

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

CRM-M-4969-2017

Date of Decision: 02.02.2018

Harbans Lal

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rahul Dev Singh, Advocate
for the petitioner.

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

ANITA CHAUDHRY, J.

The instant petition is for quashing of FIR No.85 dated 02.11.2012 registered under Sections 323, 406, 498-A and 506 of IPC, Police Station Div. No.1, Pathankot, Tehsil and District Pathankot consequent proceedings arising out of the same *qua* the petitioner, the same being wrong, illegal, unjust and utter abuse of process of law.

The petitioner is the maternal Uncle of the husband-Bishan Kumar. The complainant was married to Bishan Kumar in 2009. The couple after marriage started living at Jalandhar where Bishan Kumar was working. The allegations are that the complainant was beaten up by her mother-in-law, father-in-law and sister-in-law and to save her life, she returned to her parents house on 01.08.2012. A copy of the report prepared by the police shows that subsequently Dinu Ram had made a statement. The police recorded the statement of the complainant again wherein she also made accusations against the maternal Uncle of the husband and the

allegations were that Bishan Dass was troubling the complainant as he was under influence of his maternal Uncle and the maternal Uncle failed to give the new address of the husband.

Though the complainant had named number of relatives of the husband. The police filed the challan only against the husband and his maternal Uncle. The complainant entered into a compromise with the husband and a petition bearing *CRM-M-31862 of 2016 (Bishan Kumar Vs. State of Punjab and another)* was filed seeking quashing of the FIR. The Coordinate Bench had directed the parties to make a statement before the trial Court. Statements were recorded and the report of the Additional Chief Judicial Magistrate, Pathankot was received and based on that, the FIR was quashed vide order dated 22.10.2016.

The contention on behalf of the petitioner is that the couple had resolved their differences and were living together but he was facing the trial and he was not staying in the same house and the allegations only were that he was instigating the husband and the couple had buried the hatchet and there are no allegations against the petitioner and it would be abuse of process of Court if the trial is allowed to continue.

The State counsel urges that the complainant had remained at her maternal home for a short period and in that period there was a demand of dowry and harassment against the parents and sisters of the husband but those allegations were not proved and the challan was only filed against the husband and the maternal uncle.

The complainant has compromised the matter with her husband and the FIR was quashed *qua* him. It is to be examined now whether the trial should proceed as against the petitioner against whom the allegations are vague. It is a known fact that when a matrimonial dispute arises, complaints are given in the heat of moment over trivial issues and the present case is one of them where the complainant has made allegations against the maternal Uncle of the husband. At this stage, it is necessary to notice the principle 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.”

The petitioner had approached the Court when the trial was on but it is a fit case where the extraordinary powers under Section 482 Cr.P.C. should be exercised and considering the bald allegations made by the complainant, the present case is a typical example of a criminal

proceeding which is attendant with *malafide* and has been maliciously instituted with ulterior motive to wreck vengeance on the accused on account of personal grudges. Even if the allegations are taken on the face value, they do not make out any case against him. The only allegations were that the petitioner used to instigate the husband and the husband acted on his instance.

The instant petition deserves to be allowed. Consequently, FIR No.85 dated 02.11.2012 registered under Sections 323, 406, 498-A and 506 of IPC, Police Station Div. No.1, Pathankot, Tehsil and District Pathankot with all the consequential proceedings arising out of the same are hereby quashed *qua* the petitioner.

February 02, 2018
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(ANITA CHAUDHRY)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No