

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

Crl. Misc. M- 39230-2016 (O&M)

Date of Decision: 19th September, 2018

Jagjit Singh

...Petitioner

Versus

State of Punjab and another

...Respondent(s)

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Ms. Seena Mand, DAG, Punjab

None for respondent No.2.

JAISHREE THAKUR, J. (Oral)

This is a petition that has been filed under Section 482 Cr.P.C. seeking to quash FIR No. 138 dated 10.05.2016 registered under Section 376 of the Indian Penal Code at Police Station Khanna and charge-sheet/order dated 20.09.2016 passed by Addl. Sessions Judge, Ludhiana.

In brief, the facts of the case are that an FIR i.e. FIR No.1 dated 04.01.2016 under Sections 376/417 of IPC was got to be registered at the behest of the complainant-respondent No.2 in which it was stated that she had gone to attend a marriage of a friend of her, where she met Balwant Singh, and thereafter they continued meeting each other and deep friendly

relationship developed between them. Balwant Singh asked her for marriage and she agreed to do so and thereafter they got married. Both gave affidavit dated 14.08.2009 in the Court at Samrala that they got married and started living as husband and wife. Thereafter the complainant-respondent No.2 asked Balwant Singh to get the marriage certificate prepared but he used to dilly-dalling the matter on one pretext or the other. Thereafter, Balwant Singh went to Saudi Arabia on 01.06.2012 for the job of a driver. After that, his family members started harassing her and saying that she should go back to her own home. Balwant Singh returned from Saudi Arab on 24.09.2014 and on his asking she opened a beauty parlour shop. Balwant Singh resided with her for approximately two months and returned to Katar. Jagjit Singh, a friend of her husband-Balwant Singh, used to visit the shop and got her purchased goods worth ₹20,000/- and also paid ₹20,000/- in cash on the asking of her husband.

The complainant also gave a complaint dated 20.06.2015 and thereafter FIR No.1 dated 04.01.2016 was registered against Balwant Singh. The contents of the aforesaid FIR dated 04.01.2016 are reproduced herein below:-

“Copy of complaint, Complaint No.1905 peshi dated 20.6.2015 from Rajwinder Kaur d/o Sh. Randhawa Singh, R/o Village Shahpur, Tehsil Amlah, Distt Fatehgarh Sahib. Hon'ble SSPO Sir, Fatehgarh Sahib. Subject: Complaint against 1. Balwant Singh (Husband) 007455383441 son of Jaswinder Singh (Father-in-law, 2. Jaswinder Singh (Father-in-law) 9781763894, 3. Mandeep Kaur (Sister-in-law) 9501450705 residents of village Bondli Tehsil

Samrala, Distt Ludhiana and Didar Singh r/o Khirnia for harassing illegally. Sir, it is respectfully submittd that-- 1. That I Rajwinder Kaur D/o Sh. Randhawa Singh is resident of Village Shahpur Tehsil Amloh, Distt. Fatehgarh Sahib. 2. That I went in marriage of my friend and I met above Balwant Singh, thereafter we started meeting each other and deep friendly relationship developed. 3. That above Balwant Singh asked me for marriage and I agreed to marriage and we got married. Thereafter, we both gabve affidavit dated 14.8.2009 in the Court at Samrala and Balwant Singh told me marriage certificate will be got issued by us lateron. 4. That after the above affidavits we started living together as husband and wife. I asked the above Balwant Singh many times to get the marriage certificate prepared but he used to make excuses. 5. That thereafter Balwant Singh went to Saudi Arab on 1.6.2012 for the job of Driver. Thereafter he used to talk after 7-8 days. 6. That after he went abroad, his family members, father, sister, mother started harassing me and started saying that I should go to my home and there is no place for me intheir house. I told all these talks of them to my husband on telephone, then he told me that he will make them understood. 7. That thereafter Jaswinder Singh (Father-in-law), Harbhajan Kaur (Mother-in-law) and Mandeep Kur (Sister-in-law) started beating me and started demanding dowry from my house. My father-in-law used to come after taking liquor and used to beat and taunt me that I reside in their house without any reason. 8. That Didar Singh who is resident of Village Khirnia, after coming to my in-law's house used to take liquor with my father-in-law and he also used to abuse me. 9. That on their asking I talked to my parents. My parents gave me dowry and lots of gold ornnaments were also given so that

they could not harass me. But they remain happy for some days, but thereafter they started beating me. 10. That it will be pertinent to state that the on teej-festivals all my gold ornament were given to Mandeep Kaur. 11. That my husband Balwant Singh came back from Saudi Arab on dated 24.9.2014. On his asking, I opened a beauty parlour shop. Thereafter my husband resided with me approx. for 2 months. Thereafter, my husband again went back to Katar. Thereafter, I used to talk with him on phone. Jagjit Singh is friend of my husband. He got purchased goods worth Rs.20,000/- to me and paid Rs.20,000/- cash on the asking of my husband. 12. That now my husband is defaming me by sitting abroad and making allegation upon me that I have illicit relationship with his friend Jagjit Singh. Whereas it is not as such, because if Jagjit Singh has come to me for 2/4 times, he has come on the asking of my husband. 13. That my husband has given complaint against me that I residing in their house without any reason. And my in-laws family also said the something then on dated 16.6.2015 compromise was affected between us at Police Station Samrala. In which my in-laws had given in writing that I can take all my articles from their home and when my husband Balwant Singh will come from abroad than decide with him till that I cannot reside in their house. Copy of which is annexed herewith as proof. 14. That in spite of that accused had not allowed me to take all of my articles, and they started using it themselves. Whereas they have no concern with these articles. 15. That I am peace loving and law abiding lady, whereas the above accused are quarrelsome, clever and greedy people, who had spoiled my life willfully in conspiracy firstly by the hand of Balwant Singh. Uptill when he was residing with me, they have not stopped me and when my husband

has gone abroad then they had started harassing me and now my husband also is not accepting me, whereas they do not have any right to do so. 16. That my husband settled at abroad threatening me, whereas my father-in-law and above Didar Singh by residing here are giving open threats that if I went to their house they will cut my legs. By this way I have been struck in between. By giving this complaint I request you on the basis of above facts, legal action be taken against the above accused. My life and money be protected and justice be given to me. Thanking you, Yours faithfully. Sd/- Rajwinder Kur. Rajwinder Kaur D/o Sh. Randhawa Singh R/o Village Shahpur, Tehsil Amlah, Distt. Fatehgarh Sahib. 98036-89514 dated 20.6.2015."

That the complainant got FIR No.138 dated 10.05.2016 registered under Section 376 against Jagjit Singh-petitioner herein, stating that the petitioner used to live with her and had made physical relations with her. In the said FIR, it was stated that the petitioner had given a false assurance of marriage and it was on this assurance that he started making physical relations with her and thereafter he refused to marry her.

On the basis of the investigation, charges under Section 376 were framed against the petitioner and the petitioner herein through the instant petition seeks quashing of the said FIR.

Learned counsel appearing on behalf of the petitioner herein argued that the allegations as set out in the FIR are nothing but an abuse of process of law and has been made with an ulterior motive of financial gains. It is argued that the complainant is married to Balwant Singh as

would be evident from Annexure P/1, which is an Aadhar Card of the complainant and Annexure P/2 which is the affidavit of Balwant Singh showing that he had solemnised the marriage with the complainant-respondent No.2 as far back as on 14.08.2009, the voter list of the year 2016 for Vidhan Sabha elections for Samrala (Annexure P/3) which again would reflect that the petitioner is wife of Balwant Singh. It is further argued that the complainant-respondent No.2 has also got registered an FIR under Sections 417/376 of IPC dated 04.01.2016 against her husband-Balwant Singh, father-in-law and sister -in-law for harassment. It is argued that the instant FIR i.e. FIR No. 138 dated 01.05.2016 is absolutely silent about the fact that the respondent No.2-complainant was married to said Balwant Singh and therefore, the allegations as set out in the FIR that there was assurance of marriage given by the petitioner to her and on inducement she had developed physical relationship with the petitioner herein is not borne/made out and are thus false.

Learned counsel for the petitioner relies upon a judgment dated 23.01.2013 rendered by the Supreme Court in “**Prashant Bharti vs. State of NCT of Delhi 2013 AIR(SC)(Crl.)1778**”, wherein the Supreme Court on similar facts quashed the FIR. It was held that rape on a married woman on false promise to marry would not constitute an offence of rape. The Supreme Court held that the complainant could not have been induced into a relationship based on an assurance of marriage being a married woman, while taking note of the fact that the complainant was a major at that time.

In the case in hand, the complainant's date of birth as reflected

in the Aadhar Card is 26.10.1991. In the said Aadhar Card, she is reflected as wife of Balwant Singh. Even in the voters list, she is reflected as wife of Balwant Singh. Being married and without getting a divorce from Balwant Singh, she could not have got married to the petitioner herein. A reading of the earlier FIR registered against her husband and his family members would clearly reflect that she was annoyed or was perturbed by her husband, coming to a conclusion that she had developed illicit relationship with the petitioner herein. In the FIR, she has stated that she had met the petitioner 4-5 times and that there was no relationship between them. Interestingly enough, in the second FIR there is a total turn around, wherein she has stated that there was an assurance given to her by the petitioner herein that they would solemnize a marriage and she got pregnant from that relationship. It is when the petitioner herein stopped paying the rent and denied to get married to her, that the said FIR came to be registered.

From the facts enumerated above, it is quite clear and evident that the complainant had developed a relationship during the subsistence of her marriage with Balwant Singh and the relationship was consensual in nature. Being a major and a person who was competently running a beauty parlour shop, it could not be said that she would be unaware of the consequences of the relationship she was entering into and that no marriage could be solemnized without obtaining the divorce from the first one.

The aforesaid judgment as referred by the learned counsel, fully applicable to the facts of the instant case.

Hence the present petition is allowed and the FIR No.138 dated 10.05.2016 and all proceedings arising out of the same are quashed qua the

petitioner.

The petition stands disposed of.

September 19, 2018

seema

(JAISHREE THAKUR)

JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No.