

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

(1) Crl. Misc. M 42096 of 2014 (O&M)
Date of decision: 13.8.2018

Rajat Sharma and others

...Petitioners

Versus

State of Punjab and another

...Respondents

(2) Crl. Misc. M 20757 of 2015 (O&M)

Shruti Chaudhary

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. P.S. Ahluwalia, Advocate,
for the petitioners.

Ms. Rajni Gupta, Advocate, Sr. DAG, Punjab.

Mr. Sankalp Sagar, Advocate,
for respondent No.2.

JAISHREE THAKUR, J.

1. By this common judgment, this court proposes to dispose of the two aforesaid mentioned criminal miscellaneous petitions filed under Section 482 of the Code of Criminal Procedure for quashing FIR No. 76 dated 5.4.2011 (Annexure P1) registered at Police Station 'A' Division, Amritsar City, District Amritsar under Sections 406, 498-A IPC and all consequential proceedings arising thereunder, as a common law point is involved. For the sake of brevity, facts have been taken from CRM-M-

42096 of 2014 Rajat Sharma and others versus State of Punjab and another.

2. In brief, the facts are that a marriage was solemnized between the Rajat Sharma—petitioner No. 1 and Meenakshi Sharma in Amritsar on 28.11.2002. After the marriage, both petitioner No. 1 and the respondent No.2 (**'the respondent'** for short) resided together in the United States of America and during this time differences arose between them. Out of this wedlock, a female child was born on 26.4.2004. During their stay in America, the respondent called upon the local police alleging that petitioner No. 1 misbehaved with her and physically assaulted her. The matter was sorted out and they continued to reside together for a further duration of time when the respondent was constrained to call the police again on account of domestic assault. The respondent submitted an affidavit affirming the domestic assault after which the judge issued warrants of arrest against petitioner No. ,1 who was arrested and eventually bailed out with restraining orders. Petitioner No. 1 claimed trial to challenge the charges of domestic violence and was acquitted after the police officers who had investigated testified in court in his favour. After his arrest, the petitioner filed for divorce on 23.11.2010, which was hotly contested for a period of more than three years. The respondent at first filed a motion to dismiss the petition which was denied and the decree of divorce was passed by the Circuit Court of Hamilton County, Tennessee on 28.2.2014. There was also an order by which assets and liabilities between the parties were assessed and divided and the respondent was allowed 85,000 US dollars in terms of assets and allowed spousal support for three years, as well as child support. This order was challenged in appeal by the respondent on the ground that she had not

received an equitable distribution of assets, which appeal came to be dismissed. During the pendency of the proceedings in the United States, the respondent came to India and got a FIR registered under Sections 498A and 406A IPC at Police Station, 'A' in Amritsar, on account of demand of dowry and cruelty. The matter was investigated and final report was presented under section 173 of the Code of Criminal Procedure against Rajat Sharma—petitioner No. 1, Prem Kumar—petitioner No. 2, Asha Sharma—petitioner No. 3 and Shruti Chaudhry—petitioner in CRM-M-20757 of 2015.

3. Mr. P.S Ahluwalia, learned counsel appearing on behalf of the petitioners, contends that the instant FIR is not maintainable primarily on the ground for lack of jurisdiction. It is contended that all allegations, as set out in the FIR, pertain to incidences which took place in the United States of America. It is argued that after marriage the parties, that is Rajat Sharma and Meenakshi Sharma left for the United States of America and continued to reside there. Even a decree of divorce was obtained in the USA, and therefore, proceedings under the said FIR at Amritsar are not maintainable. Reliance in this regard is placed upon a judgment rendered in **Harmanpreet Singh Ahluwalia and others Versus State of Punjab and others 2009 (2) RCR (Criminal) 956**. It is also argued that there is non-compliance of Section 188 of the Code of Criminal Procedure, insofar as no sanction has been taken before registration of the FIR.

4. Per contra, Mr. Sankalp Sagar, learned counsel appearing on behalf of the respondent, submits that the allegations as set out in the FIR are specific as to how the respondent was ill treated, therefore, no grounds

made out for quashing of the said FIR. It was stressed that the parties only shifted to the United States in the year 2003, whereas they were married in the year 2002, therefore, the courts at Amritsar would have the territorial jurisdiction to entertain the proceedings.

5. Ms. Rajini Gupta, Senior DAG, learned counsel appearing on behalf of the respondent—State, affirms the fact that no sanction was taken as envisaged under section 188 of the Code of the Criminal Procedure has been taken before initiating these proceedings.

6. I have heard the counsel for the parties and with their able assistance gone through the pleadings of the case was as cited.

7. There is no dispute that a marriage was solemnized between petitioner No. 1 and the respondent Meenakshi Sharma in 2002 at Amritsar. On a plain reading of the FIR, it is clear that all allegations pertain to incidents that took place on foreign soil, that is in the USA, be it an incident of domestic violence, abuse, maltreatment or emotional abuse. During their time in India, before leaving for the USA, no such complaint had been filed. Litigation regarding divorce, maintenance, child support, distribution of assets also took place in USA and ultimately a decree of divorce also stands allowed to the petitioner--Rajat Sharma. Therefore, as the offences if any have been committed in USA, proceedings under the FIR at Amritsar are clearly not sustainable for want of territorial jurisdiction. A similar case came up for hearing before the Supreme Court in **Harmanpreet Singh Ahluwalia and others Versus State of Punjab and others 2009 (2) RCR (Criminal) 956**, wherein the parties were residing in Canada and FIR was registered at Jalandhar alleging demand of dowry and misappropriation of

dowry articles. The proceedings were quashed holding that the Jalandhar court would have no jurisdiction to entertain the matter.

8. Even otherwise the contents of the FIR do not disclose any such allegation that would tantamount to an offence under Section 406 IPC. There is no whisper in the said FIR about entrustment of her stridhan to any person and refusal to return the same.

9. As regards Shruti Chaudhry, sister of Rajat Sharma, there is a passing reference to her supporting the treatment meted out to the respondent at the hands of her husband and his parents. The allegations qua her have perhaps been inserted only to harass the family members of the husband. The said petitioner is the married sister of the Rajat Sharma residing separately in her own matrimonial home in India, residing thousands of miles apart. There are no specific details, let alone any such allegation that she demanded any dowry or was the cause of any such cruelty on that account. The judgment rendered in **Preeti Gupta & anr vs State of Jharkhand & anr (2010) 7 SCC 667** is wholly applicable to the case in hand, where the Supreme Court noticed the growing tendency to rope in all family members, who did not have anything to do with the matrimonial life or the dispute that arose between husband and wife, so as to cause harassment.

10. An argument has also been raised by the counsel for the petitioners that proceedings cannot be initiated in India for any offence that has been committed outside the territorial jurisdiction of India by placing reliance upon Section 188 of the Code of Criminal Procedure which reads as

under:-

“188. Offence committed outside India.— When an offence is committed outside India—

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found: Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.”

11. The Supreme Court in **Thota Venkateshwarlu vs State of A.P.Tr. Princ. Sec. & anr (2011) 9 SCC 527** had an occasion to deal with Section 188 of the Code of Criminal Procedure and it was held:-

“14. The language of Section 188 Cr.PC is quite clear that when an offence is committed outside India by a citizen of India, he may be dealt with in respect of such offences as if they had been committed in India. The proviso, however, indicates that such offences could be inquired into or tried only after having obtained the previous sanction of the Central Government. As mentioned hereinbefore, in Ajay Aggarwal case [(1993) 3 SCC 609 : 1993 SCC (Cri) 961] , it was held that sanction under Section 188 CrPC is not a condition precedent for taking cognizance of an offence and, if need be, it could be obtained before the trial begins. Even in his concurring judgment, R.M. Sahai, J., observed as follows: (SCC p. 628, para 29)

“29. Language of the section is plain and simple. It operates where an offence is committed by a citizen of India outside the country. Requirements are, therefore, one — commission of an offence; second — by an Indian citizen; and third — that it should have been committed outside the country.”

15. Although the decision in Ajay Aggarwal case [(1993) 3 SCC 609:1993 SCC (Cri) 961] was rendered in the background of a conspiracy alleged to have been hatched by the accused, the ratio of the decision is confined to what has been observed hereinabove in the interpretation of Section 188 CrPC. The proviso to Section 188, which has been extracted hereinbefore, is a fetter on the powers of the investigating authority to inquire into or try any offence mentioned in the earlier part of the section, except with the previous sanction of the Central Government. The fetters, however, are imposed only when the stage of trial is reached, which clearly indicates that no sanction in terms of Section 188 is required till the commencement of the trial. It is only after the decision to try the offender in India was felt necessary that the previous sanction of the Central Government would be required before the trial could commence.

16. Accordingly, up to the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to Section 188 CrPC. However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government. The Magistrate is, therefore, free to proceed against the accused in respect of offences having been committed in India and to complete the trial and pass judgment therein, without being inhibited by the other alleged offences for which sanction would be required.”

The counsel appearing on behalf of Punjab State has submitted

that no sanction had been obtained of the Central government, therefore, in view of the ratio as laid down in **Thota Venkateshwarlu's case (Supra)**, trial under the FIR cannot continue as it would be covered by the proviso to Section 188 of the Code of Criminal Procedure, which clearly stipulates prior approval of the Central Government.

13. Learned counsel appearing on behalf of the respondent has submitted that the petitioner No. 1 and respondent resided in India before shifting to the United States and, therefore, the petitioners are liable for the offences under section 498A and 406 IPC. This argument is noted to be rejected. As already noted above, all allegations in the FIR pertain to incidents that took place in the United States. There is no mention in the FIR of any alleged demand of dowry, harassment, cruelty or entrustment of dowry in India. There is nothing available on the record to show or establish that the respondent had filed any such complaint in the year 2002—2003. Even so, the punishment for an offence under Sections 498 A and 406 IPC is three years and the FIR has been registered on 5.4.2011, therefore, the FIR is barred by limitation for the offence if any, in India.

14. For the reasons afore-stated, these petitions are allowed and FIR No. 76 dated 5.4.2011 (Annexure P1) registered at Police Station ‘A’ Division, Amritsar City, District Amritsar under Sections 406, 498-A IPC and all subsequent proceedings arising out of the same are quashed.

13.8.2018
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No