

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

Crl. Misc. No. M-38881 of 2013

Date of decision : 11.10.2018

Anto Devi

..... Petitioner

versus

U.T. of Chandigarh & Anr.

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by: Mr. S.S. Narula, Advocate
for the petitioner.**

Mr. J.S. Toor, Addl. PP for UT Chandigarh.

**Mr. Dinesh Kumar Jangra, Advocate
for respondent No.2.**

ANITA CHAUDHRY, J.

Petitioner Anto Devi has approached this Court seeking quashing of FIR No. 76 dated 05.04.2013 registered under Sections 406 and 498-A IPC, Police Station Sector-3 (North), Chandigarh and also the consequent proceedings taken therein, including report filed under Section 173 Cr.P.C.

The petitioner is the mother-in-law of respondent No.2, whose marriage was solemnized with the son of the petitioner on 09.02.2004. Two sons were born out of the wedlock. After a decade of the marriage, respondent No.2 filed a complaint before the police against her husband and in-laws. It was alleged that her father had spent good amount in the marriage and jewellery items and households were given, which were taken from her by her in-laws after 2-3 days of the marriage. She was harassed by

the petitioner and jethani (wife of elder brother of her husband) for bringing less dowry. It was further mentioned that she was pressurized to give her child to the jethani who was not able to conceive. In 2005 she was forced to live in a rented accommodation due to the threats extended by her jeth and jethani. Her father bore the household expenses and her husband did not care for the family and gave beatings to her. She was neglected by her husband during second pregnancy. In the year 2009 the petitioner and her son took away their son and started living at Delhi. With the intervention of respectables, they started living together at Delhi with mother-in-law and son of her jeth. There also she was mentally and physically harassed by the petitioner and her husband. In 2012, they decided to shift back to Sonapat and it was mutually agreed that the complainant would live separately with her younger child while the husband and elder son were to live with the family. Her husband suspected her character. Later her husband took away both the sons with him.

The complainant also provided the list of articles given in the marriage.

On the basis of complaint, FIR was registered and investigated. Certain household articles were recovered from the husband and in lieu of jewellery and other articles, a sum of Rs.1,79,690/- was paid to the complainant. On completion of investigation, final report was filed against the husband and the petitioner.

Quashing was sought, inter alia, on the ground that due to temperamental differences, the complainant and her husband could not adjust with each other and a divorce petition was filed by the husband and

immediately on coming to know about it, the complainant filed the complaint. It was pointed out that after coming to her parental house, the complainant gave applications to the police regarding custody of the children and no cognizable offence was made out and the complainant withdrew the applications. But later she filed the complaint against the husband and other in-laws giving exaggerated accounts and the allegations pertain to their stay at Delhi or Sonapat and the Courts at Chandigarh had no jurisdiction. It was averred that the petitioner is more than 60 years of age and is handicapped as her left arm was amputated from shoulder. It was also averred that no allegation of entrustment was made against the petitioner nor any overt act was attributed to her and only general and vague allegations were levelled against her with a malafide intention just to widen the net being the mother of the husband.

In the reply filed by the complainant, it was not disputed that the petitioner was handicapped, but it was averred that the petitioner was instrumental in causing harassment to the complainant and it was on her instigation, her son used to beat and maltreat the complainant and she could not be absolved from her liability. It was submitted that there was prima facie case against the petitioner in the FIR, which is not an encyclopedia and it is for the trial Court to adjudicate whether the allegations are true or not and FIR cannot be quashed. It was submitted that dowry articles were recovered by the co-accused from Delhi and it was not disputed that petitioner was also living at Delhi and she was having dominion over property and it is matter of evidence as to how much dowry was given. It was further submitted that offence of cruelty is continuing one and the

jurisdiction is vested at Chandigarh Court. Reliance was placed on **Taramani Paresh Vs. State of MP & Ors. 2015(2) RCR(Crl.) 445**, **Sherish Hardenia & Ors. Vs. State of MP & Anr. 2014(14) SCC 406**, **Superintendent of Police, CBI Vs. Tapan Kr. Singh, 2003(2) RCR(Crl.) 880**, **M/s Indian Oil Corporation Vs. M/s NEPC India Ltd. & Ors. 2006 (3) RCR(Crl.) 740**, **Sunita Kumari Kashyap Vs. State of Bihar & Anr. 2011 AIR SCW 2481**, **Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee 1997(3) RCR(Crl.) 198**, **Mandeep Singh Vs. State of Punjab, 1997(2) RCR(Crl.) 154**, **Pritam Singh Vs. State of Delhi 2000(4) RCR (Crl.) 566**, **Jagdish & Ors. Vs. State of Rajasthan & Anr. 1997 CrL.LR (Rajasthan) 729**, **Arun Kapur & Ors. Vs. The State of Delhi & Anr. 2011(3) DMC 853** and **Gurmukh Singh Vs. Davinder Kaur 1992(2) RCR (Crl.) 213**.

I have heard learned counsel for the parties and have gone through the paper-book carefully.

The question that arises is whether the FIR and the subsequent report under Section 173 Cr.P.C. and the charge sheet can be quashed in exercise of the powers under Section 482 Cr.P.C.

Petitioner is the mother-in-law of complainant. In catena of judgments, the Courts have viewed the seriousness of the implication and over-implication of the relations of the husband by exaggerating the allegations in the cases of matrimonial discord. It is relevant to refer to some of them.

In the case of **Geeta Mehrotra & Anr. Vs. State of U.P. & Anr. 2012(4) RCR(Crl.)**, the Hon'ble Apex Court quashed the FIR against

the sister and brother of the husband by observing as under:-

“...It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives or the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.”

In the case of **Kans Raj Vs. State of Punjab & Ors., 2000(2) RCR (Criminal) 695 (SC)**, the Hon'ble Apex Court had observed that a tendency had developed for roping all the relations in dowry cases and if it was not discouraged, it was likely to affect the case of the prosecution even against the real culprits.

In **Anita & Ors. Vs. State of Punjab, 2003(4) RCR (Criminal) 313**, when a first information report was lodged by the wife under Sections 498-A and 406 of the Indian Penal Code against the entire family members of the husband, this Court exercising its powers under Section 482 Cr.P.C. had quashed the FIR and had observed that there was a tendency to involve all the relatives of the husband when the relations

between the husband and the wife become strained.

Similarly, in the case of **Harjinder Kaur & Ors. Vs. State of Punjab, 2004(4) RCR (Criminal) 332**, a criminal complaint was filed under Sections 498-A and 406 IPC against the husband, his parents and 5 sisters. The proceedings qua sisters were quashed as the allegations against the sisters were found to be vague and exaggerated and made to rope in each and every relation of the husband.

In **Arnesh Kumar Vs. State of Bihar & Anr. 2014(3) RCR (Crl.) 527**, the Hon'ble Apex Court observed that the fact that Section 498-A IPC is a cognizable and non-bailable offence had lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives and the simplest way to harass is to get the husband and his relatives arrested under this provision.

In the case of **Preeti Gupta & Anr. Vs. State of Jharkhand & Anr. 2010 AIR (SC) 3363** the Hon'ble Apex Court observed that a serious relook of the entire provisions of Section 498-A IPC was warranted by the legislation. It was observed that exaggerated versions of the incident are reflected in a large number of complaints and the tendency of over implication is also reflected in a very large number of cases. In that case the Hon'ble Apex Court quashed the criminal proceedings against brother and sister of husband, living separately.

It is abundantly clear from a perusal of FIR that no specific allegations were made against the petitioner. The FIR is silent about handing dowry articles to the petitioner. General sweeping allegations have been made that after 2-3 days of the marriage, the petitioner and other accused

took the dowry articles from her. This was more than 10 years ago. The list attached with the FIR contains articles used daily. It cannot be believed that during all these years her *istridhan* was not returned especially when she herself had stated in the FIR that she started living separately in a rented accommodation in 2005. It was not shown whether she made any complaint then. As per own case of the complainant, she had shifted to Delhi. It was pointed out by learned counsel for the complainant that certain dowry articles were recovered from Delhi and for remaining, he had deposited the amount. The articles were recovered by the son of the petitioner and from that fact itself, it cannot be inferred that the petitioner was having any dominion over the *istridhan* of the complainant. In the FIR, there was no specific instance of entrustment to the petitioner, except in the list it was mentioned that two pair of ear rings and two bangles which were purchased by the husband for the complainant after March, 2010 were with the petitioner and jethani. No date or time was mentioned as to when the same were given to her by the husband and then were taken by the petitioner and jethani. Moreover, the same were purchased by the husband of the complainant and it would not fall within the definition of *istidhan*. No help can be taken from the *Indian Oil Corporation's* case (supra).

No doubt it is for the trial Court to find the truth in the allegations of the complainant and FIR is not encyclopedia as held in the cases of *Taramani*, *Sherish Hardenia* and *Tapan Kr. Singh* (supra), but it was the case where from the reading of the FIR no case was made out against the petitioner and the allegations against her are vague. In the reply the complainant herself admitted that FIR was lodged after due

deliberations. Still, the essential ingredients of offence of cruelty and entrustment are conspicuously missing against the petitioner. No specific incidents of cruelty were given and it was only alleged that on the instigation of the petitioner, the husband of the complainant used to beat her. Except this, no overt act had been attributed. Bald and vague allegation had been made against the petitioner just to widen the net. It cannot be forgotten that there is a tendency to rope in the relatives of the husband in matrimonial disputes. In the considered opinion of this Court, by mere conjectures and implications, the petitioner cannot be said to be involved in the offence. It was a case where the couple could not adjust with each other and the series of allegations were levelled. The husband has also filed divorce petition against the wife. They are also litigating regarding custody of the children. The petitioner, who is an aged lady and handicap too cannot be asked to suffer the agony of a trial which will be lame and protracted.

In Arun Kapur's case, Delhi High Court observed that since there were specific allegations in the FIR therefore any interference at the threshold would amount to stifle power of police to investigate and turned down the request for quashing. In the instant case, as referred to above, there are no specific allegations against the petitioner and investigations have concluded and the facts are such that warrant interference by this Court in exercise of powers under Section 482 Cr.P.C.

In Satish Mehra Vs. State of N.C.T. of Delhi & Anr. AIR 2013 SC 506, it has been observed thus:-

“15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is

inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed.”

In the case of **Divya @ Babli & Ors. Vs. State of Haryana, 2006(4) RCR(Crl.) 322**, this Court quashed the proceedings qua sisters by observing that there is a tendency for roping in all the relations in dowry cases. It was further held that there is no hard and fast rule that the proceedings cannot be quashed after the filing of the challan or after framing of the charge.

Furthermore, in the case of **State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors. 1991(1) RCR (Crl.) 383 (SC)**, the Hon'ble Supreme Court had observed that where the proceeding is instituted with an ulterior motive or where the allegations made in the complaint are absurd and improbable, the Court would be within its power to quash the complaint/

FIR.

In the considered opinion of this Court, the allegations made in the FIR, so far as the petitioner is concerned, are absurd and improbable and warrants interference to meet the ends of justice and prevent the abuse of process of the Court and refrain from commenting on the other submission raised at bar by the counsel for the petitioner regarding the territorial jurisdiction.

In view of the discussion made above, the instant petition is allowed. The impugned FIR and the consequent proceedings taken therein, against the petitioner alone are quashed.

Whatever has been said hereinabove is without prejudice to the case against the remaining accused.

11.10.2018
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No