

Crl. Misc. No.M-4901 of 2012 (O&M).

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

**Crl. Misc. No.M-4901 of 2012 (O&M)
Date of decision : 27.04.2018**

Harnam Chand and others

.....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sanjiv Kumar Aggarwal, Advocate
for the petitioners.

Mr. K.S. Aulakh, DAG, Punjab.

Mr. Sandeep Khunger, Advocate
for respondent no.2.

ANITA CHAUDHRY, J(ORAL)

The petitioners are seeking quashing of FIR No.80 dated 06.12.2011 registered under Sections 498-A, 406 IPC, Police Station Nurmahal, District Jalandhar and the consequent proceedings arising out of the same. The petition was filed on behalf of four persons. Since the challan had not been presented qua petitioners no.3 & 4, therefore, it was rendered infructuous. Their names were ordered to be deleted vide order dated 21.04.2014.

The daughter of the complainant namely Mandeep is a Dutch national and was married to Naresh in 2005. She is settled in Netherland since 1989 The complainant had given a detailed list of Istridhan given at

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the time of marriage to various family members of Naresh and the amount he had spent on the marriage. The complainant's daughter had taken Naresh to Holland with her in 2006. Naresh acquired permanent residency but after acquiring that status the allegations are that his attitude and that his family members changed drastically. In December 2007 Naresh came to India with their daughter and they stayed in the matrimonial home and all the accused abused and scolded his daughter and also gave her a beating. It was claimed that the couple returned to Holland in January 2008 and two years later Naresh came to India for few days and went back and sent his daughter to India in April 2010. The allegations are that the complainant's daughter was harassed by the in-laws. The incident alleged is of 19th July 2010. The complainant's daughter saw that her father-in-law and mother-in-law were whispering something in the ear of Rakesh and Neena (Dever and Deverani of Mandeep) and soon thereafter Rakesh, Neena and Surjit Kaur (Jethani) caught hold of her hair and started beating her and asked her to convey to her father to give a Honda City car as he had lot of money. The complainant's daughter refused and the accused got annoyed and they attempted to kill her and pressed her neck. Mandeep saved herself and called up Naresh (who was in Holland) but he abused her and threatened that Mandeep would not be allowed to come back to Holland. Mandeep along with her daughter were thrown out and they returned to village Cheema Khurd. The allegations are that the complainant had made a complaint on 20.07.2010 but no action was taken.

On these allegations, the police filed the challan against the father-in-law and the mother-in-law.

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The quashing of the FIR has been prayed on their behalf on the ground that no part of the alleged incident had taken place at Phillaur and the FIR had been registered in December 2011 and the couple was divorced on 18.04.2012. It was urged that no complaint was given by Mandeep Kaur in Holland and the allegations were made up and there was no reason to demand a Honda City car when the husband were already abroad and permanently settled and the proceedings were a mis-use of law and Courts.

State of Punjab filed its reply and pleaded that the main ground raised by the petitioners was regarding jurisdiction but there was no absolute prohibition that the matter was only to be investigated in the local territorial jurisdiction. It was pleaded that an inquiry was held and it was found that petitioners no.1 & 2 were harassing and beating the daughter of respondent no.2 on account of insufficient dowry and were forcing the parents to give a Honda City Car. It was pleaded that P.O. proceedings were pending against Naresh Kumar while challan had been presented against petitioners no.1 & 2 and the other persons named in the FIR were not challaned.

The complainant in its reply pleaded that his daughter became a victim of harassment at the hands of petitioner no.1 & 2 and their son from the time of the marriage. It was pleaded that Naresh Kumar son of petitioner no.1 followed his wife to Holland where he acquired permanent residency and the couple had returned to India in 2007 and lived in the petitioner's house and his daughter was beaten and there was a demand of Honda City car. It was pleaded that the complainant had given a complaint on 14.03.2011 but the FIR was registered only in December. It was pleaded that Naresh had two passports and it had been obtained by presenting fabricated documents.

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Complainant has placed on record documents Annexures R-2/1 to R-2/7.

The petitioner side had also placed on record the order Annexure P-10, vide which the marriage was dissolved on 18.04.2012 by the Dutch Court.

I have heard counsel of both the sides.

Counsel for the petitioners submits that the marriage between the parties took place in 2005 and the FIR had been lodged in December 2011. It was urged that the complaint is by the father and not by the daughter and the incident is stated to have occurred on 19.07.2010. It was urged that the complainant had alleged that an attempt on her life was made and they allege that the complaint was given on 20.07.2010 but the police did not take action and the FIR is after one and a half year and that too in a different district when the incident alleged is somewhere else. It was alleged that the police found half of the statement to be untrue as one of the persons named was abroad. It was urged that divorce proceedings were initiated and a divorce decree was passed on 18.04.2012. It was urged that the allegations are that the husband wanted a permanent residency but permanent residency was acquired much earlier. It was contended that there was no medical in support of the allegations and there is a delay in lodging the FIR and the complainant's daughter did not return to India to make her statement. It was urged that had such an incident occurred, the complainant's daughter would have mentioned it in the divorce proceedings. It was also urged that the FIR could not have been lodged at Noormahal, District Jalandhar as no incident had taken place in that district. It was urged that the complainant has not

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even placed any material on record to show that the complainant's daughter had returned to Holland and these proceedings are an abuse of the process of the Court and ought to be quashed. Reliance was placed upon ***Bhura Ram and Ors. Vs. State of Rajasthan & Anr 2008(2) RCR (Criminal) 761, Y. Abraham Ajith and ors. Vs. Inspector of Police, Chennai and another 2004(3) RCR (Criminal) 988, Preet Gupta & Anr. Vs. State of Jharkhand & anr 2010(4) RCR (Criminal) 45 and Arun Kumar etc. Vs. Pinki Rani in CRM-M-15064-2009, D.O.D. 26.03.2010 (P&H).***

On the other hand, the submission on behalf of the respondent is that there is no prohibition that an offence committed beyond the local territorial jurisdiction cannot be investigated or inquired or even tried by virtue of Sections 177 to 188 Cr.P.C. It was urged that when an offence is committed partly in one local area and some part in another then it can be inquired and tried by a Court having jurisdiction over both the local areas. It was urged that cruelty is a continuing offence and could be inquired by the police in the area where the FIR was lodged. It was urged that after the complainant's daughter was beaten, she returned to her parent's house. It was urged that there was no delay in lodging the FIR and the complaint had been given the next day but the police did not take any action and another complaint was sent in March 2011 but the police took seven months to register the FIR.

A query was posed to the complainant as to whether a decree of divorce was passed and the fact has not been denied. The Counsel for the petitioners has pointed out to the fact that they had placed on record the divorce decree and it has not been refuted by the other side.

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Mandeep was married to Naresh in May 2005. Admittedly, they moved to Holland. Soon thereafter the husband acquired permanent residency. There was no complaint till 2010. There is no material to show that any complaint was lodged on 20.07.2010. The complainant did not place on record the copy of the complaint. The only complaint available is the complaint made in March 2011. The police held a number of inquiries but registered the case only in December 2011. Meanwhile, the husband had filed for divorce in Holland and a divorce decree was passed on 18.04.2012. It has not been shown by the complainant side that any complaint was made by the wife in Holland. There was no reason why this incident was not disclosed there. The complainant has been unable to produce on record the statement given by the victim. Her statement was important. The State counsel also could not show that any statement had been given by the complainants' daughter . They are unable to give the date on which she returned to Holland. The fact is not even indicated in the reply filed by the complainant. There is no explanation from the side of the complainant as to why she did not make a statement to the police then. The incident is said to have occurred on 19.07.2010. The complaint was given after eight months. According to the allegations set up in the complaint, there were past incidents of beating by the in-laws whenever the complainant's daughter came to India. If there was any truth, in such allegations, there was no reason for Mandeep to come and stay in the matrimonial home that too in the absence of her husband. Her parents were in India and she would have stayed with her parents instead. No medical record was produced to show that any such occurrence had occurred. If for a

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moment it is taken that some occurrence had taken place, Mandeep would not have called up her husband, she would have called up her parents. Testing the veracity of the allegations, I find that the accusations levelled in the FIR have to be rejected and discarded and there is no need to send the case for trial and for recording any evidence as the accusations have no basis. The statement of the complainant is not of sterling quality. In such a situation the judicial conscious of this Court would be persuaded to exercise the powers under Section 482 Cr.P.C. as that would prevent the abuse of the process of the Court. The reason is that no material has been placed before this Court by the complainant. He was not even present at the spot. His daughter is a Dutch national. She went back from India without making a statement to the police. She never came forward to make a statement. No material has been relied upon by the complainant which is sound or reasonable or of impeccable quality. Difference had arisen between couple sometime in 2009. The permanent residency had already been acquired by the husband in 2006. The allegations that Mandeep was beaten whenever she came to India are absurd, unsubstantiated and without any legal evidence.

So far as the jurisdiction is concerned, the couple had remained together in Holland. There was not even a whisper of allegation of any demand of dowry in the initial four years. The complaint had been lodged regarding an incident which took place in the matrimonial home, therefore, the ordinary venue for the trial or for the reporting of the incident should have been the area of jurisdiction in which the occurrence had taken place. Even if assuming that there was any truth in the allegation that there was a

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demand or that Istridhan was delivered to the accused, all those allegations also with respect to harassment and cruelty in the matrimonial home occurred within the jurisdiction of Police Station Nurmahal and the offence could have been inquired and tried by the Court only in whose jurisdiction it was committed. The Apex Court in *Manish Ratan Vs. State of M.P. 2007(1) RCR (Criminal) 513* had held that when no part of cause of action arose in the house where the bride came ultimately to reside, would not have the jurisdiction as the offence under Section 498-A IPC is not a continuing one. However, it is not necessary to delve into the question of territorial jurisdiction as it has already been held that it was a fit case for exercising jurisdiction under Section 482 Cr.P.C. to quash the criminal proceedings as it would prevent the abuse of the process of the Court and would secure the ends of justice.

The petition is allowed. The FIR and the subsequent proceedings are quashed.

27.04.2018
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No