

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

**CRM-M-5858-2015 (O&M)
Date of Decision: 19.12.2018**

Narinder Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. V.K. Jindal, Sr. Advocate, with
Ms. Nagma Gupta, Advocate,
for the petitioners.

Ms. Rajni Gupta, Sr. DAG, Punjab.

Ms. G.K. Dulat, Advocate, for
Mr.N.S. Lucky, Advocate,
for the complainant-respondent No.2.

JAISHREE THAKUR, J.

1. This petition has been filed by the petitioners under Section 482 of the Code of Criminal Procedure seeking quashing of the order dated 09.04.2014 passed by Chief Judicial Magistrate, SAS Nagar Mohali (Annexure P-4) whereby the petitioners herein have been declared proclaimed person. The petitioners further pray for quashing of FIR No. 06 dated 06.08.2013 under Sections 406, 498-A IPC, registered at Women Police Station Mohali, District SAS Nagar (Annexure P-3) and all subsequent proceedings arising therefrom.

2. Briefly the facts of the case are that petitioners herein are the elder brother and sister-in-law of Sandeep Kanwar Singh whose marriage was solemnized with respondent No.2, Mandeep Kaur on 27.11.2011. Petitioners migrated to Australia in the year 2006 and since then they are residents of Australia residing in Melbourne. Sandeep Kanwar Singh had also migrated to Australia in the year 2009 and came back to India on 15.11.2011 for his marriage and again left for Australia on 15.01.2012. On 12.09.2012, Mandeep Kaur respondent No.2 left India for Australia to join the company of her husband at Melbourne. While in Melbourne matrimonial differences arose between husband and wife i.e. Sandeep Kanwar Singh and respondent No.2 Mandeep Kaur, who could not pull on smoothly on account of their temperamental differences. Disputes over petty matters started occurring between them. In this regard, respondent No.2 made a complaint dated 24.04.2013 against her husband to the Australian Police. After lodging the said complaint dated 24.04.2013 against her husband, respondent No.2 came to India on 13.07.2013 and got registered FIR No. 06 dated 06.08.2013 under Sections 406, 498-A IPC, at Women Police Station Mohali, District SAS Nagar (Annexure P-3) involving all the family members of her husband. Aggrieved against the said FIR and order 09.04.2014 passed by Chief Judicial Magistrate, SAS Nagar Mohali (Annexure P-4) whereby the petitioners herein have been declared proclaimed person, the instant petition has been filed.

3. Mr. V.K. Jindal, learned Sr. Advocate assisted by Ms. Nagma Gupta, Advocate appearing on behalf of the petitioners argues that petitioner No.1 came to India on 23.10.2011 to attend the marriage of his younger brother Sandeep Kanwar Singh with respondent No.2 and after marriage left for Australia on 06.01.2012, whereas petitioner No.2 came to India on 14.11.2011 to attend the same marriage on 27.11.2011 and after marriage left for Australia on 15.12.2011. During their stay in India there was no complaint or allegation against them or any person and thereafter respondent No. 2 left for Australia on 12.09.2012. In fact, the dispute apparently was between the husband and wife and that too on account of their incompatibility. The allegations leveled against the petitioners are totally false and baseless and without any iota of evidence. It is submitted that even if the allegations levelled in the FIR are gone into, it would be surfaced that no role has been attributed to the petitioners herein. Insofar as the offence under Sections 498-A & 406 IPC are concerned, the same are not made out against the petitioners as neither any dowry was entrusted to them nor respondent No.2 ever asked the petitioners for the return of her alleged dowry articles. It is also argued that with mala fide intention respondent No.2 complainant knowing well that petitioners herein are residing in Australia yet gave their address of Yamuna Nagar and, therefore, no proper service was affected upon them as per the law, and consequently were declared as proclaimed person, which order is not

sustainable on account of the fact that they were residing abroad. It is also submitted that the co-accused, other than Sandeep Kanwar Singh, stand acquitted by the Judicial Magistrate 1st Class, SAS Nagar, Mohali vide order dated 29.01.2018.

4. On notice, reply has been filed by the respondent-State by submitting that after completion of investigation, report under Section 173 Cr.P.C. was put up against the accused persons excluding the petitioners herein as they were on run. It is further averred that legal procedure was adopted by the police to effect service upon the petitioners herein. Consequently, prays for dismissal of the instant petition.

5. Mr. Narinder Lucky, learned counsel appearing for respondent No. 2 submits that the allegations as set out in the FIR are correct and that the petitioners have rightly been summoned to face trial and on non-appearance after they were summoned, have been declared proclaimed offenders. Reliance is place upon a judgment rendered in *Lavesh Vs. State (NCT of Delhi) 2012(8) SCC 730* and *State Of Madhya Pradesh vs Pradeep Sharma, 2014(2) SCC 171* to contend that no relief ought to be granted to them until and unless they surrender before the trial court.

6. I have heard the counsel for the parties and with their assistance have also perused the pleadings.

7. At the very outset, the argument raised that the petitioners are proclaimed persons since they did not put in an

appearance before the trial court when summoned and consequently should not be entitled to any relief without first submitting to the trial court. However, this court finds no merit in the argument as raised. It is true that the petitioners were declared as proclaimed persons, but this court takes notice of the fact that the address of the petitioners was shown to be at Yamunanagar which clearly was an incorrect address given. Respondent No. 2 was aware that the petitioners were residents of Australia, however with a mala fide intention did not choose to give the correct address. Section 82 Cr.P.C. clearly states that service must be effected upon a person, and if found evading service, proclamation must be published as prescribed, namely shall be published as follows- *a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides; b) it shall be affixed to some conspicuous part of the house or home-stead in which such person ordinarily resides or to some conspicuous place of such town or village; c) a copy thereof shall be affixed to some conspicuous part of the Court house.* When the petitioners do not reside in India, a fact well within the knowledge of respondent No. 2, then any service effected in Yamunanagar would not be a proper service. There is also nothing on record to show that an attempt was made to serve the petitioners at the residence where they *ordinary reside* either through publication in newspapers or through the embassy. Hence, the order declaring them as proclaimed offenders is improper and is hereby set aside. Reliance

has been placed on judgments rendered in *Lavesh Vs. State (NCT of Delhi) 2012(8) SCC 730* and *State Of Madhya Pradesh vs Pradeep Sharma, 2014(2) SCC 171* which are not applicable to the facts of the instant case, especially when there is non-compliance of Section 82 Cr.P.C.

8. The marriage between Sandeep Kanwar Singh and respondent No. 2 is not in dispute and neither is the fact that the petitioners who are the elder brother and sister in law of Sandeep Kanwar Singh are permanent residents of Australia. As per the uncontroverted pleadings, the petitioners came to India only for a short period only to attend the marriage and left shortly thereafter. Respondent No. 2 left India on 12.09.2012 to join her husband at Melbourne, where they lived together as husband and wife for a short period when differences arose between them. A complaint was registered against the husband Sandeep Kanwar Singh in Australia and the same is silent about any ill treatment meted out to respondent No. 2 by the petitioners herein. Allegations pertain to abuse at the hands of her husband. There is an oblique reference to the petitioners making her do household work, which cannot be construed to be any offence.

9. The complaint filed here and the subsequent prosecution of the petitioners under the said FIR would be an abuse of the process of law qua the petitioners herein who are the relatives of the husband of respondent No. 2. They left India and returned to Australia within a

few weeks after the marriage was solemnized between respondent No. 2 and brother of petitioner No. 1. There is nothing available on the record to show or establish that respondent No. 2 had filed any such complaint during their short stay in India before they left for Australia and subsequently followed by respondent No. 2 herself. If any difference arose, it was between her and Sandeep Kanwar Singh. Moreover it is evident that respondent No. 2 got the instant FIR registered after she returned from Australia. The allegations herein are found to be general in nature and an obvious improvement from the complaint that was filed in Australia, where she made allegations only against her husband of abuse and an oblique passing mention against the petitioners. Obviously the intention of respondent No. 2 is only to harass the relatives of the husband.

10. In the case of ***Preeti Gupta and another vs. State of Jharkhand and another, (2010) 7 Supreme Court Cases 667***, the main question which fell for consideration before the Hon'ble Supreme Court was whether the High Court ought to have exercised its inherent powers under Section 482 Cr.P.C. and quashed the complaint against the relatives of the husband of the complainant. The Hon'ble Supreme Court while quashing a criminal complaint under Sections 498-A, 406, 341, 323 and 120-B of IPC read with Sections 3 and 4 of the Dowry Prohibition Act, qua married sister-in-law and unmarried brother-in-law who were residing separately, has observed as under :-

“18. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent powers should not be exercised to stifle a legitimate prosecution, but the Court's failing to use the power for advancement of justice can also lead to grave injustice.

19. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

29. Admittedly, Appellant No.1 is a permanent resident of Navasari, Surat, Gujarat and has been living with her husband for more than seven years. Similarly, Appellant No.2 is a permanent resident of Goregaon, Maharashtra. They have never visited the place where the the alleged

incident had taken place. They had never lived with respondent No.2 and her husband. Their implication in the complaint is meant to harass and humiliate the husband's relatives. This seems to be the only basis to file this complaint against the appellants. Permitting the complainant to pursue this complaint would be an abuse of the process of law.”

11. Therefore, based on the allegations as set out and the facts of the present case, this court finds that the proceedings under the FIR are unsustainable qua the petitioners herein and allowing them to continue would be an abuse of the process of law. Consequently, FIR and subsequent proceedings arising therefrom against the petitioners herein are quashed.

19.12.2018

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.