

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-2430 of 2017

Date of Decision: 05.11.2019

Rakesh Bhardwaj

...Petitioner (s)

Versus

State of Punjab & another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. M.S. Atwal, Advocate
for the petitioner.

Mr. Saurabh Khurana, DAG, Punjab.

Mr. Vinod Kumar, Advocate for
Mr. Vishal Mittal, Advocate
for respondent no.2.

HARI PAL VERMA, J. (Oral)

The petitioner has filed the present petition under Section 482 Cr.P.C. for quashing of FIR No.5 dated 15.01.2015 under Section 498-A IPC registered at Police Station Mukerian, District Hoshiarpur (Annexure P-1).

The aforesaid FIR was registered at the behest of respondent no.2 Jaswinder Bhardwaj @ Mona. As per the FIR, marriage of petitioner was solemnized with respondent no.2 on 07.05.2006, wherein the father of

respondent no.2 had spent Rs.5,00,000/-. The father of the complainant

gave sufficient dowry including 6 tola gold (earrings for mother-in-law, ring and chain to the petitioner and ring to brother-in-law) apart from other household articles i.e. colour T.V., fridge, washing machine, peti, sofa, bed, 11 warm beddings and other clothings etc. After marriage, the complainant started living with the petitioner in her matrimonial home at Dasuya and two girls were born out of this wedlock. However, the mother-in-law of the complainant started taunting her for bringing less dowry, whereas the petitioner (husband) started demanding a motorcycle. On 14.11.2009, on the asking of the petitioner, the complainant brought Rs.50,000/- from her father and gave it to the petitioner. Father of the complainant had taken that money on loan from a cooperative bank of Village Dhamia. But still, the accused were not satisfied and continued to harass the complainant. When the complainant had given birth to her second daughter on 01.07.2010 at Dasuya, the petitioner and his family members have stated many bad things to her for giving birth to second girl child. All the expenses incurred on the birth of second daughter of the complainant were born by the father of the complainant. Thereafter, the petitioner went to Delhi for his work and in his absence, his family members started torturing and abusing the complainant and made her stay in her matrimonial home very difficult. However, when the complainant talked to the petitioner on phone in this regard, he also used to scold her and even stopped receiving her phone. The petitioner never sent money to the complainant and it was her father who used to send money to her for daily expenses. Because of paucity of funds, the complainant had to send her elder daughter Avni at her father's place and she is studying there. All the expenses of her study are being

born by the father of the complainant. On 15.06.2014, the parents of the petitioner, his sister and husband of his sister threw the complainant out of her matrimonial home forcibly and asked her to bring more money from her parents. The father of the complainant and other relatives requested the petitioner and his family members to take the complainant back to her matrimonial home, but they refused to take the complainant back.

It being a matrimonial dispute, this Court had referred the matter to the Mediation and Conciliation Centre vide order dated 08.02.2018.

As per the report dated 19.11.2018 of the mediator, despite best efforts, the parties could not reach at any amicable settlement and therefore, the case was sent back to the Court.

On 16.09.2019, this Court passed the following order:-

“Counsel for the petitioner states that though the petition filed by the petitioner under Section 9 of the Hindu Marriage Act, 1955 for Restitution of his Conjugal Rights has been decreed, as the respondent-wife had withdrawn from his society without there being any sufficient cause, but she has not joined her matrimonial home. However, he is still ready to take her back to her matrimonial home.

At this stage, counsel for respondent no.2 submits that respondent no.2 is ready to join her matrimonial home.

Parties are directed to remain present in person.

Adjourned to 30.09.2019.

Interim order to continue.”

Thereafter, on 30.09.2019, following order was passed by this

Court:-

“Pursuant to the order dated 16.09.2019 passed by this Court, the parties are present in person and with the able assistance of their respective counsels, they have been interacted. Since, they have shown their inclination to stay together, in order to ascertain compatibility, adjourned to 05.11.2019.

Respondent No.2 is present in Court and she has agreed to accompany her husband. Similarly, the husband is also ready to take his wife with him.

Accordingly, they will go to Delhi where as on date, the petitioner is residing. Respondent No.2 will ascertain viability of the accommodation in possession of the petitioner. After staying at Delhi for some time, the parties shall go to Dasuya, where their two daughters are presently residing.

Interim order to continue.”

Counsel for the petitioner has argued that the allegations levelled in the complaint against the petitioner and his family members have been found to be false. The only allegations on the basis of which the FIR in question was registered are that the petitioner was neither willing to cohabit with the complainant nor giving any maintenance to her, which compelled her to leave her matrimonial home. However, he submits that it is the complainant who had deserted the petitioner way back in the year 2010 and after her leaving the matrimonial home, the petitioner had made numerous efforts to contact the complainant telephonically and through letters, but she has refused to join his company. The petitioner even filed a petition under Section 9 of the Hindu Marriage Act, 1955, which was decreed on 07.04.2012. But despite passing of the aforesaid decree, the complainant had refused to join the company of the petitioner. Resultantly, the petitioner filed a petition under Section 13(1)(ia)(ib) of the Hindu

Marriage Act for dissolution of marriage by way of decree of divorce on 30.05.2014. The present FIR is nothing but a counterblast to the petitions filed by the petitioner. He has further argued that even a compromise Annexure P-4 was effected between the parties, whereupon, the parties had decided to stay together as husband and wife, but despite that, the complainant refused to join the company of the petitioner. Further, no offence under Section 498A IPC is made out, as despite there being an order for restitution of conjugal rights, as passed by the Family Court under Section 9 of the Hindu Marriage Act, respondent no.2 has not joined the petitioner. Moreover, the FIR in question was registered after an inordinate delay of 5 years whereas the limitation is of 3 years.

State has filed reply by way of affidavit of Ravinder Singh, PPS, D.S.P., Sub Division Mukerian, District Hoshiarpur. As per the reply, the police investigated the case and after completion of investigation, challan was prepared and the same was presented against the petitioner before the trial Court, Mukerian on 01.06.2015. After submission of challan, charge was framed against the petitioner on 10.06.2015 and the case is fixed for evidence of the prosecution witnesses. The reply suggests that during the investigation, the petitioner was guilty of harassing and maltreating the complainant on account of demand of dowry.

On the other hand, counsel for respondent no.2-complainant has argued that the allegations against the petitioner are serious, as he has been harassing the complainant for bringing more dowry and thereby, compelled her to leave her matrimonial home. He is not interest to keep his family with him.

I have heard learned counsel for the parties.

On 30.09.2019, parties were present in person before the Court and as they have shown their inclination to stay together, the case was adjourned for today i.e. 05.11.2019 so as to ascertain their compatibility with each other. Respondent no.2 had agreed to accompany the petitioner-husband and similarly, the husband had also shown his readiness to take his wife with him. Accordingly, this Court directed the parties to go to Delhi, where the petitioner was residing as on date. Similarly, the respondent no.2 was also asked to ascertain the viability of the accommodation in possession of the petitioner and after staying at Delhi for some time, they were required to go to Dasuya, where their two daughters were residing with the parents of the complainant. However, counsel for respondent no.2 has apprised this Court that the petitioner has not respected the Court orders. In terms of the order dated 30.09.2019, though the petitioner had taken the complainant from this Court so as to take her to Delhi, but she was made to stay at Ambala and was not taken to Delhi. The conduct of the petitioner shows that on the one hand, he is giving an impression to the Court that he is ready to take his wife with him and for that purpose, he had even filed a petition under Section 9 of the Hindu Marriage Act, but in fact, he has no such intention to take his wife and children to the matrimonial home. Despite there being an order passed by this Court that the petitioner shall take the complainant with him to Delhi, she has been made to stay at Ambala and has not been taken to Delhi.

There being specific allegations against the petitioner and his conduct does not warrant any interference by this Court for quashing of the FIR in question in exercise of powers of this Court under Section 482 CrPC.

Accordingly, the present petition is dismissed.

November 05, 2019
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No