to try the case.

11. The other question that needs to be answered is whether the FIR No. 65 dated 11.04.2012, under Sections 406, 498-A of the IPC and 3 & 4 of Dowry Prohibition Act, came to be registered at Police Station Civil Lines, Patiala District Patiala deserves to be quashed being an abuse of process of law.

12. Admittedly, the complainant has filed FIR under Sections 406, 498-A and Sections 3 & 4 of the Dowry Prohibition Act on allegations that she has been subjected to cruelty at the hands of the her husband and his parents on account of non fulfillment of demand of dowry. It has been specifically submitted that there has been a demand for cash and a Bentley car by the husband and in-laws, while also submitting that the father of the complainant in order to satisfy the demand had handed over a sum of ₹ 50 Lakhs in cash in order to buy an apartment in Gurugram. It is also argued that the petitioner instead of buying the flat in the name of the complainant had fraudulently added his name in the title deed and was now making an attempt to have the entire flat transferred on to his name.

13. The respondent complainant had raised similar allegations as raised before the present FIR came to be registered to the Joint Commissioner of Police at Gurgaon and the matter had been investigated in great detail. The Inspector consigned the application to the record as both petitioner and the

complainant were not available. In investigation, it was found that mobile phones were not being attended by both of them and a conclusion was drawn that it is a dispute between husband and wife. As per another report available on the record (Annexure P-10) reflects that the petitioner herein had given a complaint against his wife Shabinderjit Kaur, stating that she had taken away two gold sets, 1 Navrattan gold set, 1 Navrattan matching earrings, two gold bangles and 1 gold ring apart from her own articles and clothing. In the said report, it was stated that the ASI had himself got a meeting arranged between the petitioner and the complainant and suggested to both of them to reside jointly for a week to which they both agreed, but the complainant stayed for a period of 3 days and left the house of her own wish. When the ASI tried to contact the complainant wife, the Mobile was switched off and thereafter the complainant also went back to the United States and no further action was taken. The matter was also investigated by Asstt. Inspector General of Police, NRI Commission Women Wing, Phase 7, Mohali who submitted his report dated 26.03.2014. As per the enquiry report, no evidence came to light regarding demand of dowry, cash or demand of Bentley car by the accused person-the petitioner. As per the enquiry report, there were some exchange of hot words between the petitioner and respondent No. 2. The enquiry report is available on the record as Annexure R-1 with the reply filed by the respondent - State. The report further states that no fact regarding demand of dowry came to light and regarding the allegation of paying amount in cash for purchase of flat the same was also found to be untrue as the complainant could not produce any proof. In fact, it came to light that the flat situated in town was purchased

by the petitioner (through his own sources) in his name and in the name of the complainant, and that in the insurance policy he had also nominated his wife. It was further stated in the enquiry report that the marriage took place in a simple manner in Canada in a Gurudwara and no relatives were present at that point in time. It was recommended that the challan should be presented only under sections 406, 506 IPC, while recommending that sections 498-A, 3/4 of Dowry Prohibition Act deleted.

14. The counsel for the petitioner has also vehemently argued that the complainant has not been able to show any entrustment of gold articles since she was not able to show any purchase of such items. It is noted that the Investigating Officer has supplied information by letter dated 11.8.2014 *“that during course of investigation no bills receipts were provided by the complainant for misappropriated items and no verification by sales tax Department was done”* This argument is countered by submitting that the jewellery, was old jewellery, bought at the time of first marriage which was already in the possession of the complainant.

15. On a co-joint reading of the enquiry report as available on the record of the then Investigating Officer at Gurugram, report Annexure P-10 on a complaint filed by the petitioner, the enquiry report of the Investigating Officer attached with the NRI Commission at Mohali, evidence available on the record, it transpires that the flat in question had been purchased by the petitioner herein out of his own funds from his NRO account maintained with IDBI bank, funds which had been transmitted from abroad. Moreover, the name of the complainant has been added as joint owner in the said flat and her

name is reflected as nominee in his insurance policy. It becomes manifestly clear that the allegations as set out in the FIR are not sustainable. The investigation as done by the NRI Commission clearly reflects that the complainant has not been able to prove any demand of dowry, handing over of ₹ 50 lakhs cash to purchase a flat or that there was any physical abuse. The very allegation that the sum of ₹ 50 lakhs in cash had been handed over by the father of the complainant to purchase of flat stands belied. The argument that gold articles are still in the possession of the petitioner also does not inspire much confidence, since there is a report on the record that the complainant left the matrimonial home of her own accord after taking her jewellery and clothes. Respondent had returned to the matrimonial home after agreeing to reside there and give her marriage another chance, but left within a period of three days. The respondent also did not cooperate during investigation as she did not respond to any of the calls made by the Investigating officer.

16. As noted by the Investigating Officer at Gurugram, it appears that there is a matrimonial dispute that arose between the parties which led to various allegations that have been raised by the complainant. Even though there is an argument that it is for the trial Court to look into the evidence available and the High Court ought not to interfere, this court finds that the allegations as set out in the FIR are not supported by any of the findings in the inquiry report available on the record. The inherent powers of the High Court under Section 482 of the Code are wide and unfettered which should be exercised with great caution but failing to exercise the said power when the allegations raised are improbable would also tantamount to grave injustice.

17. In the present case, this court is of the opinion that this is a case where the allegations have already been investigated by the NRI Commission and allegations of demand of dowry have been held to be untrue while holding that it was a simple marriage with no relatives present. Earlier too on similar complaint filed before the Commissioner of Police, Gurugram where the parties were residing, the matter was investigated and it was termed as a matrimonial dispute and no action taken thereon. Therefore, this court deems it appropriate to quash FIR No. 65 dated 11.04.2012, under Sections 406, 498-A of the IPC and 3/ 4 of Dowry Prohibition Act, registered at Police Station Civil Lines, Patiala District Patiala being an abuse of the process of the court. Ordered accordingly.

18. Petition stands allowed.

13.07.2018

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.