

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

(1) Crl. Misc. M 25375 of 2015 (O&M)
Date of decision: February 8, 2018

Rajesh Kumar Gupta

...Petitioner

Versus

State of Punjab and another

...Respondents

(2) Crl. Misc. M 41457 of 2015 (O&M)

Rakesh Kumar Gupta

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. R.S. Bajaj, Advocate,
for the petitioners.

Mr. A.S. Sandhu, Additional Advocate General, Punjab.

Mr. R.K. Arya, Advocate,
for respondent No.2.

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. 62 dated 14.07.2012 (Annexure P/1) registered at Police Station Kahnwan, District Pathankot, under Sections 406, 498-A and 420/34 IPC and all consequential proceedings arising there under, as they arise out of the

similar set of facts and a common law point is involved. For the sake of brevity, facts have been taken from CRM- M-25375 of 2015 Rajesh Kumar Gupta versus State of Punjab and another.

2. In brief, the facts as stated are that a marriage was solemnized between Arun Kumar Gupta, brother of the petitioner, and Pramila Devi on 14.2.2006 in Amritsar, according to Hindu religious rites and ceremonies. Respondent No. 2 that is the complainant shifted to England in March 2006 and continued to reside there with her husband, the brother of the petitioner. The petitioners are permanent resident of United Kingdom and residing separately from their brother. In June 2010 Arun Kumar Gupta along with his wife came to India . The family members of respondent No. 2 planned for going on a pilgrimage to Mata Vaishno Devi on 06.06.2010. Respondent No. 2 accompanied them and while they were away Arun Kumar Gupta returned to England. On her return respondent No. 2 came to know that he had also taken her important documents along with him and thereafter contacted her husband on phone. She was assured that he would send the documents back to her in Amritsar. The documents were sent but they were received by respondent No. 2 in a spoiled condition. Resultantly, she could not travel on them. Thereafter, she got FIR No. 62 dated 14.07.2012 (Annexure P/1) registered at Police Station Kahnwan, District Pathankot, under Sections 406, 498-A and 420/34 IPC against her husband Arun Kumar Gupta, his real brothers Rajesh Kumar Gupta, Rakesh Kumar Gupta alleging that at the time of marriage her parents spent more than their capacity, i.e ₹2 lakhs in cash while giving 28 of grams of gold and other articles including air-conditioner, fridge, TV, CD player. It was further

stated in the F.I.R that her husband used to harass her with repeated demands of ₹5 lakhs. It was also stated that a fraud had been played upon her. After the registration of the FIR, the challan was presented against Arun Kumar Gupta and his two brothers. Since the petitioners were not residing in India at the time of the registration of FIR, they were not served with any summons, consequently were declared proclaimed offender by the trial court by order dated 2.1.2014. Thereafter, the petitioner on coming to India submitted bail bonds and is facing trial. Aggrieved against the proceedings the instant petition for quashing of FIR has been preferred.

3. Mr. R.S Bajaj, learned counsel appearing on behalf of petitioner, contends that the FIR registered is nothing but an abuse of the process of law with an attempt to harass the family members of the husband of the complainant. It is argued that the petitioner is a British citizen and is residing in England alongwith his family since 1978. In fact, he did not attend the marriage of respondent No. 2, nor did he participate in the said marriage in the year 2006. He came to India in the year 2010 for a short duration of a month and left immediately thereafter. The allegation of respondent No. 2 that she was harassed and given beatings while she was residing in England are blatantly false as the petitioner is residing at a distance of about 175 km from the matrimonial home of respondent No. 2—complainant and had nothing to do with their daily life. The complainant and her husband used to visit India on an annual basis and no complaint was ever submitted to any person either in England or in India. Moreover, after the registration of the impugned F.I.R, a detailed investigation was done by SP (HQ) Pathankot, who gave his report declaring the petitioner innocent.

However, without taking the report into consideration supplementary challan against the petitioner has presented. It is also argued that the complainant and her husband Arun Kumar Gupta were residing in England after solemnizing of their marriage and any offence would be within the territorial jurisdiction of United Kingdom and the courts in India would not be competent to do so.

4. Reply to the instant petition has been filed by both the respondent—State and respondent No.2—complainant. Mr. R.K. Arya, learned counsel appearing on behalf of the complainant and Mr. A.S. Sandhu Additional Advocate General, argue that there are serious allegations in the FIR against the petitioner herein as he is the person who instigated Arun Kumar Gupta, husband of the complainant, to demand cash of ₹5 lakhs. It is argued that the report prepared by SP headquarters Pathankot, declaring the petitioner innocent was never approved of and cannot be taken into consideration.

5. I have heard the counsel for the parties and with their assistance perused the pleadings.

6. Admittedly, a marriage took place between Arun Kumar Gupta and the complainant Promila Devi in the year 2006. After marriage the parties resided together in England and there seems to have been no complaint made during that time either before the authorities there or during any of their annual visits to India. A reading of the FIR does not reveal that the petitioner herein attended the marriage of Arun Kumar Gupta with the complainant or that there was any entrustment of any dowry articles. There is no mention in the said F.I.R of any gold ornaments etc. having been given

to the petitioner. In fact, only general allegations have been made stating that there was a demand of dowry by the in-laws family. All the allegations are against her husband Arun Kumar Gupta that he returned to England in her absence along with her jewellery, her passport, identity card, air tickets and other documents while also taking away ₹1 lakh with him. In fact, the only allegation in the FIR against the petitioner is that on asking about the whereabouts of her husband, from her brother-in-law Rakesh Kumar Gupta, she was informed that he had returned to UK. In the FIR there is no mention about the petitioner Rajesh Kumar Gupta. It is only in the supplementary challan presented that there is a reference of the petitioners, namely Rajesh Kumar Gupta and Rakesh Kumar Gupta, instigating husband of the complainant to raise a demand of ₹5 lakhs from her when they used to visit her home.

7. In the reply filed to the petitioner for quashing of a FIR, there is no denial that the petitioners herein are permanent residents of England and residing separately at a distance of 175 km from the matrimonial home of the complainant. Even if for the sake of argument, it is taken into account that the petitioners herein instigated their brother to raise a demand of ₹5 lakhs from the complainant, it was a demand that was raised in England, outside the territorial jurisdiction of the courts at Bhatinda. Therefore, the offence, if any, had been committed in England. 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. Similarly in the instant case, even if there was an instigation at the behest of the petitioners for demand of ₹5 lakhs from the complainant, the said demand was raised outside the territorial jurisdiction of Bhatinda and, therefore, the courts are not competent to entertain the matter.

8. Even otherwise there is no specific role or injury or demand of dowry or entrustment of dowry articles /istridhan or misappropriation of the same against the petitioners herein. It is apparently clear that the F.I.R has been registered against the petitioners herein only to harass the family members. The Supreme Court in **Preeti Gupta and another versus State of Jharkhand and another (2010) 7 Supreme Court Cases 667** had no hesitation in quashing the Criminal Complaint under Sections 498A, 406, 341, 323, and 120 B of IPC read with Sections 3 and 4 of the Dowry Prohibition Act, qua married sister-in-law and unmarried brother-in-law who were residing separately. It was observed as under:-

“18. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent powers should not be exercised to stifle a legitimate prosecution, but the Court's failing to use the power for advancement of justice can also lead to grave injustice.

19. The High Court should normally refrain from giving a

prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

29. Admittedly, Appellant No.1 is a permanent resident of Navasari, Surat, Gujarat and has been living with her husband for more than seven years. Similarly, Appellant No.2 is a permanent resident of Goregaon, Maharashtra. They have never visited the place where the alleged incident had taken place. They had never lived with respondent No.2 and her husband. Their implication in the complaint is meant to harass and humiliate the husband's relatives. This seems to be the only basis to file this complaint against the appellants. Permitting the complainant to pursue this complaint would be an abuse of the process of law.”

9. In **B.S. Joshi and others vs. State of Haryana and another, (2003) 4 Supreme Court Cases 675**, the Hon'ble Supreme Court has observed :-

“If for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the

exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power. Thus, the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.”

10. Recently, in the case of **Rajesh Sharma and others vs. State of U.P. and another (Criminal Appeal No.1265 of 2017, decided on 27.07.2017)** the Hon'ble Supreme Court has observed that “....*there is need to check the tendency to rope in all family members to settle a matrimonial dispute. Omnibus allegations against all relatives of the husband cannot be taken at face value when in normal course it may only be the husband or at best his parents, who may be accused of demanding dowry or causing cruelty. To check abuse of over implication, clear supporting material is needed to proceed against other relatives of a husband.*”

11. In the case in hand, the petitioners are brothers-in-law of the complainant, residing separately from the complainant and their brother in England, that too at a considerable distance. Not a single instance has been given as to when or as to how or in what manner petitioners herein are involved in the commission of alleged offences. There is no averment to the effect that a complaint had been lodged in England or any time prior to thereto when the complainant used to visit India.

12. In view of the foregoing discussion and ratio of law laid down by the Hon'ble Supreme Court in **Preeti Gupta and another vs. State of**

Jharkhand and another, in B.S. Joshi and others vs. State of Haryana and another, in Rajesh Sharma and others vs. State of U.P. and another and Harmanpreet Singh Ahluwalia (Supra), this court is of the considered view that there is no specific allegation/details against the petitioners, to constitute an offence under Sections 406, 498-A and 420/34 of Indian Penal Code.

13. In view of the above, the instant petitions are allowed. Consequently, the FIR No. 62 dated 14.07.2012 (Annexure P/s1) registered at Police Station Kahnwan, District Pathankot under Sections 406, 498-A and 420/34 IPC and all consequential proceedings arising there under qua the petitioners herein are quashed.

February 8, 2018
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No