

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

**CRM-M-26787-2013 (O&M)
Date of Decision: 22.2.2019**

Gurdip Kaur

.....PETITIONER(s).

VERSUS

Sarabjit Kaur and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Sanjeev Duggal, Advocate
for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

RAJ SHEKHAR ATTRI, J.

This is a petition under Section 482 of the Code of Criminal Procedure for quashing impugned complaint No.21-I/18.3.2002 dated 16.3.2002 (Annexure P-1) titled as Sarabjit Kaur v. Seva Singh etc. filed under Sections 365, 354, 355, 323, 504, 506, 148, 149 of Indian Penal Code pending in the Court of Chief Judicial Magistrate, Kapurthala along with all subsequent proceedings arising therefrom.

It is the case of the prosecution that on 19.1.2002 at about 11:00 a.m., complainant Sarabjit Kaur along with Balwinder Singh, Sukhwinder Singh, Kailash, Paramjit Singh and other persons had gone to approach Deputy Superintendent of Police (Detective), Kapurthala. However, they were asked to wait for sometime outside his office. In the

meanwhile, petitioner went there and she in connivance with others forcibly tried to kidnap the complainant and Seva Singh exhorted the co-accused who forcibly tried to throw the complainant in the vehicle. When the complainant raised noise, then Seva Singh started giving kick blows to her and Kulwinder Singh and Tarlochan Singh tore off her clothes and inflicted injuries on her chest with the intention to outrage her modesty. At that time, Gurmej Kaur, Gurdip Kaur and Jasvir Kaur were instigating their co-accused to abduct the complainant in a vehicle and to kill her otherwise, she will give statement against them before the DSP (D). But before arrival of the DSP (D) at the spot, the accused ran away.

I have heard learned counsel for the parties and gone through the record.

A bare perusal of the complaint transpires that in fact on 19.1.2002, present petitioner-Gurdip Kaur had submitted complaint against Jaswant Singh and the inquiry was marked to DSP(D), Kapurthala. The DSP(D) summoned both the parties to his office.

The allegations against the petitioner are that she instigated her companions to cause injuries to the opposite party. It has been argued that the complaint has been filed at a belated stage on 18.3.2002 complaining action against all the accused pertaining to occurrence which took place on 22.1.2002.

Both the parties have levelled counter allegations against each other.

So far as quashing of the complaint at this stage is concerned, to the mind of this Court, parties have to be given opportunity

to adduce evidence. At this stage, version of the complainant cannot be discarded. This Court has no material with it to disbelieve the story propounded by the complainant. Veracity of allegations levelled against the petitioner can only be tested at the touchstone of evidence.

The Hon'ble Supreme Court in **State of Haryana and others v. Ch. Bhajan Lal and Ors.**, 1992 AIR (SC) 604 has made the following observations:-

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised 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 channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Whether 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 F.I.R. 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. Whether, the allegations in the F.I.R. 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 F.I.R. 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.”

Having regard to the facts and circumstances of the case, no case is made out for interference by this Court.

Dismissed.

However, nothing expressed above shall affect the merits of the case.

February 22, 2019
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>