

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

% Judgment reserved on: 24th September, 2018
Judgment delivered on: 16th November, 2018

+ CRL.M.C. 1868/2011

PRAVEEN VERMA

..... Petitioner

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Rajesh Tyagi, Adv.

For the Respondent : Mr. Panna Lal Sharma, Addl. PP for the State with
SI Shashi Kumar

Mr. Ajay Verma, Ms. Sudha Reddy and Ms. Katyayini,
Adv. for R-3

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner seeks quashing of FIR No. 578/2005 under section 498A/406/506/34 Indian penal code, police station Shalimar Bagh and all consequential proceedings arising therefrom.

2. Contention of the petitioner is that petitioner is a citizen of United States of America and is a permanent resident there. Petitioner married Respondent No. 3 on 04.05.1992. By a decree of divorce dated 10.08.2007 marriage between the parties has been dissolved.

3. It is contended that Respondent No.3 had been abusing the process of law in United States of America as well as in India by initiating multiple

judicial proceedings civil as well as criminal on concocted allegations in order to harass the petitioner and his family members. It is contended that the present petition has been filed seeking quashing of the subject FIR as the same has been malafidely instituted by Respondent No. 3 and is an abuse of process of law.

4. It is contended that subject FIR and the consequential proceedings arising therefrom have been quashed by the High Court qua the other accused i.e. the family members of the petitioner. It is further contended that courts in India do not have jurisdiction to take cognizance of the acts alleged to have been done by a foreign citizen on foreign land.

5. It is contended that the allegations in the FIR are concocted and false. It is contended that FIR has been registered in the year 2005 and the parties were married in 1992 and as such there is unexplained delay. Further the allegations in the FIR do not disclose any cognizable offence.

6. It is further alleged that criminal proceedings which are manifestly attended with *malafide* intentions and ulterior motive for wrecking vengeance on the accused and to spite him for private and personal grudge cannot be allowed to continue in a court of law. Reliance is placed on the decision of the Supreme Court in *State of Haryana & others versus Bhajan Lal & others*, (1992) Supp (1) SCC 335.

7. Per contra a preliminary objection is been raised by learned APP appearing for the State. It is contended that petitioner has been declared a proclaimed offender by the trial court by order dated 01.04.2006. Since petitioner has not approached the trial court for seeking recall of the

proceedings initiated under section 82 Cr.P.C., subject petition is not maintainable at the behest of the petitioner through a general power of attorney.

8. Contention of learned counsel for the petitioner is that the initiation of proceedings under Section 82 Cr.P.C. were not warranted and the petitioner had valid reasons for not appearing before the trial court because Respondent No.3 had simultaneously initiated proceedings in United States of America as also in India. It is contended that the proceedings initiated in USA were for custody of the minor children and simultaneously proceedings in India were initiated to prevent the petitioner from attending to the proceedings in USA. In order to effectively defend himself in the proceedings initiated in USA by Respondent No.3, petitioner left India and successfully defended the proceedings there.

9. In the facts of the present case, it is not in dispute that proceedings under section 82 Cr.P.C. were initiated against the petitioner and by order dated 01.04.2006, the trial court has declared the petitioner as a proclaimed offender and further initiated process under section 83 Cr.P.C.. It is an admitted position that petitioner has not initiated any proceedings to seek recall of the order declaring the petitioner as a proclaimed offender and the initiation of process under section 83 Cr.P.C.. Further, the petitioner even after the conclusion of the proceedings in USA has chosen not to come to India to appear before the Trial Court.

10. Failure to appear before the court consequent to a proclamation issued under section 82 Cr.P.C. has itself been made an offence under the Indian penal code. Petitioner in the present case has been declared a

proclaimed offender as far back as in 2006 and thereafter the petitioner has chosen not to appear before the court and participate in the legal proceedings or to seek recall of the proceedings under section 82 Cr.P.C..

11. Consistently, this court has been taking the view that an accused who has not submitted to the jurisdiction of the Trial Court and participate in the legal process, cannot approach this court for seeking the discretionary relief under section 482 Cr.P.C.

12. This court while exercising powers under Section 482 of the Cr.P.C. has to be conscious of the fact that ordinarily it is not to embark upon an enquiry with regard to reliability of evidence or to appraise the same as that is the function of the trial court. Though the judicial process cannot be used as an instrument of oppression or needless harassment, however the Court is to be judicious in exercising discretion and it has to take all relevant facts and circumstances into consideration prior to exercise of powers of quashing of criminal process under Section 482 Cr.P.C.. This power is to be exercised sparingly in rarest of rare cases.

13. When the petitioner is not willing to submit to the jurisdiction of the court and participate in the legal process, it would be inappropriate for this court to exercise powers under section 482 Cr.P.C., at the request of such an accused, to even examine as to whether the case of the petitioner satisfies the conditions laid down by the Supreme Court in *State of Haryana & others versus Bhajan Lal & others (Supra)* for quashing of an FIR.

14. In view of the above, I am not inclined to entertain the petition filed by the petitioner seeking quashing of the subject FIR and the consequential proceedings emanating therefrom. The petition is accordingly dismissed as not maintainable. Liberty is however granted to the petitioner to approach the trial court to seek recall of the proceedings initiated under section 82 and 83 Cr.P.C. and thereafter, if circumstances warrant, approach this court afresh under section 482 Cr.P.C. for quashing.

15. It is however clarified that this court has neither examined nor commented on the merits of the case of either party and also as to the validity or otherwise of the proceedings initiated under section 82 and 83 Cr.P.C..

16. Order *dasti* under the signatures of court master.

SANJEEV SACHDEVA, J

NOVEMBER 16, 2018

HJ