

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

(1) Crl. Misc. M 22713 of 2014 (O&M)
Date of decision: October 15, 2018

Manav Arora

...Petitioner

Versus

U.T., Chandigarh and others

...Respondents

(2) Crl. Misc. M 6647 of 2014 (O&M)

Narain Dass Arora @ N.D. Arora and another

...Petitioners

Versus

U.T., Chandigarh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. V.P. Singh, Advocate,
for the petitioners.

Mr. Lalit K. Gupta, Addl. P.P., for
Union Territory, Chandigarh.

Mr. Sartej Singh Narula, Advocate,
for respondent No.4.

JAISHREE THAKUR, J.

1. By this common judgment, this court proposes to dispose of the two aforesaid mentioned criminal miscellaneous petitions filed under Section 482 of the Code of Criminal Procedure for quashing FIR No. 713 dated 7.12.2013 registered under Sections 406, 498-A IPC at Police Station Sector 34, Chandigarh and all consequential proceedings arising thereunder,

as a common law point is involved.

For the sake of brevity, facts have been taken from **Crl. Misc. M 22713 of 2014 Manav Arora Versus U.T., Chandigarh and others.**

2. In brief, the facts are that the aforesaid FIR was got lodged at the instance of respondent No.4, who is father-in-law of the petitioner. It is alleged that the marriage of the daughter of complainant, namely Ashima Soni was solemnized with the petitioner on 2.4.2012 in Chandigarh and presently his daughter is residing in Melbourne (Australia). It is alleged that in the ring ceremony, a sum ₹50,000/- were spent by the complainant. The complainant gave ancestral gold weighing 15 tola and a diamond ring to his daughter and ₹ 1 lakh in cash was given to all relatives and friends. It is further alleged that one gold chain and one gold bracelet was given to the petitioner, whereas one gold chain weighing 18 gram and one pair of gold ear ring weighing 6 gram were given to the parents of the petitioner. It is also stated in the FIR itself that the petitioner and the daughter of the complainant went to Australia on 27.4.2012 and the complainant paid the air fare. It is further alleged that the entire family of the petitioner went to Australia on 28.8.2012 and remained there for 45 days and during their stay in Australia the daughter of the complainant was tortured for not bringing sufficient dowry. It is alleged that the complainant, along with his family, went to Australia on 8.4.2013 to meet his daughter where the petitioner's family instigated the petitioner to humiliate them. It is further alleged that on 13.5.2013, the mother of the petitioner called the complainant's wife at her residence and told her to pay ₹1.4 lakhs as they had put financial burden on

their son by visiting them. On 13.5.2013, the complainant was asked to pay ₹25 lakhs in cash by the parents of the petitioner or their daughter would be tortured. The petitioner got spouse sponsor of his wife cancelled and also got served a legal notice for vacation of his house.

3. Mr. V.P. Singh, learned counsel appearing on behalf of the petitioners, contends the allegations, as set out in the FIR, are totally false and without any basis. It is argued that he marriage took place on 2.4.2012 and soon thereafter the couple went to Australia on 27.4.2012. It is contended that the incidents, if any, as alleged in the FIR, took place in Australia and therefore, the instant FIR is not maintainable primarily on the ground for lack of jurisdiction. Reliance in this regard is placed upon a judgment rendered in **Harmanpreet Singh Ahluwalia and others Versus State of Punjab and others 2009 (2) RCR (Criminal) 956**. It is further contended that inventory of all the article found in the locker of the father of the petitioner was prepared and all the dowry articles and the gold ornaments were handed over to the complainant, in the presence of the police/investigating authority against receipt, vide Annexure P/5. It is also argued that there is non-compliance of Section 188 of the Code of Criminal Procedure, insofar as no sanction has been taken before registration of the FIR.

4. Per contra, Mr. Sartej Singh Narula, learned counsel for respondent no 4 along with Mr. Lalit K. Gupta, learned counsel appearing on behalf of the Union Territory, Chandigarh, submits that the allegations as set out in the FIR are specific as to how the daughter of the complainant was

ill treated, therefore, no grounds made out for quashing of the said FIR. It is argued that the dowry articles were handed over to the petitioner-husband and his parents in India and demand of dowry was also made in India, therefore, the present FIR was rightly registered and the courts at Chandigarh would have the territorial jurisdiction to entertain the proceedings. However, Mr. Lalit Gupta learned counsel for Union Territory has not disputed the fact that no sanction was taken as envisaged under Section 188 of the Code of the Criminal Procedure before initiating these proceedings as against Manav Arora.

5. I have heard the counsel for the parties and with their able assistance gone through the pleadings of the case and the law as cited.

6. There is no dispute that a marriage was solemnized between the petitioner—Manav Arora and the daughter of the complainant, namely Ashima Soni on 2.4.2012 at Chandigarh and soon thereafter, the couple went to Australia on 27.4.2012. The daughter of the complainant remained with her husband till 25.7.2012 and returned to India to take her Ph.D. viva and she returned to Australia on 29.8.2012 thereafter. Both sides of parents visited Australia independently, but matrimonial differences had arisen between them. Litigation ensued between Manav Arora—petitioner and Ashima daughter of the complainant, which resulted in Ashima Soni making an application seeking intervention and Family Violence Protection Act, 2008 in Australia against her husband the petitioner herein, the police went to the residence then took note of the fact that both had a verbal arguments, however, there was no disclosure of threat, violence or damage. The

petitioner—husband has alleged that due to the false allegations being raised against him, he was under great mental trauma and had to undergo psychiatric treatment and eventually they decided to divorce and part ways. But the daughter of the complainant failed to sign the final documents and subsequently FIR 713 dated 7.12.2013 came to be registered at Chandigarh.

7. The contents of FIR have to be read, keeping the specific role attributed to Manav Arora, the husband, and his parents. A reading of the same clearly reflects that there are specific allegations in the FIR pertaining to Mr. N D Arora and his wife Mrs Neelam Arora (petitioners in Crl. Misc. M 6647 of 2014 regarding entrustment and demand of Dowry at the time of marriage and even thereafter. The daughter of the complainant left for Australia with her husband but came back to undertake her Ph.D. viva voce alone in 25.7.2012 and she stayed with her in-laws. In the FIR, it is stated that immediately after the marriage, the daughter was tortured for not bringing dowry as per their status. The entire thrust of the allegations made out in the lengthy FIR is against the parents in law, namely Mr. N.D Arora and his wife Mrs. Neelam Arora. The incidents of entrustment and demand of dowry are stated to be at Chandigarh and, therefore, the courts at Chandigarh would have jurisdiction to entertain the matter. The argument raised that there are certain emails available on the record of the complainant himself that reflect he was happy with the way his daughter was being treated and that these emails reflect that there was no demand of dowry, are a matter of evidence and cannot be looked at this stage. Even the contents of the statutory declaration form relied upon, which reflects that

Ashima Soni has stated that all her belongings are in her possession and she does not claim anything from her husband or his relative and further stated that she will not claim anything in respect of maintenance/alimony or any kind of share in immovable properties of her husband Manav Arora or his parents in any Court of law in Australia or anywhere in the world nor shall file any kind of complaint against her husband or my in-laws with respect to the dowry or any other kind of behaviour, cannot be looked at this stage since there is submissions made that signatures of Ashima Soni were obtained in this declaration under duress. In view of the specific allegations made against the parents of the husband, as set out in the FIR, this court is not inclined to interfere in the said matter. Resultantly **Crl. Misc. M 6647 of 2014** stands dismissed .

8. As regards **Crl. Misc. M 22713 of 2014**, the independent petition filed by Manav Arora, it is worthwhile to notice that the allegations qua him in FIR *are general* in nature. As already noticed earlier, the main thrust of grievance and specific allegations of demand of dowry are against the parents-in-law—petitioners in Crl. Misc. M 6647 of 2014. It cannot be lost sight of that within a period of 3 weeks of their marriage the parties left to reside in Australia. Any ill-treatment meted out to her was investigated under the Australian laws and the allegations of abuse and violence were unfounded. During their time in India, before leaving for Australia, no such complaint had been filed. The argument raised that she was forced to sign divorce papers in Australia, again is an argument that can not be taken note of since these are acts that have taken place on foreign soil. There is nothing

available on the record to show or establish that the complainant or his daughter had filed any such complaint during their short stay of 25 days in India before the married couple left for Australia. Therefore, as the offences, if any, have been committed in Australia, proceedings under the FIR at Chandigarh are clearly not sustainable for want of territorial jurisdiction. A similar case came up for hearing before the Supreme Court in **Harmanpreet Singh Ahluwalia and others Versus State of Punjab and others 2009 (2) RCR (Criminal) 956**, wherein the parties were residing in Canada and FIR was registered at Jalandhar alleging demand of dowry and misappropriation of dowry articles. The proceedings were quashed holding that the Jalandhar court would have no jurisdiction to entertain the matter.

9. An argument has also been raised by the counsel for the Manav Arora (petitioner in Crl. Misc. M 22713 of 2014) that proceedings cannot be initiated in India for any offence that has been committed outside the territorial jurisdiction of India by placing reliance upon Section 188 of the Code of Criminal Procedure which reads as under:-

“188. Offence committed outside India.— *When an offence is committed outside India—*

(a) by a citizen of India, whether on the high seas or elsewhere;
or

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found: Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with

the previous sanction of the Central Government.”

10. The Supreme Court in **Thota Venkateshwarlu vs State of A.P.Tr. Princ. Sec. & anr (2011) 9 SCC 527** had an occasion to deal with Section 188 of the Code of Criminal Procedure and it was held:-

“14. The language of Section 188 Cr.P.C is quite clear that when an offence is committed outside India by a citizen of India, he may be dealt with in respect of such offences as if they had been committed in India. The proviso, however, indicates that such offences could be inquired into or tried only after having obtained the previous sanction of the Central Government. As mentioned hereinbefore, in Ajay Aggarwal case [(1993) 3 SCC 609 : 1993 SCC (Cri) 961] , it was held that sanction under Section 188 CrPC is not a condition precedent for taking cognizance of an offence and, if need be, it could be obtained before the trial begins. Even in his concurring judgment, R.M. Sahai, J., observed as follows: (SCC p. 628, para 29)

“29. Language of the section is plain and simple. It operates where an offence is committed by a citizen of India outside the country. Requirements are, therefore, one — commission of an offence; second — by an Indian citizen; and third — that it should have been committed outside the country.”

15. Although the decision in Ajay Aggarwal case [(1993) 3 SCC 609:1993 SCC (Cri) 961] was rendered in the background of a conspiracy alleged to have been hatched by the accused, the ratio of the decision is confined to what has been observed

hereinabove in the interpretation of Section 188 CrPC. The proviso to Section 188, which has been extracted hereinbefore, is a fetter on the powers of the investigating authority to inquire into or try any offence mentioned in the earlier part of the section, except with the previous sanction of the Central Government. The fetters, however, are imposed only when the stage of trial is reached, which clearly indicates that no sanction in terms of Section 188 is required till the commencement of the trial. It is only after the decision to try the offender in India was felt necessary that the previous sanction of the Central Government would be required before the trial could commence.

16. Accordingly, up to the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to Section 188 CrPC. However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government. The Magistrate is, therefore, free to proceed against the accused in respect of offences having been committed in India and to complete the trial and pass judgment therein, without being inhibited by the other alleged offences for which sanction would be required.’’

12. The counsel appearing on behalf of the Union Territory, Chandigarh, as already noticed, has submitted that no sanction had been obtained of the Central Government, therefore, in view of the ratio as laid down in **Thota Venkateshwarlu's case (Supra)**, trial under the FIR cannot continue as against Manav Arora as it would be covered by the proviso to Section 188 of the Code of Criminal Procedure, which clearly stipulates prior approval of the Central Government.

13. For the reasons afore-stated, Crl. Misc. 22713 of 2014 is

allowed and the FIR No. 713 dated 7.12.2013 registered under Sections 406, 498-A IPC at Police Station Sector 34, Chandigarh and all consequential proceedings arising thereunder are quashed qua the petitioner—Manav Arora.

13. In nutshell, Crl. Misc. M 6647 of 2014 (filed by the petitioners —Narain Dass Arora and Neelam Arora) is dismissed and Crl. Misc. M 22713 of 2014 (filed by the petitioner—Manav Arora) stands allowed.

October 15, 2018
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No