

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

% Decided on: 23rd August, 2018

+ **W.P.(CRL) 3378/2016**
MRS SUNAINI KHALE & ORS ... Petitioners

Represented by: Mr.Bhal Singh Malik,
Advocate

versus

STATE (NCT OF DELHI) & ANR ... Respondents

Represented by: Mr.Ashish Aggarwal, ASC for
the State with Mr.Piyush
Singhal and Mr.Yash Kotak,
Advocates
Mr.Ashok Arora with
Ms.Anantmala Potdar,
Advocates for the complainant
along with complainant in
person

+ **W.P.(CRL) 3380/2016**
ARJUN GUPTA Petitioner

Represented by: Mr.Bhal Singh Malik,
Advocate

versus

STATE (NCT OF DELHI) & ANR. Respondents

Represented by: Mr.Ashish Aggarwal, ASC for
the State with Mr.Piyush
Singhal and Mr.Yash Kotak,
Advocates
Mr.Ashok Arora with
Ms.Anantmala Potdar,
Advocates for the complainant
along with complainant in
person

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By these petitions the petitioners seek quashing of FIR No.475/2016 under Sections 498A/406/34 and Section 377 IPC registered at PS Saket on the complaint of respondent No.2 and the proceedings pursuant thereto.
2. Petitioner Arjun Gupta in WP(Crl.)3380/2016 is the husband of complainant-respondent No.2 and the three petitioners i.e. Sunaini Khale, Shailesh Sharadchandra Khale and Shasheen Shailesh Khale in WP(Crl.)3378/2016 are the mother-in-law, father-in-law and brother-in-law respectively of complainant-respondent No.2. All the four petitioners are residents of Australia.
3. Learned counsel for the petitioners contends that the offences alleged were committed in a foreign country and thus neither the police in Delhi nor the courts at Delhi have jurisdiction to investigate or try the said offences. It is contended that a bare reading of the FIR reveals that the hidden purpose of the FIR was to implicate all the family members to settle the matrimonial dispute between Arjun Gupta and the complainant. The litigation has been filed only to extort money from the petitioners and thus the proceedings against the petitioners are an abuse of the process of law.
4. Learned Additional Standing Counsel for the State on the other hand contends that the petitioners have till date not joined the investigation. He further states that the contents of the FIR disclose commission of cognizable offences hence the same cannot be quashed.
5. As per the allegations in the FIR, complainant and Arjun Gupta came to know each other through a matrimonial website and on the luring of Arjun Gupta the complainant along with her parents visited Sydney to meet Arjun Gupta and his family wherein in a pre-planned manner they were

made to perform the engagement ceremony. Thereafter, in August, 2014 Arjun Gupta and his father visited India and asked them to organize a marriage ceremony with Indian rituals between the two of them. Despite repeated requests that there was no urgency the complainant and his family members were compelled to perform the marriage. To the utter surprise of the complainant and her family members, only Arjun Gupta and his step father were present and mother of Arjun Gupta was not present in the marriage.

6. Since the marriage was performed in Arya Samaj Mandir, Arjun Gupta and his step father suggested that they should all celebrate the marriage by inviting all relatives and friends in March, 2015 which the complainant's family agreed. Arjun Gupta and his father insisted that the celebration should be a destination wedding celebration with all the fan and fare at Jaipur. Thus, it was agreed that ceremonial function of the marriage would be performed on 10th March, 2015 at Jaipur with all relatives and guests in a three day programme. It is the case of the complainant that her parents spent more than 2 lakh Australian dollars including the jewellery in the said marriage on the specific demands of Arjun Gupta and his parents. It is stated that the jewellery items given to the complainant are also in the custody of Arjun Gupta and his parents.

7. In October, 2014 on the insistence of Arjun Gupta and his parents, complainant went to Sydney alone for an Indian ceremonial fast i.e. *Karwa Chauth* and when she reached there, the first instance of physical abuse took place. The complainant was shocked and started crying. Parents of Arjun Gupta came in the room, pacified the complainant, scolded Arjun Gupta and told him to apologise. The complainant was clueless and was unable to

understand the reason for this sudden shocking reaction. However, she forgave him. Later, in December, 2014 Arjun Gupta visited India and took her to Chandigarh for some wedding shopping. There also, when she was interacting with Arjun's family friends at their place, he got enraged and behaved rudely with her. They went back to hotel Taj in Chandigarh where Arjun Gupta caught hold of her, twisted her arms and started pushing her back and forth violently in the lift. When the lift stopped at a random floor, some hotel staff came to help and prevented Arjun Gupta from hurting her. The complainant was staying in the couch while Arjun Gupta was screaming, shouting, abusing and running around in the lobby with 15-20 security men and staff trying to control him. Fearing her safety, one of the family friends of Arjun Gupta took the complainant to her house and soon thereafter, Arjun Gupta followed them, started fighting with them and tried to hit the complainant.

8. On returning to Delhi, the complainant told everything to her parents. Immediately thereafter, Arjun Gupta reached there but the parents of the complainant confronted him and told him that they could not go ahead with the marriage function if it continued and that they needed to speak to Arjun's parents to which Arjun Gupta threatened the complainant stating that he would ruin her future if her parents go ahead and inform his parents about what had happened in India. Since the marriage between Arjun Gupta and the complainant had already been registered, she decided to give it another chance. Thereafter, Arjun Gupta did not come to India till wedding celebration in March however in January, 2015, the parents of the complainant got several e-mails from the mother of Arjun Gupta demanding gifts for their family members to be exchanged during the marriage

celebrations in March. Arjun Gupta insisted on an expensive solitaire diamond ring of 20,000 Australian dollars which was bought by her parents under pressure. During the marriage celebration, since the decorator did not do the job well, instead of sorting out the issue, Arjun Gupta went violent on the complainant in front of her family members, hotel staff and decorator. It is alleged that Arjun Gupta forced her to have unnatural sex and used to beat her. All her jewellery was taken by her mother-in-law to be kept in her custody. On their other trips also it is alleged that Arjun Gupta physically assaulted her and became violent. Since the complainant saw some dubious financial transactions, on reaching Sydney she complained to his parents but they did not seem surprised and to her surprise, it was revealed that Arjun Gupta was involved in buying and selling narcotic drugs and was convicted at a young age of 18 years for a period of two years which fact was concealed from them. Despite the complainant trying to make her marriage work, Arjun Gupta kept on physically assaulting her. Even Shasheens, the step brother of Arjun Gupta and petitioner No.3 in WP(Crl.)3378/2016, used objectionable language towards the complainant which continued even in Sydney causing her mental harassment.

9. From the narration of facts in the complaint as noted above it is evident that instances of cruelty and entrustment of property took place in Delhi as well which continued in various parts of India as well as abroad hence the police at Delhi where the complainant is also accounting for her stridhan has jurisdiction to investigate the offences and the courts at Delhi have jurisdiction to try the same. The prayer of the petitioner seeking quashing of the FIR does not fall in any of the criteria laid down by the Supreme Court in the decision reported as 1992 AIR 604 State of Haryana

Vs. Bhajan Lal wherein the Supreme Court succinctly laid down the parameters for quashing of the FIR and the proceedings as under:

“(1) Where the allegations made in the first information report or the complaint, 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 a 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 a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding 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.”

10. Consequently, the petitions are dismissed.

(MUKTA GUPTA)
JUDGE

AUGUST 23, 2018

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