

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM M-31490-2018 (O&M)

Date of Decision : 15.01.2019

Saroj Saharan and another

..... Petitioners

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Jitender Dhanda, Advocate
for the petitioners.

RAJ SHEKHAR ATTRI, J. (Oral)

Through the instant petition, the petitioners are seeking quashing of case FIR No.80 dated 17.12.2016, registered under Sections 323, 342, 406, 498-A and 506 IPC, at Women Police Station, Panchkula and all the consequential proceedings arising out of it including the report under Section 173 Cr.P.C. dated 09.03.2018 and order of framing of charge dated 24.04.2018.

The quashing of the FIR has been sought on the following grounds:-

- (i) *That a bare perusal of the FIR (Annexure P-2) and report U/S 173 Cr.P.C. (annexure P-4) clearly reveals that not even a single incident of harassment or demand of dowry has taken place at Panchkula and as such, learned Court at Panchkula got no jurisdiction to try the FIR in question, as held by this Hon'ble Court and other Hon'ble High Courts and Hon'ble Apex Court of India in a number of cases.*

(ii) *That it is the admitted case of the complainant that she never stayed at Rohtak with the petitioners after her visit to Australia in the year 2012 and as such there is no question of alleged harassment at the hands of the petitioners and as such the registration of FIR in the month of December 2016 after a gap of more than 4 years is itself time barred.*

(iii) *That the act and conduct of the petitioner No.2 by getting issued the passport after marriage on 5.7.2012 by showing herself unmarried and visiting Australia on tourist visa by using the said passport clearly reveals that from the very beginning she do not have any intention or interest to live in the matrimonial relationship and she has solemnized the marriage to fulfill her ulterior motive to harass, humiliate and blackmail the petitioners by getting registered the present FIR. It is worthwhile to mention here that the FIR in question came to existence at the point of time of retirement of petitioner No.2 from the post of Executive Engineer because the motive of respondent No.2 from the very beginning was to extract money from the petitioners by getting them implicated in the present case.*

(iv) *That the evil motive of the respondent No.2 and her parents of grabbing money from the petitioners is also clear from the fact that the respondent No.2 has got issued another passport in the name of Yashleen Nitara on 12.5.2016 again showing herself unmarried. Meaning thereby she has no interest in the matrimonial tie with Vikram Singh son of the petitioners and her sole purpose for solemnizing the marriage with Vikram Singh was to extract money from the petitioners by harassing and humiliating them on the basis of false and frivolous allegations.”*

Learned counsel for the petitioners has submitted that the

instant petition has been filed beyond the period of limitation, therefore, the cognizance stands barred under Section 468 Cr.P.C. and that the trial court has no territorial jurisdiction to try the offences. In support of his contention, he has placed reliance upon certain judgments i.e. 2010 (14) RCR (Criminal) 485 Narendra Kumar sharma alias Narendra Sharma vs. State of West Bengal & anr.; 2012 (7) RCR (Criminal) 1141 Debasish Dey vs. State of Bihar and the judgment dated 21.04.2017, passed by this Court in CRM M-3550-2017 titled as Kran Singh vs. State of Haryana.

On the other hand, learned State counsel as well as learned counsel for respondent No.2 have vehemently contended that the offences under Sections 406 and 498-A IPC are continuing offences as the last demand was raised on 27.08.2016 i.e. few months prior to the registration of FIR.

I have given my thoughtful consideration to the rival contentions.

First of all coming to the point of jurisdiction. Indisputably, the ring ceremony was solemnized at Panchkula on 27.06.2012. At that time, Rs.10,00,000/- were entrusted to the accused persons for the purpose of purchasing household articles in Australia. Respondent No.2-wife is the permanent resident of Panchkula. The marriage was solemnized at Panchkula and at that time the articles i.e. *istridhan* were entrusted to the accused persons. This Court would like to reproduce the relevant part of the FIR as under:-

“My marriage took place with Vikram on 29.06.2012 at Ramgarh Fort, Distt. Panchkula as per Hindu rites and rituals. As per the demand of the family of my husband, my parents had made a total expense of Rs.62 lacs including gifts,

gold jewellery (57 tola approximately), cash, stridhan, etc. which were given to my husband, father-in-law, mother-in-law, sister-in-law, brother-in-law and their relatives on both the ceremonies, which was much beyond the means and paying capacity of my parents. At the time of vidai on my marriage, my father had also given me a sum of Rs.1,00,000/- for my expenses. However, my mother-in-law took away this money from me saying that right now, it is not safe to carry this much cash while travelling and that she would give it back to me later. That after my marriage, I stayed with my husband and his family at Rohtak from 30.06.2012 to 08.08.2012. During this stay at Rohtak, my husband, father-in-law, mother-in-law, sister-in-law disclosed to me that they were not happy with the dowry I brought because it was not upto their expectations. My husband and mother-in-law would continue to taunt me by saying that I should ask my parents to give Audi car to my husband and more cash and gold which would be of use to my husband in Australia. They also told me that since my husband is settled in Australia, there were lots of marriage proposals for him who are ready to give more dowry. On 08.08.2012, all of a sudden, my husband left for Australia, which was disclosed to me by him only on 07.08.2012. After he left I went to Panchkula to my parents house and returned to Rohtak on 31.08.2012. After my husband left for Australia, the behaviour of my father-in-law, mother-in-law totally changed. In the month of September, 2012, my mother-in-law had slapped me and beaten me for asking her when will I get to my husband in Australia and that I was barred from even stepping out of the house. My father-in-law started demanding that I should ask my family to give them Audi car, and cash of Rs.50 lakhs. He also threatened me that he will not send me to Australia till I get the money from my parents. My mother-in-law also told me to give my new sarees and suits to my sister-in-law as they were planning to fix her marriage. My sister-in-law also used

to taunt me for bringing less gold jewellery, and that I should ask my parents to give me more diamond sets which she could use in her marriage. I did not disclose anything to my family since I come from a respectable family, and that I wanted to start my new life with my husband in Australia, and that I would get away from this cruel behaviour. That on 21.09.2012, under the pressure of my father-in-law and mother-in-law my parents gave a sum of Rs.1 lac to my father-in-law for arranging my ticket as they demanded. That my mother-in-law and sister-in-law continued to harass me during my stay in Rohtak. I even started to feel ill due to all the household work that I had to do all day, without being properly fed. My father-in-law continued to taunt me and even started verbally abusing me and using filthy language against me and my family for bringing less dowry, and that I should get Audi car and cash of Rs.50 lacs. I left for Melbourne on 26.09.2012 on Tourist visa. My mother-in-law kept all my jewellery, belongings, stridhan saying that I would not need them in Australia.”

Three distinct venue for the trial of criminal breach of trust are prescribed by Section 181 (4) CrPC 1973 which reads as follows:-

“Section 181 (4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court, within whose local jurisdiction, the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.”

A bare perusal of the above quoted provisions makes it clear that the offence of criminal misappropriation or breach of trust may be enquired into or tried by the Court, within whose jurisdiction, any of the following five facts took place namely,

(i) Any part of the property forming the subject matter of

- the offence was received by the accused or*
(ii) was retrained by him; or
(iii) was required to be returned by him; or
(iv) was required to be accounted for by him; or
(v) the offence was committed.

The ratio of law laid down in **Narender Kumar Sharma's case** (supra) is not acceptable solely on the ground that in this case the provisions of Section 181 (4) Cr.P.C have not been considered. Apart from it, in the instant case entrustment was made at the time of marriage at Panchkula and police of Police Station Panchkula has jurisdiction to register the FIR and case can be tried by the trial court at Panchkula.

Similarly, the facts in **Debasis Dey's case** (supra) are distinguishable.

Now coming to the argument with regard to the limitation. It has been argued on behalf of petitioner that under the provisions of Section 468 Cr.P.C., the FIR has been lodged much after a lapse of period of limitation. This Court has considered this contention but it carries no weight.

Chapter XXXVI of the Code of Criminal Procedure contains Sections 467 to 473 and it deals with the point of limitation for taking cognizance of certain offences. Section 468 creates a bar against taking cognizance of an offence after lapse of the period of limitation. Sub-section (1) thereof lays down that except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation. Sub-section (2) specifies different periods of limitation for different types

of offences punishable with imprisonment for a term exceeding one year,

but not exceeding three years , the period of limitation is three years. Section 469 specifies the point of time with reference to which the period of limitation is to be counted. Section 470 provides for exclusion of time in certain cases. Sub-section (4) thereof lays down that in computing the period of limitation, the time during which the offender has been absent from India or from any territory outside India, which is under the administration of the Central Government or has avoided arrest by absconding or concealing himself, shall be excluded. Section 472, which deals with continuing offence declares that in case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues. Section 473, which begins with non-obstante clause, empowers the Court to take cognizance of an offence after the expiry of the period of limitation, if it is satisfied that the delay has been properly explained and it is necessary so to do in the interest of justice.

In *State of Punjab v. Sarwan Singh [1981(3) SCC 34]*,

Hon'ble Apex Court noted that the object of Section 468 Criminal Procedure Code is to create a bar against belated prosecutions and to prevent abuse of the process of the court and observed that this is in consonance with the concept of fairness of trial enshrined in Article 21 of the Constitution.

In *Venka Radhamanohari v. Vanka Venkata Reddy [1993(3)*

SCC 4] Hon'ble Supreme Court considered the applicability of Section 468 to the cases involving matrimonial offences, referred to the judgment in Sarwan Singh's case (supra) and observed :

"It is true that the object of introducing Section 468 was to put a bar of limitation on prosecutions and to prevent the parties

from filing cases after a long time, as it was thought proper that after a long lapse of time, launching of prosecution may be vexatious, because by that time even the evidence may disappear. This aspect has been mentioned in the statement and object, for introducing a period of limitation, as well as by this Court in the case of Sarwan Singh (supra). But, that consideration cannot be extended to matrimonial offences, where the allegations are of cruelty, torture and assault by the husband or other members of the family to the complainant. It is a matter of common experience that victim is subjected to such cruelty repeatedly and it is more or less like a continuing offence. It is only as a last resort that a wife openly comes before a court to unfold and relate the day-to-day torture and cruelty faced by her, inside the house, which many of such victims do not like to be made public. As such, courts while considering the question of limitation for an offence under Section 498-A i.e. subjecting a woman to cruelty by her husband or the relative of her husband, should judge that question, in the light of Section 473 of the Code, which requires the Court, not only to examine as to whether the delay has been properly explained, but as to whether "it is necessary to do so in the interests of justice".

The Hon'ble Supreme Court then compared Section 473 Criminal Procedure Code with Section 5 of the Limitation Act and observed :

"For exercise of power under Section 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the court that there was sufficient cause for condonation of the delay, whereas Section 473 enjoins a duty on the court to examine not only whether such delay has been explained but as to whether it is the requirement of the justice to condone or ignore such delay. As such, whenever the bar of Section 468 is applicable, the court has to apply its mind on the question,

*whether it is necessary to condone such delay in the interests of justice. While examining the question as to whether it is necessary to condone the delay in the interest of justice, the Court has to take note of the nature of offence, the class to which the victim belongs, including the background of the victim. If the power under Section 473 of the Code is to be exercised in the interests of justice, then while considering the grievance by a lady, of torture, cruelty and inhuman treatment, by the husband and the relatives of the husband, the interest of justice requires a deeper examination of such grievances, instead of applying the rule of limitation and saying that with lapse of time the cause of action itself has come to an end. The general rule of limitation is based on the Latin maxim : *vigilantibus, et non, dormientibus, jura subveniunt* (the vigilant, and not the sleepy, are assisted by the laws). That maxim cannot be applied in connection with offences relating to cruelty against women."*

In [Arun Vyas v. Anita Vyas, 1999\(2\) RCR\(Criminal\) 828 :](#)

[\[1999\(4\) SCC 690 \]](#) Hon'ble Apex Court again considered the applicability of Section 473, Criminal Procedure Code in cases relating to matrimonial offences and observed :

"The first limb confers power on every competent court to take cognizance of an offence after the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and the second limb empowers such a court to take cognizance of an offence if it is satisfied on the facts and in the circumstances of the case that it is necessary so to do in the interests of justice. It is true that the expression 'in the interest of justice' in Section 473 cannot be interpreted to mean in the interest of prosecution. What the court has to see is 'interest of justice'. The interest of justice demands that the court should protect the oppressed and

punish the oppressor/offender. In complaints under Section 498-A the wife will invariably be oppressed, having been subjected to cruelty by the husband and the in-laws. It is, therefore, appropriate for the courts, in case of delayed complaints, to construe liberally Section 473 Criminal Procedure Code in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case it is necessary so to do in the interests of justice. When the conduct of the accused is such that applying the rule of limitation will give an unfair advantage to him or result in miscarriage of justice, the court may take cognizance of an offence after the expiry of the period of limitation in the interests of justice. This is only illustrative, not exhaustive."

In *State of H.P. v. Tara Dutt, 2000(1) RCR(Criminal) 41 : [2000(1) SCC 230]* a three-Judges bench of Hon'ble Supreme Court considered whether there can be a presumption of condonation of delay under Section 473 Criminal Procedure Code and observed :

"Section 473 confers power on the court taking cognizance after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and that it is necessary so to do in the interest of justice. Obviously, therefore in respect of the offences for which a period of limitation has been provided in Section 468, the power has been conferred on the court taking cognizance to extend the said period of limitation where a proper and satisfactory explanation of the delay is available and where the court taking cognizance finds that it would be in the interest of justice. This discretion conferred on the court has to be exercised judicially and on well-recognised principles. This being a discretion conferred on the court taking cognizance, wherever the court exercises this discretion, the same must be by a speaking order, indicating

the satisfaction of the court that the delay was satisfactorily explained and condonation of the same was in the interest of justice. In the absence of a positive order to that effect it may not be permissible for a superior court to come to the conclusion that the court must be deemed to have taken cognizance by condoning the delay whenever the cognizance was barred and yet the court took cognizance and proceeded with the trial of the offence. But the provisions are of no application to the case in hand since for the offences charged, no period of limitation has been provided in view of the imposable punishment thereunder. In this view of the matter we have no hesitation to come to the conclusion that the High Court committed serious error in holding that the conviction of the two respondents under Section 417 would be barred as on the date of taking cognizance the Court could not have taken cognizance of the said offence. Needless to mention, it is well settled by a catena of decisions of this Court that if an accused is charged with a major offence but is not found guilty thereunder, he can be convicted of a minor offence if the facts established indicate that such minor offence has been committed."

It has been considered the earlier judgment in **Arun Vyas v.**

Anita Vyas (supra) and held :

"The aforesaid observations made by this Court indicate that the order of the Magistrate at the time of taking cognizance in case of an offence under Section 498-A, should indicate as to why the Magistrate does not think it sufficient in the interest of justice to condone the delay inasmuch as an accused committing an offence under Section 498-A should not be lightly let off. We have already indicated in the earlier part of this judgment as to the true import and construction of Section 473 of the Code of Criminal Procedure. The said provision being an enabling provision, whenever a Magistrate invokes

the said provision and condones the delay, the order of the Magistrate must indicate that he was satisfied on the facts and circumstances of the case that the delay has been properly explained and that it is necessary in the interest of justice to condone the delay. But without such an order being there or in the absence of such positive order, it cannot (sic) be said that the Magistrate has failed to exercise jurisdiction vested in law. It is no doubt true that in view of the fact that an offence under Section 498-A is an offence against the society and, therefore, in the matter of taking cognizance of the said offence, the Magistrate must liberally construe the question of limitation but all the same the Magistrate has to be satisfied, in case of period of limitation for taking cognizance under Section 468(2)(c) having expired that the circumstances of the case require delay to be condoned and further the same must be manifest in the order of the Magistrate itself. This in our view is the correct interpretation of Section 473 of the Code of Criminal Procedure."

Apart from it, the offence of breach of trust with regard to *istridhan* as well as under Section 498-A Cr.P.C. is continuing one. This Court in **Renu versus State of Haryana 1990 (1) RCR (Criminal) 612** has observed in para No.8 as under:-

"In the case in hand obviously the husband and parents-in-law of Smt. Raj Rani are in possession of her Istridhan. They have refused to hand over this property to her despite repeated requests although she is legally entitled to all the jewellery etc. gifted to her even by her husband and in laws at the time of her marriage and later on. It is not a case of that type where the misappropriation of the money was involved. Thus, under these circumstances, the offence under Section 406 Indian Penal Code appears to be a continuing one. If that is so no case is made out for quashing the first information

report or the investigation conducted against Ashok Kumar husband, Krishna Rani alias Bishni Devi, mother-in-law and Lekh Raj father-in-law of Smt. Raj Rani. In the case of continuing offence, fresh limitation will start running from the day Smt. Raj Rani makes a demand from these accused for the return of her Istridhan and they refused to do so.”

Similar view was observed by the Madhya Pradesh High Court in **Bairo Prasad and another vs. Smt. Laxmibai Pateria 1991 Criminla Law Journal 2535** wherein it has been observed in para No.5 as under:-

“No doubt, non-applicant daughter-in-law was turned out from the marital home in 1973 and accordingly, a report was lodged on 5-12-1973 and also on 17-12-1973 and demands after demands were also made for return of Stridhan but no heed was paid and ultimately on 2-11-1987, a registered notice with acknowledgement was also sent. Therefore, when the demand is made and the notice is served, from that date a fresh period of limitation shall begin to run and this will be a continuing offence and the provisions of Section 472, Criminal Procedure Code would be attracted which read as under:-

“In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.”

In Bhagirath Kanoriya v. State of M.P, AIR 1984 Supreme Court 1688, where the accused persons were charge-sheeted for non-apyment of employer's contribution towards provident fund before the due date, it has been held that the offence being a continuing offence, the period of limitation prescribed by Section 468, Criminal Procedure Code cannot have any application and under the circumstances, provisions of Section 472, Criminal Procedure Code will be attracted giving fresh period of limitation to run at every moment of the time during which the offence continues. In the instant case, whenever the demand is made, the period of limitation will be

computed from that date. The last notice was served on 2-11-1987 and the complaint was filed on 12-1-1988 i.e. within three months from the date of notice. Therefore, the complaint is not barred by limitation. Besides this, provisions of Section 47u3, Criminal Procedure Code are emphatic giving jurisdiction to the Court for extending the period of limitation in certain cases and where the trial Court is satisfied that the delay has been satisfactorily explained or that it is necessary to do so in the interest of justice, the trial Magistrate may take cognizance of an offence even after expiry of the period of limitation prescribed under Section 468, Criminal Procedure Code (hereinafter referred to as the Code). However, the facts of the instant case do not fall within the ambit of Section 473, Code but certainly fall within the ambit of Section 472 of the Code being a continuous offence, as discussed above; and the submission made by the learned counsel in this regard is rejected being without any force.”

Apart from it, in the case in hand, the demand for return of *istridhan* was lastly raised on behalf of the complainant in Panchayat on 27.08.2016. This Court would like to reproduce the relevant part of the FIR hereunder:-

“In the meantime, my parents have tried numerous times to contact the family of my husband and have even taken Panchayats (accompanied by Ramesh Malik s/o Maha Singh Malik 1349 Sector 11 Panchkula; Anil Arya, s/o Sadanand Sector 4 Panchkula; Ravinder Dangi s/o Ishwar Singh Rohtak; Baljeet Khokar s/o Daya Chand Khokar Rohtak; Ashish s/o Balbir Singh VPO Majra Tehsil Rohtak; Om Prakash Nerwal s/o Sunehra, Karnal; Sandeep s/o Satyavir Singh VPO Village Majra Tehsil District Rohtak; Nirmal Sindhu w/o Satbir, 71 Sector 26 Chandigarh) to their home in Rohtak in the month of 10 March 2013, August 2013, 12

January 2014, 22 June 2014, 25 January 2015, 2 August 2015 and 28 February 2016. But my father-in-law and mother-in-law have again and again abused them in front of the Biradari and have told them that they have high contacts and nothing can be done against them. My father-in-law has said – 'hamara ladka Australia mein rehta hai, uske liye roz ameeron ke rishte aate hain. Jab tak tum 50 lacs rupaye nahi doge, hum tumhari ladki ko wapis nahi lenge. Uska future kharaab kar denge'. He even denied returning my stridhan. The last Panchayat was taken to Rohtak on 27 August, 2016 when my mother-in-law did not even allow my parents and other elders of Biraadari to enter their house. My mother-in-law abused my parents and said that – 'Mera beta ab Australia ka citizen ban gaya hai aur usne doosri shaadi kar li hai. Ab tum tumhari ladki ko wapis nahi aana denge. Use agar divorce bhi chahiye, toh 1 crore rupaye do. All the accused have continued to harass and torture me and my family since the time my marriage took place. That my husband has not only verbally and physically abused me, but he along with his parents and sister, have been demanding dowry in the form of cash, gold jewellery and car.'"

Thus this court is of the view that cognizance was taken within a period of limitation.

Apart from it, the Hon'ble Supreme Court in **State of Haryana and others v. Ch.Bhajan Lal and Ors.**, 1992 AIR (SC) 604 has pleased to lay down the parameters with regard to quashing of the proceedings pending before the police or before the court of law. The following observations have been made in the concluding paragraph:-

"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.

1. 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.

2. 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.

3. 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.

4. 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.

5. *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.*
6. *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.”*

In view of aforesaid discussion, finding no ground to quash the aforesaid FIR, the instant petition stands dismissed.

15.01.2019
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No