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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 7th September, 2018

+ CRL.M.C. 3562/2016 and Crl.M.A.15056/2016

RISHI PAL & ORS.

..... Petitioners

Through: Mr. Ashok Kumar Gahloth, Advocate
with Mr. Birender Singh Advocate

versus

STATE (GOVT. OF NCT OF DELHI) & ORS..... Respondents

Through: Ms. Meenakshi Dahiya, APP for the
State with SI Ishwar Singh, AATS-
West
Mr. Parmod K. Sharma, Advocate
with Mr. Prashant Baaj, & Ms. Ankita
Vashisht, Advocates for R-2 & R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was filed and came up before this court in September, 2016 to seek quashing of the proceedings in the criminal case arising out of report under Section 173 Cr.P.C. submitted on conclusion of the investigation into case first information report (FIR) No. 21/2010 dated 27.01.2010 of Police Station Hari Nagar, involving offences punishable under Sections 448/506/34 of Indian Penal Code, 1860 (IPC) wherein, by virtue of the order dated 13.01.2015 of the Metropolitan Magistrate (MM), cognizance has been taken and

process has been issued against the petitioners summoning them to appear as accused.

2. The record would show that the FIR of the case was registered pursuant to the directions of the Metropolitan Magistrate under Section 156(3) Cr.P.C. on the compliant of second respondent.

3. The background facts, as may be culled out from the FIR, read alongside the petition at hand, would show Mr. Shilendra Rana, son of second and third respondent (collectively the claimants), was married to the third petitioner, other petitioners being her parents, on 21.11.2002. The third petitioner statedly went to United States of America (USA) with her husband in March, 2003 and out of their cohabitation, a female child was born on 28.01.2004. It appears that the third petitioner (wife) had some grouse against the husband, she accusing him of torture. She reported the matter to the police in USA in the wake of which she with her husband and the child returned to India in November, 2007. The husband statedly went back to USA leaving the wife and the child in India.

4. It is the case of the petitioners that the third petitioner started living with her parents-in-law, i.e., second and third respondents in her matrimonial home. On the other hand, on the petition of the husband, a decree of divorce was granted by a court in USA against the third petitioner. The petitioners' case is that the wife was constrained to file a complaint, *inter alia*, against the second and third respondents in July, 2009, they having allegedly taken her minor daughter to USA without her consent. Some reports to the police appear to have been

lodged. It is the further case of the petitioner that the third petitioner had come to the matrimonial home on 18.08.2009, but she had to return to her parental home as she had forgotten to bring her keys from there. From this, it could be inferred that for some period prior to 18.08.2009 she had been living with her parental family and not in the house of the second and third respondents.

5. Be that as it may, the second and third respondents, in their complaint before the Metropolitan Magistrate have alleged that the third petitioner had made visit to their house, *i.e.*, DA-89E, Hari Nagar, Delhi on 18.08.2009 and though an attempt was made to arrange a duplicate key maker but they could not open the house, in their absence, they being away to USA. It is further their case in the FIR that upon their return from USA, they found the third petitioner living in their house along with her parents. It is against this backdrop that allegations have been made, *inter alia*, of the offence of house trespass under Section 448 IPC stated to have been committed, on which cognizance was taken by the Metropolitan Magistrate based on the report of investigation submitted by the police.

6. In contrast, the case of the petitioners is that the decree of divorce was taken by playing fraud and has been set aside. She further avers that is that she had come back to the matrimonial home on 19.08.2009 and had entered the house using her own keys finding her valuable articles missing, she having later filed a complaint under Protection of Women from Domestic Violence Act, 2005, which is pending.

7. The petitioners claim that the complaint to the police leading to the present proceedings, quashing of which is sought, is based on false accusations.

8. In the given facts and circumstances, the submissions made by the petitioners give rise to the questions of facts which cannot be addressed conclusively in the jurisdiction under Section 482 Cr. PC. In this context, the following observations of the Supreme Court in *Rajiv Thapar and Ors. Vs. Madan Lal Kapoor*, (2013) 3 SCC 330 need to be borne in mind.

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the

charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.”

(emphasis supplied)

9. For the above reasons, the petition is dismissed. The interim orders are vacated.
10. This disposes of the pending application as well.

R.K.GAUBA, J.

SEPTEMBER 07, 2018

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