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

**Crl. Misc. No.M- 3415 of 2014
Date of decision : 27.07.2018**

Paramjit Singh Parmar

......Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Jagmohan Ghumman, DAG, Punjab.

None for respondent no.2.

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ANITA CHAUDHRY, J.

The petitioner is seeking quashing of FIR No.7 dated 01.12.2012, registered under Sections 420, 498-A, 406 IPC, Police Station NRI, District Kapurthala (Punjab).

It would be necessary to give the factual score. The petitioner married respondent no.2 in February 2008. Respondent no.2 was a permanent resident of Canada and had been living abroad since April 2004. She returned to Canada after the marriage. The petitioner joined her in Canada in September 2010. No child was born out of the wedlock. Differences arose between them and they separated in November 2011. The wife filed a family claim in British Columbia in February 2012 claiming marriage costs, costs associated with immigration and sponsorship. The petitioner filed a counter claim claiming an order of divorce. The wife also filed her response. Respondent no.2 sent a complaint to Inspector General of Police, Jalandhar on the basis of which FIR was registered. Allegations were levelled against the husband, the mother-in-law and the sister-in-law regarding demand of dowry, mis-appropriation, harassment and fraud.

In the complaint given to the police, it was pleaded that the petitioner used to come to their house and would request the complainant's mother to get him married to his daughter and his intentions were not good from the very beginning and his only purpose was to go abroad. It was pleaded that Paramjit belonged to a poor strata of the society and they were greedy but since he had shown a lot of interest, therefore, her mother agreed. It was pleaded that after her permanent residency was finalized, she returned to Canada on 23.10.2007 to prepare for the marriage and the wedding was solemnized on 08.02.2008. The complainant claimed that gifts including gold, watches, gold rings etc. were given. It was alleged that when the complainant reached the in-law's house, she found that there was no television, refrigerator or even the daily use articles. Her mother-in-law and sister-in-law started taunting her and demanded a sum of Rs. 4 – 5 lacs for the refrigerator, television, geyser etc. and the mother-in-law started harassing her. It was pleaded that the complainant returned to her parent's house on 11.02.2008. It was claimed that the husband also shifted to her parent's house posing to be innocent. The complainant returned to Canada in April 2008 and applied for sponsorship. The complainant returned to India in December 2008 with the intention that she would stay with her husband till the application was approved. It was claimed that she accompanied her husband to attend the Canadian Consulate. Permanent residency was refused as the Officer concluded that the marriage was not genuine and had been entered primarily to secure a permanent residence in Canada. It was pleaded that the order was challenged by her in appeal. It was pleaded that Paramjit Singh showed his colours after he reached Canada and started abusing and beating her and and physically assaulted her and played fraud with her sentiments and left her for some undisclosed place. The complainant contacted her mother-in-law and sister-in-law who started abusing her and asked her to send money. The complainant came back to India in October 2010 and stayed in the matrimonial home. Allegations were levelled that the mother-in-law and sister-in-law started abusing her and pushed her out of the matrimonial home and she went back to her parent's house and stayed there. Allegations were made that her dowry articles had been misappropriated.

The petitioner's case is that he and respondent no.2 were living permanently in Canada and matrimonial litigation was pending in Canada and after initiating the process in Canada, respondent no.2 filed the FIR in India simply to harass him and his family. It was pleaded that no such allegations were levelled by her in the proceedings in Canada, which were now being made out and was an afterthought. It was pleaded that respondent no.2 was residing in Canada and had given wrong address. It was pleaded that the petitioner had reached Canada on 15.09.2010 and there was no reason for her to come back to India after a month of his arrival and stay with his parents and the whole story was concocted.

The petitioner appended the copy of the petition and the testimonials.

The State took the plea that the petitioner had not come to the Court with clean hands and the FIR was registered and proclamation proceedings were pending and dowry articles had not been recovered.

Respondent no.2 filed the reply and pleaded that the petition was not maintainable as the petitioner was declared proclaimed offender on 17.11.2014 and appended the copy of the order. It was pleaded that the petitioner habitually used to beat her. It was pleaded that the petitioner had performed the marriage only with a view to go abroad. It was claimed that the dowry articles were not returned and those were mis-appropriated and all the persons named in the FIR had cheated her and fraud had been played upon her.

I have heard both the sides.

Counsel for the petitioner contends that this petition had been filed in January 2014 and it is during the pendency of the petition that he was declared proclaimed offender when he was abroad and the order was challenged in revision and he was placing the copy of the revision on record. It was contended that the revision challenging the order declaring the petitioner proclaimed offender was still pending as there was a stay of the proceedings. It was urged that the wife had approached the Supreme Court of British Columbia but she failed to give any details of it in the FIR and had concealed facts. It was contended that when differences had arisen within the first few months of the marriage and there were demands, there was no reason why the wife would support his case and pursue his appeal for permanent residency and there was no reason why she would return to India and stay with his parents when there were differences between them. It was urged that the story had been cooked up. It was urged that it was the petitioner who had filed for divorce and the wife had filed a counter claim and it can be seen that there were no allegations of demand of dowry or mis-appropriation were made in the Supreme Court and they have annexed the copy of the counter claim.

Per contra, the submission of the State Counsel is that the petitioner was not entitled for the relief because he was named and the petitioner is the main accused being the husband. It was urged that the petitioner was declared proclaimed offender, therefore, he was not entitled to file the petition for quashing the FIR.

Similarly, the counsel appearing for respondent no.2 submits that a clear case was made out against the petitioner and the person who has been declared proclaimed offender cannot maintain a petition. It was urged that challan has already been presented and it is for the trial Court to consider and form a view after the parties have led their evidence.

Having heard the learned counsel for the parties at great length, after careful perusal of the documents placed on record by the parties, I am of the opinion that keeping in view the peculiar facts and circumstances of the case noticed above, the instant case is a fit case which warrants interference at the hands of this Court while exercising the inherent jurisdiction under Section 482 Cr.P.C. for twin reasons namely to prevent the abuse of process of the Court and also to secure the ends of justice and the reasons follow:-

It is a matter of record and there is no dispute that the wife was already settled abroad. It was a arranged marriage and the complainant came from Canada and the marriage ceremony took place on 02.02.2008. The complainant returned to Canada. The complainant claimed that a Karra, chain, gold ring, watch and clothes were given to Paramjit Singh and a set of gold ear-rings was given to his sister and gold ring to his brother-in-law and besides gold sets to the parents. The complainant had alleged that when she went to the matrimonial home, she found that there was no television, refrigerator or any item of daily use and taunts were thrown at her and a demand of Rs. 4 to 5 lacs was made for purchasing the house-hold articles and she returned to her parent's house within 4 - 5 days of the marriage. It was claimed that her husband also shifted to her parent's house. In April 2008 the complainant claims that she returned to Canada and she applied for sponsorship for her husband. It is difficult to believe that statement, if there was a demand within a week of the marriage and the girl had returned to her parent's house even then she approached the Canadian Authorities and supported the husband in getting permanent residency abroad. The couple remained in India only for a week. No complaint was given to any authority. The complainant went abroad. The permanent residency was refused as the marriage was doubted. An appeal was filed by the complainant, which succeeded only on the efforts made by the complainant. This has been asserted by her in the FIR. There was no reason why the complainant would vigorously pursue the sponsorship of her husband when in the initial week of the marriage there were demands and taunts were thrown by the in-laws and the husband. The complaint is silent as to when the physical abuse started in Canada as the complainant has alleged physical assault at the hands of the husband in Canada. The reply filed by the complainant lacks factual aspects. It is not the case of the complainant that she had ever approached the Canadian Police or had lodged any complaint against the husband. The date on which the husband had left the matrimonial home is also missing from the complaint. It is difficult to accept that after physical abuse, the complainant would return and stay with the husband's family in India in October 2010. No complaint was even then given to the police. The complainant did not give details of specific incidents in the complaint and general and vague allegations were made.

The complaint was given to the authorities on 27.10.2012. The husband had already filed for divorce and the mutual divorce proceedings were pending when the complaint was filed in India. The complainant had concealed from the police that the matter was already before the Canadian Courts and she had filed a claim. It is not disputed that a divorce decree followed subsequently and the complainant had filed her claims for spousal support etc. The complainant has failed to respond to these facts at the stage of arguments.

It is undisputed that the petitioner was staying abroad with the wife. He was abroad when the FIR was registered, knowing fully well that the accused was abroad, the complainant claimed that she was a resident of Phagwara and she gave wrong address of the husband. The petitioner was declared proclaimed offender after the filing of the present petition. The proceedings later had been stayed. In fact, the order declaring the petitioner a proclaimed offender was a direct result of the *mala fide* intention of the complainant who kept the Court of competent jurisdiction and the police in dark concealing the fact that he was not staying in India. Had the complainant told the police that he was abroad, he would not have been declared proclaimed offender nor the Magistrate would have passed such an order. Having said that it can safely be concluded that the complaint had been filed with a view to wreck vengeance and cause maximum harassment to the husband by misusing the process of law and therefore, the continuation of the proceedings arising out of the FIR are uncalled and un-warranted and thus liable to be quashed.

Resultantly, from the above observation, the instant petition is allowed and the impugned FIR and the subsequent proceedings including the P.O. order are quashed.

(ANITA CHAUDHRY)
JUDGE

27.07.2018
Sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No