

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc. No. M-32978 of 2015

Date of Decision: 14.3.2018

Subhash Jain and another

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Keshav Pratap Singh, Advocate
for the petitioners.

Ms. Mahima Yashpal, AAG, Haryana
assisted by ASI Suresh.

Mr. Akshay Jindal, Advocate
for respondent No. 2.

ANITA CHAUDHRY, J

The petitioners are the father-in-law and mother-in-law and are seeking quashing of FIR No. 236 dated 27.3.2015 registered under Sections 323, 498-A, 406, 506, 34 IPC, Police Station Model Town, District Panipat, Haryana (Annexure P-1) and all the consequent proceedings arising out of the same.

The FIR was lodged by the girl's father Pardeep Jain-respondent No. 2. His daughter Vasudha was married to Ashish on 27.6.2012 at Delhi. The couple left India after 10 days of marriage on 7.7.2012. The petitioners claim that Vasudha never returned to their house after that. Their case is that vague allegations have been levelled against them regarding demand of dowry and beatings and no specific role has been

was no demand and the FIR does not give the dates on which the demand was raised. It was pleaded that the couple were living in U.S. and differences arose between them and it was the daughter-in-law who used to beat the husband regarding which their son had made complaint Annexure P-2. It was pleaded that a divorce petition was filed by Vasudha on 12.1.2015 before the Superior Court of Washington and their son accepted notice and was contesting the divorce. It was pleaded that the registration of FIR was an abuse of the process of law and respondent No. 2 wanted to settle her personal scores and has levelled false and frivolous allegations. The prayer made by the petitioners was that the actual effective party was Vasudha who did not lodge the FIR. It was pleaded that Panipat police had no jurisdiction to register the complaint as the marriage was solemnized at Delhi and the couple were living in U.S. soon after their marriage.

Respondent No. 2. filed his short reply pleading that the petition was not maintainable as the petitioners had equally efficacious remedy of challenging the order of framing of charge. It was pleaded that notice of motion was issued on 28.11.2015 and before that charge had been framed and the petitioners had failed to disclose that charge had been framed and on this ground alone, the petition was liable to be dismissed. It was pleaded that the ground taken by the petitioners primarily is that since the divorce proceedings have been finalized therefore the present petition was a luxury litigation. It was pleaded that the petitioners were trying to take benefit of their own wrong and nobody can be allowed to take benefit of their own wrong. It was pleaded that one of the accused is watching the proceedings and has still not joined and had not submitted himself before the investigating agency.

No reply has been filed by the State.

It would be relevant to mention here that the petition was filed in September 2015 and it was taken up for hearing on 28.9.2015 and records were requisitioned for 28.11.2015. The petitioners filed an application for pre-poning the hearing preferably before 21.10.2015 as that was the date fixed for framing of charge. The Co-ordinate bench ordered the listing of the case on the date already fixed. Thereafter on 28.11.2015, notice of motion was issued and the proceedings before the trial Court were ordered to be stayed.

I have heard the submission of both sides.

Counsel for the petitioners submits that the couple remained in India for 10 days before going abroad on 7.7.2012. It was urged that the wife filed a divorce petition in January 2015 and the father of the wife lodged the FIR on 27.3.2015. It was urged that the complainant's daughter had come to India in April 2016 and she did not make any statement and divorce had been granted in December 2015. It was urged that a separation agreement was drawn up and 25,000 dollars was the settlement amount. It was urged that the girl was a software engineer and was working in U.S. and there was no complaint before the couple left India in July 2012 and all the allegations made by the complainant pertain to the incidents of alleged cruelty in U.S. It was urged that there was no complaint that any dowry had been demanded before marriage or at the time of marriage and the FIR came into existence only after the complainant's daughter had filed for divorce. It was urged that the FIR is an abuse of the process of law and the police could not register any FIR and cognizance could not have been taken as the alleged incident took place in U.S. and divorce decree had been passed by

U.S. Courts and therefore, the proceedings are liable to be quashed. It was urged that they had approached the Court before the charge was framed and framing of charge will not take away the jurisdiction as they have challenged the consequential proceedings that may have arisen thereafter. Reliance was placed upon *Manish Ratan and others versus State of M.P. and another* 2007(1) SCC 262, *T. Venkateshwarlu and others versus State of A.P. and others* 1999 CriLJ 39, *Priya Vrat Singh and others versus Shyam Ji Sahai* 2008(8) SCC 232, *Mangat Ram versus The State of Haryana and another* 1988(2) RCR (Criminal) 349, *Swapnil and others versus State of Madhya Pradesh* 2014(13) SCC 567, *Gurdial Singh versus State of Punjab and another* 2015(45) R.C.R. (Criminal) 982, *Harmanpreet Singh Ahluwalia versus State of Punjab and others* 2009(7) SCC 712 and the judgments passed by this Court in *CRM-M-26882-2014* titled *Pankaj Sharma and another versus State of Punjab and another* decided on 20.9.2016 and *CRM-M-35337-2015* titled *Shalu and another versus State of Haryana and another* decided on 14.2.2018.

On the other hand, the submission made on behalf of the complainant and the State is that the cruelty is a continuing offence and it had started immediately after marriage when the couple was here and the extraordinary remedy cannot be invoked by the petitioners. It was urged that there was a demand of flat and the demand came even before the wedding card could be distributed and the boy was having an affair which is noted by the counsellor in Annexure P-2.

Few facts which are not disputed are that the parties were married in Delhi in June 2012. The couple left for U.S. within 10 days of their marriage. It has not been shown that the wife had returned to India

even till the registration of the FIR. The father got the FIR lodged and referred to the acts of cruelty committed by the son-in-law in U.S. He had also made allegations that there was demand of dowry before and at the time of marriage which is difficult to accept as the complaint was given after the daughter had approached the U.S. Courts seeking divorce and no such complaint was given there. The couple had stayed together for almost three years and it has not been shown that in the initial years there was any dispute or complaint. Annexure P-2 is the notice of the counsellor which refers to the conversation between the counsellor and Vasudha. The words used there are that “the girl was upset because the husband used to remain out and she knew that he was having an affair without telling her.” The counsellor had also noted that Vasudha got hysterical and she was crying and wanted a divorce and gave suicide threats.

Though, the divorce proceedings were initiated by the wife but ultimately those were not contested and a divorce decree was passed in December 2015. A separate settlement agreement was drawn up and 25,000 dollars was paid by the husband.

A query was made to the State counsel with respect to any statement given by the girl. It was stated that there was no statement and their file did not have her statement though it was stated that the girl had been cited as a witness.

The petitioners here are the father-in-law and mother-in-law. They rightly claim that their daughter-in-law had not lived with them after they had left for U.S. All the acts which are alleged by the complainant took place in United States. Counsel for the complainant has been unable to show any averment that the petitioners had committed any maltreatment or

had made any demand of dowry in India during those ten days. It appears that the FIR was lodged by the father of the girl to harass the parents as the marriage was not going well. The wife did not come back to lodge the FIR. It is her father who got the FIR registered at a time when the parties were admittedly staying abroad. The daughter of the complainant had persuaded her father to file the litigation and is pursuing a proxy litigation.

On perusal of all the above said factual background, it is found that the story put-forth in the impugned FIR is based on concoctions and these are baseless allegations and it amounts to a blatant misuse of process of law. The complainant had concocted a story that there was a demand of dowry before marriage and at the time of the marriage. He did not explain even here as to why no complaint was made then or soon after the couple had left. The complaint to the police had been made three years later after his daughter filed for divorce. There is no allegation that any harassment or maltreatment was given to his daughter in India. Had the maltreatment or harassment taken place in U.S., the daughter would have made a complaint to the authorities in U.S. On the contrary, it is found that on 11.8.2014 the couple had sought help and counselling and the wife was taken to talk to a social worker which indicates that problem started in the marriage sometime in the middle of 2014. As per the contents of the FIR it was around November 2014 that the couple started living separately. Though the complaint had referred to beating incidents but has been unable to show when she was beaten up and where. Had it been so, the wife would have reported the matter to the police in U.S. The allegations of cruelty, harassment and torture, if any, took place in United States and cognizance of it could not have been taken by the police in India. The parties had

invoked the jurisdiction of U.S. Court for their matrimonial dispute and all disputes stand settled.

In view of the above, it is evidently a fit case where the FIR and the subsequent proceedings should be quashed exercising the extraordinary jurisdiction under Section 482 Cr.P.C.

The petition is allowed. The aforesaid FIR and all consequent proceedings conducted on the basis thereof are quashed qua the petitioners.

**(ANITA CHAUDHRY)
JUDGE**

March 14, 2018

Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No