

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

CRM-M No.31459 of 2013 (O&M)
Date of decision: 15th December, 2018

Harcharan Singh Saini & another

... Petitioners

Versus

State of Punjab & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Gautam Dutt, Advocate for the petitioners.

Mr. Rakeshinder S. Sidhu, Asstt. AG, Punjab
for respondent No.1/State.

Mr. A.P.S. Shergill, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

The brief facts that need to be highlighted in this petition under Section 482 Cr.P.C. moved by accused petitioners Harcharan Singh Saini and his wife Rajinder Kaur seeking quashment of FIR bearing No.18 dated 18.10.2012 under Sections 406 and 498-A IPC pertaining to Police Station NRI Jalandhar City (Annexure P2) and challan under Section 173 Cr.P.C. (Annexure P3), are as follows:-

Complainant Harmanjit Kaur alias Harmanjit Saini wife of Paramjit Singh son of the present petitioners, made a complaint stating that her marriage with the accused Paramjit Singh was solemnized on 27.12.2002 where sufficient money was spent and huge articles of dowry and other costly items were given. The complainant has serialized the

items that were given to various accused at the marriage. It is alleged that the accused had been continuously harassing, torturing and beating the complainant for demand of dowry and along with the husband, the present petitioners and sisters of the husband namely Amrit Kaur and Baljit Kaur had all been ill-treating her and demanding more dowry articles including cash. The husband had gone to Muscat where the complainant joined him and even at that place, as has been alleged by the wife, the treatment meted out to her by the husband was of open humiliation and even after the wife got pregnant the husband hurled filthy abuses telling the wife that the child did not belong to him. The wife continued with this relationship hoping against hope that with the passage of time everything will be smoothened down and in spite of the fact that the wife brought the matter to the notice of her in-laws, no action was initiated by the parents of the husband to sort out the issues. After the birth of the child, the accused raised a demand of Rs.20.00 lacs and pressurized the complainant to bring cash and which kept on increasing day-by-day and thereafter at the marriage of the younger brother of the husband of complainant, the family had asked for SUV vehicle and even an attempt to outrage her modesty was made by her father-in-law and on account of this continuous harassment and cruelty heaped upon her, she was forced to make complaint leading to registration of the present case.

The petitioners have come up before this Court seeking quashment of the FIR and all consequences arising out of it including the report under Section 173 Cr.P.C. The primary grounds that have been canvassed in this petition by the petitioners, who are parents of the husband, are that allegations levelled by the complainant are highly vague, ambiguous and of general nature; claiming that it has become a tendency to rope in members of the family of the husband on false and frivolous allegations. The petitioners have denied the allegations that have been levelled by the complainant in the FIR. It is claim of the petitioner Harcharan Singh Saini that he was residing abroad and so his son, husband of the complainant, and thus, allegations of harassment, cruelty and physical abuse do not subsist. The petitioners have claimed that it was on falsehood and figment of imagination of the complainant, the disgruntled daughter-in-law, the family had been made to suffer humiliation, degradation and torture and have termed the same to be reckless and wild allegations. The petitioners have levelled insinuations against the complainant that she had even openly remarked that since her husband was infected with AIDS and that she will not live with him and had shown her inclination to live separately and demanded share in the property. It is contended that none of the allegations fall within the realm of criminal breach of trust qua the istridhan much less under cruelty, be it

physical or mental, and terming the proceedings to be misuse of the process of the Court, have sought its quashment.

Learned State counsel as also the learned counsel for the private respondent wife, in their response though accept the factum of marriage but have denied that the petitioners have been falsely implicated. It is claimed by the State that upon complaint of the complainant, due inquiry was instituted by a senior police officer and after the allegations were found to be correct, the present case was got registered and denied that it was a misuse of the process of law. It is the categorical stand of the respondents that the complainant has been immensely harassed, humiliated and tortured on account of demand of dowry, thus, terming the averments of the petitioners to be unfounded sought dismissal of the same.

Heard Mr. Gautam Dutt, Advocate for the petitioners; Mr. Rakeshinder Singh Sidhu, Asstt. Advocate General, Punjab representing the State/respondent No.1, Mr. A.P.S. Shergill, Advocate on behalf of the wife/respondent No.2 and perused the records of the case.

It is not in any manner displaced that Paramjit Singh, husband of the complainant, has been declared as proclaimed offender which is apparent from the petition for divorce under Section 13 of the Hindu Marriage Act, 1955 instituted by the husband against the wife, and in spite of his knowledge he had failed to submit himself to the Court and

which, as has been argued by the counsel, is still in operation. Normally a person, who is declared as a proclaimed offender, is required to move the Court which declared him so and may even object to and challenge the very validity of the proclamation and at least judicial decorum demands that he should surrender before a Court and which has not come about in the present case by the husband. Reliance placed on '**Subhash vs. State of Punjab**' 2012(2) RCR(Criminal) 514 as well as in '**Mehnga Singh v. State of Punjab**' 2002(7) RCR(Criminal) 501. It is highly unacceptable, as has been sought to be projected by the petitioners side that they are unaware of the same and which does not sustain as the petitioners are the parents of the husband of the complainant and therefore, the husband is deemed to be in knowledge of the present proceedings. More so, it is settled law that when Code of Criminal Procedure requires the appearance of accused in a Court of law, it is no compliance if a power of attorney holder appears for him, for which this Court seeks support from '**T.C. Mathai v. The District & Sessions Judge, Thiruvananthapuram**' 1999 AIR (SC) 1385. The allegations in the FIR spell out specific role to each and every accused in commission of the offence. Since it is settled proposition of law, reference of which can be laid to the case of '**Umesh Kumar vs. State of Andhra Pradesh**' 2014(1) SCC Criminal 338, that this Court in exercise of inherent powers under Section 482 Cr.P.C. cannot collect evidence and comment

on it and furthermore in the well highlighted case of '**State of Haryana and others v. Ch.Bhajan Lal and others**' 1992 AIR SC 604, Hon'ble the Supreme Court has categorized the eventualities where such powers can be exercised, which reads as follows:-

- (1) Where the allegations made in the First Information Report or the complaint, 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 F.I.R. 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 a 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 a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is 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.

The marriage between the couple has been solemnized in the year 2002 and the allegations against the accused have cropped up immediate thereafter, as has been alleged in the FIR, and which

continued throughout different occasions which are well elaborated in the allegations which contained specific role assigned to each of these accused. More so, the question of cruelty to the complainant as per these allegations has been carried on throughout this matrimony till the wife was thrown out of the matrimonial home and therefore, being a continuing offence it cannot be termed that the allegations have come about at a belated stage. It is not in any manner displaced by the two sides that the complainant too had instituted a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against the accused where she had also laid claim for monetary reliefs in respect of the articles of dowry, are itself suggestive of the claim of the wife that each and every accused was handed over these costly articles of istridhan as well as gifts. More so, the case of the petitioner Harcharan Singh Saini, who admittedly had filed a suit for permanent injunction seeking an order of restraint against the complainant from lifting the household articles, is in itself suggestive that all was not well and invariably the petitioners are trying to accept the fact that articles of the complainant wife are still lying in the matrimonial home and apprehending that she might take away those articles, the petitioners have instituted this suit for permanent injunction.

Since learned counsel for the petitioners could not displace the arguments that have been canvassed at the bar on behalf of the

respondents as to what substantial element is there which necessitates exercise of extraordinary inherent powers of this Court under Section 482 Cr.P.C. or how there has been misuse of the process of the Court, the claim of the petitioners that there are general, vague and ambiguous allegations, does not sustain in view of what has come about in the allegations contained in the FIR lodged by the wife. Learned counsel for the petitioners could not convince this Court how or by what manner there is an urgent need for this Court to show indulgence in curbing this prosecution of the accused. Rather, as is apparent, it is nothing but a device that has come about to delay and scuttle the due process of law which has been set into motion and the trial Court had taken cognizance of the offences for which the accused have been charged. Thus, finding no merit the present petition stands dismissed.

(FATEH DEEP SINGH)
JUDGE

December 15, 2018

rps

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No