

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

Crl. Misc. M- 30123 of 2014 (O&M)
Date of Decision: December 6, 2018

Kuldeep Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rajesh Bhateja, Advocate
for the petitioner.

Mr. R.S. Khaira, AAG, Punjab.

JAISHREE THAKUR, J.

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure for quashing FIR No. 208 dated 25.07.2014, under Sections 498-A, 406 and 506 of the Indian Penal Code, registered at Police Station Dharamkot, District Moga and all consequential proceedings arising thereunder.
2. In brief, the facts as stated in the FIR are that a marriage was solemnized between Jagandeep Kaur, the daughter of complainant—Balbir Singh, with the petitioner—Kuldeep Singh on 24.4.2011. It is alleged that soon after the marriage, the daughter of the complainant was harassed by Kuldeep Singh (husband) and Chamkaur Singh (brother-in-law), Manjit Kaur (mother-in-law), Angrej Singh Sandhu (father-in-law) and Charanjeet Kaur wife of Chamkaur Singh (sister-in-law) on account of bringing

inadequate dowry. It was alleged that in May 2011, a demand was made by all to the daughter of the complainant, stating therein that Kuldeep Singh is going to Canada and in order to secure a visa for the complainant a sum of ₹15 Lakh should be brought. The complainant made arrangements and after borrowing money, handed over the same to the family of the petitioner. Thereafter, Kuldeep Singh left for Canada in July, 2011 and daughter of the complainant left in June, 2012. A female child, namely Preet Kaur, was born on 23.09.2012. It was alleged that all accused continued to harass the daughter of the complainant and even the custody of the minor child was handed over to the brother of the husband. The matter was investigated and it was recommended that FIR be registered against the petitioner—Kuldeep Singh, and father-in-law Angrej Singh Sandhu. The other accused mentioned in the FIR were found to be innocent.

3. Mr. Rajesh Bhateja, learned counsel appearing on behalf of petitioner, contends that the FIR registered is not sustainable on account of the fact that no specific allegation has been made in the FIR against the petitioner and all allegations raised therein are general in nature. It is also argued that Jagandeep Kaur, daughter of the complainant, left for Canada along with her in-laws in the month of June, 2012. On reaching Canada, the father of the petitioner shifted residence from Abbotsford to Edmonton to reside with his daughter, which is at a distance of more than 1000 Kilometres. It is also argued that when the father of the petitioner left the residence of his son and daughter-in-law Jagandeep Kaur to reside with his daughter, the daughter of the complainant called the police in Canada and levelled false allegations against him. The matter was investigated and all

allegations were found to be false and the petitioner was declared innocent by the Canadian police. It is argued that the matrimonial dispute, if any, arose in Canada and, therefore, this Court would have no jurisdiction to entertain the matter. It is also argued that the investigation conducted by the police itself shows that dispute was started between the petitioner and the daughter of the complainant after the birth of the female child Preet Kaurt i.e. 23.9.2012 in Canada. Therefore, the occurrence, if any took place that took place under the jurisdiction of the courts in Canada. It is also argued that there is non-compliance of Section 188 of the Code of Criminal Procedure in so far as no prior sanction has been taken to prosecute the petitioner who is an NRI.

4. *Per contra*, learned counsel appearing for the respondent—State submits that the allegations, as set out in the FIR, are true and that the daughter of the complainant had been harassed on account of bringing inadequate dowry.

5. I have heard learned counsel for the parties and have also perused the pleadings of the case.

6. Admittedly, a marriage took place between Jagandeep Kaur and Kuldeep Singh, daughter of the complainant in the year 2011. After marriage, the petitioner—Kuldeep Singh left for Canada in July, 2011 and was followed in June, 2012 by the parents of the petitioner and his wife. The FIR does not reveal that there is any specific mention that the petitioner had raised a demand of dowry or that there was any such entrustment of the same to him. A general allegation has been raised that there was harassment on account of inadequate dowry and that the accused had demanded a sum

of ₹ 15 Lakh in order to send the complainant's daughter to Canada. There is no mention in the said FIR of any gold ornaments etc. having been given to the petitioner. As noticed by the Investigating Officer, the harassment caused to the daughter of the complainant Jagandeep Kaur for demand of dowry was in Canada.

7. Reply has not been filed to controvert the submissions made in the petition or the statement that a complaint filed by the daughter of the complainant in Canada against the parents of the petitioner was found to be false. Even if for the sake of argument, it is taken into account that the petitioner harassed the complainant's daughter for demand of dowry, it was a demand that was raised in Canada, outside the territorial jurisdiction of the Courts at Moga. Therefore, the offence, if any, had been committed in Canada. 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.

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 petitioner herein. On the same set of allegations, the other accused, mentioned in the FIR, have been found to be innocent. It is apparently clear that the FIR has been registered against the petitioner herein only to harass the petitioner. It can also be seen from the FIR registered that the same has not been got registered by Jagandeep Kaur herself but by her

father. Perusal of the same would reveal that she was present in India in the month of March 2013 and returned back to Canada in April, 2013. During her stay in India, she could have got registered the FIR herself but did not do so. It is only much later that the FIR came to be registered at her behest by her father in July, 2014.

9. An argument has also been raised by the counsel for the petitioner 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. Princl. 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.’’

11. The counsel appearing on behalf of the respondent—State, 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 against the petitioner 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.

12. 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 as under :-

“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.”

13. In view of the foregoing discussion and ratios of law laid down by the Hon'ble Supreme Court in the judgments rendered in ***Harmanpreet Singh Ahluwalia and others, Thota Venkateshwarlu and B.S. Joshi and others (supra)***, this Court is of the considered view that there is no specific allegation/detail against the petitioner, to constitute an offence under Sections 406, 498-A and 506 of the Indian Penal Code.

14. In view of the above, the instant petition is allowed. Consequently, FIR No. 208 dated 25.07.2014, under Sections 498-A, 406 and 506 of the Indian Penal Code, registered at Police Station Dharamkot, District Moga and all consequential proceedings arising thereunder are quashed qua the petitioner herein.

December 6, 2018
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No