

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Decided on: 12th February, 2018

+ **W.P.(CRL) 444/2018**

JERAMBHAI VANMALIBHAI PATEL & ANR Petitioners

Represented by: Mr. Anil Malhotra, Mr. Ranjit Malhotra and Mr. Rajat Bhalla, Advocates.

versus

THE STATE GOVT OF NCT OF DELHI & ANR Respondent

Represented by: Mr. R.S. Kundu, ASC for State with SI Sanju Rai Singh, PS CWC Nanak Pura.

Mr. Bhagat Singh and Mr. Suman Saharan, Advocates.

**CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA**

MUKTA GUPTA, J. (ORAL)

Crl.M.A. No. 2651/2018 (Exemption)

Allowed, subject to all just exception.

W.P.(CRL) 444/2018 and Crl.M.A. No. 2650/2018

1. By this petition, the petitioners seek quashing of FIR No. 55/2017 under Section 498A/406/34 IPC registered at PS CWC Nanak Pura and the proceeding pursuant thereto.
2. The main grounds inter alia urged by learned counsel for the petitioners seeking quashing of FIR in question are that FIR is part of the

series of false and frivolous litigation instituted by respondent No. 2, the Petitioners are borne and brought up in South Africa, thus citizens of South Africa, being foreign residents they cannot be subject to Indian Law merely because respondent No. 2 is living in India, no approval under Section 188 Cr.P.C. having been taken the registration of FIR and cognizance thereon is illegal. Learned counsel for the petitioners also urges that no cognizance of the offences could have been taken as the same is barred by limitation as per Section 467/468/469 Cr.P.C.

3. Petitioners also state that the complainant had earlier also married with a person and then taken divorce levelling allegations of mental and physical cruelty. It is the case of the petitioners that the parties stayed in Delhi at Sheraton Hotel from 25th June 2015 up till 1st July, 2015 that is only for a period of six days, whereafter the respondent No. 2/complainant and Dirshan, son of the petitioners had gone for their honeymoon from 2nd July, 2015 to 7th July, 2015 to Udaipur, when the petitioners had no occasion to be present with them. Thus there being no allegation attributed even remotely or made out against the petitioners, the FIR in question is liable to be quashed.

4. In short the contents of FIR No. 55/2017 lodged by the respondent No. 2 at PS CWC Nanakpura are that she had filed a case under Protection of Women from Domestic Violence Act at the District Court Saket which is pending. She further stated that since the petitioners and their son Dirshan caused mental and physical cruelty, she had filed the present FIR.

5. According to the complainant, Dirshan and respondent No. 2 married as per Hindu rites and ceremonies on 23rd June, 2015 at New Delhi. It is alleged that the petitioners and their son treated the complainant with great

physical, psychological, emotional, sexual, economic and mental cruelty. The marriage was materialised through the website Shaadi.com and from the very inception all the accused demanded a lavish wedding at a five star hotel with great pomp and show. Since the family of the complainant was unable to satisfy their unreasonable and exorbitant demands, the petitioners got annoyed with the complainant and she was humiliated by the petitioners and their son. It is the case of the complainant that Dirshan suffered from General Anxiety Disorder, had been admitted to various hospitals for psychiatric treatment and was on constant medication for many years which fact was not revealed to the complainant. It is specifically alleged that prior to December, 2014 the petitioners herein who are the parents of Dirshan came to New Delhi from Surat when they did not reveal the factum of Dirshan suffering from psychiatric disorder and that his earlier marriage was dissolved due to psychiatric disorder, thus they played fraud on the complainant.

6. As per the complainant, the petitioners came to Delhi in December, 2014 and made a demand of having a lavish wedding in a Five Star Hotel which her parents could not do as they did not have the money to perform a wedding reception at New Delhi Sheraton, Saket. The petitioners also wanted the complainant and her parents to serve alcohol but the complainant and her parents due to economic constraints could not serve alcohol at the function. Annoyed by the same, the petitioner No.2 herein taunted the complainant just one day before the reception on 27th June, 2015 at the Sheraton Hotel, Saket and wanted the complainant and her parents to pay for the accommodation at Sheraton Hotel, Saket. However, parents of the complainant had to cut a very sorry figure for non-payment of

accommodation, so they were humiliated causing mental agony to her parents. On the day of wedding function that is 23rd June, 2015 the petitioner No. 2 made a demand that all the relatives of the accused who had come in the marriage should be given expensive gifts and clothes. Thus the complainant's parents arranged lots of gifts, cash and clothes to all the members who came to attend the marriage. In spite of all this the petitioner No.2 taunted at the function on 28th June, 2015 at New Delhi Sheraton Hotel, Saket that the gifts, cash and clothes/articles were below their standard. On the day of the function the petitioner No.2 took away all the jewellery given to the complainant by her family members as well as from the side of the accused persons on the pretext of keeping it safely with her. It is the case of the complainant that the entire jewellery articles/stridhan were entrusted to petitioner No.2 at Sheraton Hotel, Saket, New Delhi for being kept in safe custody which articles are still in the possession of petitioner No.2 and are worth more than ₹1 Crore which have been criminally misappropriated. Some jewellery which the complainant wore in some of the functions in South Africa was also taken away by petitioner No. 2 herein and that the said jewellery is also liable to be returned back to the complainant at New Delhi.

7. The complainant has also levelled allegation against Dirshan, however it is not relevant to deal with the same at this stage as the issue before this Court presently is whether the FIR in the question can be quashed or not on the grounds as prayed by the petitioners.

8. As noted above one of the ground taken by the petitioner is that the cognizance of the offence is barred by limitation under Section 467/468/469 Cr.P.C. On instructions learned Additional Standing Counsel for the State

submits that at this stage only investigation is going on and no charge sheet has been filed, thus the stage of taking cognizance and whether it is barred by limitation and whether the delay if any is required to be condoned or not has not even arrived as yet.

9. Learned counsel for the petitioner has taken this Court through an order passed by the Division Bench on 14th December, 2017 and contends that a finding has been arrived by the Division Bench of this Court that the marriage was performed in Gujrat on 23rd June, 2015. It is thus contended that the version of the complainant in FIR is incorrect as marriage having been performed at Gujarat no other function/ceremony could have taken place at Delhi. Para 5 of order dated 14th December, 2017 by the Division Bench in a writ of habeas corpus for the production of his minor daughter filed by Dirshan, husband of the complainant notes as under:-

Para 5:- What is not in dispute between the parties is that the Petitioner and Respondent No. 2 met through a website. Their marriage ceremony was performed in Gujarat on 23rd June, 2015. The marriage was registered in New Delhi on 26th June, 2015 under Section 5 of the Hindu Marriage Act, 1955 ('HMA'). Respondent No. 2 was at the time of marriage, as she is now, residing with her parents in Lajpat Nagar, New Delhi.

10. Even noting that the marriage between the parties was performed on 23rd June, 2015 at Gujrat, the specific allegation of the complainant being that the dowry articles were entrusted at Sheraton Hotel, Saket, New Delhi, harassment for not meeting the demands was made at Delhi, the above noted FIR cannot be quashed on the contention of learned counsel for the

petitioner who states that since marriage is performed in Gujarat there can be no other ceremonies at Delhi and thus no entrustment could take place at Delhi. Dehors the ceremonies, the entrustment of dowry articles/gifts at Delhi would be a fact which is required to be investigated during the course of investigation and required to be proved during trial. Since part of cause of action has arisen in Delhi, the requirement of taking prior permission of the Central Government under Section 188 Cr.P.C. does not arise and the FIR in question cannot be quashed on this ground as well.

11. In the decision reported as 1993 (3) SCC 609 Ajay Aggarwal vs. Union of India & Ors., wherein offences were allegedly committed by NRI partly in Dubai and partly in India, Supreme Court held that previous sanction of the Central Government under Section 188 Cr.P.C. was not required.

12. Learned counsel for the petitioner also insists on the inconsistencies in the FIR made. At this stage this Court will not appreciate the merits and demerits of the FIR in question. Needless to note that during the course of investigation if no offence is found to be made out in Delhi or against any of the accused it would be for the investigating agency to form an opinion on the same in accordance with law and file the report accordingly.

13. Learned counsel for the petitioner also contends that the complainant voluntarily left Cape Town which is demonstrated from the documents placed by the petitioner on record and that the complaint in Delhi was made after three months of coming to Delhi on the basis of which FIR was registered. Merely because the complaint was made after three months of coming to India cannot be the ground to quash FIR in question.

14. Learned counsel for the petitioner relied on the decisions reported as

2008 (3) R.C.R. (CrI) 135 Fatma Bibi Ahmed Patel Vs. State of Gujarat & Anr., 2009 AIR 2009 SCW 3976 Harmanpreet Singh Ahluwalia and Ors. Vs. State of Punjab and Ors., 2017 AIR (SC) 3869 Rajesh Sharma Vs. State of U.P. & Anr., 2012 (3) Law Herald 2562 Jaswant Singh and Ors. Vs. State of Punjab and Anr. and 2016 SCC online Raj 8208 Dr. Amit Gulati Vs. State of Rajasthan.

15. In *Fatima Bibi* (supra) the Supreme Court dealing with an appeal wherein the order of taking cognizance by the court was under challenge, while discussing the scope of Section 4 IPC and Section 188 Cr.P.C. clarified that in the Constitutional Scheme of our country, all laws made by Parliament primarily are applicable only within the country. Ordinarily, therefore, all persons who commit a crime in India can be tried in any place where the offence is committed. Section 4 of the IPC however extends the scope of applicability of the territorial jurisdiction of the Court of India to try a case, the cause of action of which took place outside the geographical limits if committed by a citizen of India on an aircraft or ship registered in India. As noted above part of cause of action in the present case having taken place in Delhi it cannot be held that due to non-compliance of Section 188 of the Cr.P.C. the FIR in question is required to be quashed.

16. In *Harmanpreet Singh Ahluwalia's* case (supra) Supreme Court noted that on investigation, Police found that no case was made out at Jalandhar where the FIR was registered and based on the said investigation recommended a report of cancellation. However, the Court issued summons. As noted above, in the present case, the investigation has just commenced and only on collection of material can the Investigating Officer form an opinion whether part offence has been committed in Delhi or not.

17. In *Dr.Amit Gulati*'s case (supra) the High Court of Rajasthan at Jaipur followed the decision in *Fatima Bibi* (supra) and in the said case since there was no specific allegation against the petitioner in the FIR of coercion and harassment, the FIR was directed to be quashed.

18. In *Jaswant Singh*'s case (supra) the Punjab & Haryana Court quashed the FIR in question as there were no allegations of demand of dowry and consequent harassment of the complainant at the hands of the petitioner in India.

19. As noted above, in the present case, the complainant has levelled allegations of demands at Delhi and also entrustment of her articles at Delhi. The contention of learned counsel for the petitioner that the marriage already having taken place at Gujarat, no other function could be performed in Delhi cannot be a ground to quash the FIR in view of the specific statement of the complainant. Further, the complainant has alleged fraud against the petitioners at Delhi for obtaining her consent for marriage by concealing the fact that their son was suffering from psychiatric disorder.

20. Considering the complaint filed by respondent No.2 and that the present stage is pre-mature to evaluate the merits of the FIR in question on which investigation is yet to be conducted, at this stage, this Court finds no ground to quash the FIR in question.

21. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 12, 2018
'yo'