

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

CRM-M-40572-2015

Date of Decision: 06.02.2018

Vijay Kumar

...Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. A.P.S. Deol, Sr. Advocate with
Mr. Shakti Pal Singh Mann, Advocate
for the petitioner.

Ms. Dimple Jain, AAG, Haryana.

None for respondent No.2.

ANITA CHAUDHRY, J.

The instant petition is for quashing of FIR No.143 dated 06.06.2015 registered under Section 376 of IPC, Police Station Taraori, District Karnal.

Both the State and the private respondents have filed reply.

No one is appearing for respondent No.2 for the last two dates.

No one appears even today.

A complaint was given to the Police on 06.06.2015 and when translated, it reads as under:-

*'Vijay son of Rajpal caste Jangra r/o near
M.C. Office used to visit our house since 2010 and he
took the advantage of my shortcomings and developed
physical relations with me against my will. Out of this
relation one son was born who is now aged 3 years
named and his name is Paras. But now I have started*

hating myself and wish to initiate action against Vijay aforesaid. It is requested that legal action be initiated against him and my younger son be subjected to DNA test to test his paternity with Vijay. On 04.05.2015 day time also I had physical relations.'

The petitioner filed an application for anticipatory bail and made an offer that he was ready to get the DNA test. The Investigating Officer moved an application before the Magistrate to summon the complainant to get her as well as as her son's DNA test. The complainant appeared in the Court and made a statement on oath that she was not willing to get the DNA test. She was cautioned by the Magistrate that an adverse inference could be drawn against her but since there was refusal, the papers were ordered to be tagged with the remand papers.

The petitioner has approached for quashing of the FIR on the plea that the complainant was a married woman and had 3 children from the marriage and she had made statements on oath that the children were born out of the wedlock and that was the reason she refused DNA test as true facts would have come to light. It was pleaded that despite this, the police has filed the challan on a complaint which is vague and the police had not investigate the matter to dig out the true facts. Detailing the events, the petitioner pleaded that the complainant was married to Vinod Kumar and a petition for dissolution of marriage was filed by Vinod Kumar and allegations were levelled that she used to leave the house without informing and stayed away for number of days. He doubted her. Later, a petition under Section 13-B of the Hindu Marriage Act was filed and the wife received Rs.28 lacs as full and final settlement and some amount was deposited in

FDRs. However, after first motion, the wife wanted to join the company of the husband and the couple started living together. The petition for mutual divorce was withdrawn. It was pleaded that the motive for withdrawal was that she wanted to extract more money and property. It was pleaded that the complainant insisted on selling the houses and shops and wanted to settle in Punjab and when her husband (Vinod Kumar) refused to accede to the demand, she obtained a GPA in her own name and transferred the house in the name of the minor child. When her husband learnt about the GPA, he filed a suit challenging the gift deed and the sale deeds executed by Manju on the plea taken was that the sale deed had been obtained by fraud. It was pleaded that the petition for divorce filed in 2010 was withdrawn on a joint statement as she gave an undertaking that she would not act against the interest of the minor children but went back on her statement and sought permission from the Guardian Court to sell the property and at that point of time Vinod Kumar (the husband) was in the Rehabilitation Centre and did not appear and the petition was allowed *ex parte*. On attaining knowledge of the *ex parte* order, Jaswinder Singh, nephew of Vinod Kumar, filed an application seeking cancellation of the permission. The case of the petitioner is that Jaswinder Singh had engaged the petitioner as his counsel and the complainant started threatening the petitioner to withdraw the application or face allegations of 'gang rape'. The petitioner fearing registration of a case, gave a complaint before the DGP, Haryana in September 2013. The matter was investigated and enquired and thereafter complainant gave an affidavit that a compromise had been effected and the petitioner withdrew his complaint after an affidavit was given in October

2013 in which she had stated that she would not initiate civil or criminal litigation against the petitioner.

The case of the petitioner further is that the complainant filed a petition seeking divorce from her husband and an *ex parte* decree was passed and in that petition, she had claimed that all the 3 children were born out of the wedlock and their names and date of birth were recorded therein and she had made a similar statement on oath in the petition seeking divorce. It was pleaded that the petitioner filed a petition seeking direction to the S.P. Karnal to protect his life and liberty at the hands of Manju and Nitin as they were again threatening to implicate him. It was pleaded that since an affidavit had been given, the petition was withdrawn on 25.09.2013 to avail appropriate remedy as per law. It was pleaded that on 11.03.2015, the complainant and her new companion Pankaj Wadhwa started following the petitioner and threatened to implicate him in some criminal case and on the basis of his complaint proceedings under Sections 107 and 151 Cr.P.C. were initiated and the complainant was aggrieved by the proceedings and filed the present complaint levelling false allegations. It was pleaded that the complainant made a statement under Section 164 Cr.P.C. and improved upon her earlier statement. The petitioner was seeking quashing of the FIR.

The State in its reply admitted that the petitioner had offered to get her DNA test and an application was made before the Magistrate but the complainant had made a statement and refused to get the DNA test. It was pleaded that challan had been presented and the case was fixed for further proceedings.

Respondent No.2 in her reply pleaded that the petitioner could not invoke the inherent jurisdiction and it was for the trial Court to adjudicate and finally decide the matter.

The petitioner moved *CRM-26020-2017* and placed on record an affidavit given by respondent No.2 stating that she did not want to pursue the FIR and had no objection if the FIR was quashed. The authenticity of the affidavit cannot be checked, the complainant has not cared to appear therefore the case is being decided on merits.

I have heard the submissions of both the sides.

Counsel for the petitioner has taken me through the documents appended along with the petition and urges that the complaint is vague and does not give any details and the petitioner was named in a false case as he was representing the nephew of the husband of the complainant as she feared hurdles in her plans therefore she started levelling allegations and fearing a police case, the petitioner gave a complaint in 2013. The counsel refers to Annexure P-10. It was also submitted that a complaint was later filed as the complainant gave affidavit Annexure P-12. The counsel has also referred to the petition filed by the complainant seeking divorce as well as the quashing petition. Counsel also refers to the application filed by Jaswinder Singh nephew of Vinod Kumar seeking cancellation of the permission granted to Manju to sell the minor's property. Counsel submits that the police has filed the challan without verification of facts and proceedings under Section 107, 151 Cr.P.C. were initiated. The counsel further submits that the complainant has specifically pleaded that her children were born from the wedlock disclosing their names and date of

birth and she had made a statement on oath and had got an *ex parte* decree of divorce and it is a fit case where the FIR should be quashed as it is attended with *malafides* and with ulterior motive and the complainant holds a personal grudge. The counsel also refers to the affidavit given by respondent No.2.

The State counsel states that the challan has been presented and the complainant had refused her DNA examination.

It is necessary to notice the principles laid down in '***State of Haryana vs. Bhajan Lal, 1992 Supp(1) Supreme Court Cases 335***' which read as under:-

“The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently chennelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

(1) Where the allegations made in the first information report or the complainant/respondent No.2, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of

the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

(4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of Magistrate as contemplated under Section 155(2) of the Code.*

(5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.*

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

In *Harjinder Kaur and others versus State of Punjab 2004*(4)

R.C.R. (Criminal) 332 it was held that even though challan had been filed and charge had been framed yet there was no absolute bar to entertain the petition under section 482 Cr.P.C. as each case has to be

examined on its own facts.

The complainant is a married women with children which she had admitted to be born out of the wedlock with Vinod Kumar. She had made a statement before the Court that the children were born out of the loins of Vinod Kumar. The petitioner could lay hands on the litigation between the complainant and her husband as he was representing the nephew of the husband. All the documents which have been made available by the petitioner are from Court records. There is no dispute regarding their authenticity or correctness as they are public documents.

On going through the documents, it becomes clear that the complainant got agitated since an application had been filed by the petitioner and she felt that hurdles were being created and she would not be able to reap the harvest and take away the sale proceeds after selling the minor's property. On the very face of it, the complaint appears to be false. It does not give any details. The complainant had made allegations that the petitioner had been taking advantage of her and had developed relations. She claimed that a child was born from that union but when asked to get a DNA test, she refused. Her statement was recorded by the Magistrate. It exposes the falsity of the allegations. The police should have tested the statement and they did not bother to investigate the case properly and rushed to file challan and it has played havoc with the petitioner's life. The complaint was given merely to give vent to her motive and wreck vengeance upon the petitioner. She was holding a personal grudge and it is a fit case where the extra ordinary power under Section 482 Cr.P.C. should be exercised to prevent the abuse of process

of the Court and the authorities. The allegations made in the FIR could not be have been taken at their face value and the police was not justified in filing the challan. The petitioner cannot be asked to endure a trial on frivolous allegations. It would not be correct to send him to face a long and protracted trial. The process would be extremely long and painful.

Taking into consideration the totality and the peculiar facts and circumstances, the instant petition deserves to be allowed. Consequently, the FIR and the subsequent proceedings arising therefrom *qua* the petitioner are quashed.

February 06, 2018

ps-I

**(ANITA CHAUDHRY)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No