

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-34965 of 2017 (O&M)
Date of decision : April 08, 2019

Subhash Chand @ Subhash Chander Babbar and others

....Petitioners

versus

State of Haryana and another

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Ishwar Lal, Advocate for the petitioners
Mr. Amrik Narwal, DAG, Haryana for State/respondent
no. 1
Ms. Divya Sharma, Advocate, for respondent no. 2

Fateh Deep Singh, J. (Oral)

Petitioners Subhash Chand @ Subhash Chander Babbar, Sudesh Kumari, Hema @ Hemu and Rekha have come up in this petition under Section 482 of the Code of Criminal Procedure (in short, Cr.P.C.) seeking quashment of FIR No. 92 dated 28.6.2017, under Sections 323, 406, 498-A IPC, Police Station Women, Ambala, Annexure P/1, got lodged against them by respondent no. 2-Neha Narang.

The brief allegations levelled by the complainant are that marriage between complainant and Ravi Kumar Babbar son of petitioners no. 1 and 2 and who happens to be the brother of petitioners no. 3 and 4 took place on 5.3.2016. The allegations harbour on the averments that the accused including the husband used to raise demand of dowry and often taunting the bride that the articles so given by them are not commensurate with their status and raised demand of air-conditioner, diamond ring, car, money etc. On refusal of the complainant to oblige, it is alleged that the accused often used to maltreat her and not only physically abused her but mentally as well regarding which complaints Annexure P/2 and Annexure P/3 were made by the complainant on 16.7.2016 and 9.8.2016 in which the accused affected a settlement but again started insisting on the same and as a consequence of which the present case was got registered.

The contention of the learned counsel for the petitioners Sh. Ishwar Lal is that it was the fault of the complainant who was insisting and pressing hard her husband to separate from his family which had led to this dispute and has been falsely given the colour of demand of dowry and harassment. It is averred that the wife has sought to raise unreasonable and illegal demands and even

compelling the husband to reside as a *Ghar Jawai* in the house of the parents of the complainant at Ambala and when the husband had refused citing his obligations towards his aged parents and other family members, the wife had levelled false allegations. The counsel has asserted that the complainant had affected a compromise and in pursuance of which had made statement in civil matters as well as in the complaint to the police and that the wife had thus condoned the acts and the allegations so levelled against the accused-petitioners, thus, terming the prosecution of the petitioners to be unwarranted in law, sought its quashment.

Mr. Amrik Narwal, DAG, Haryana for State/respondent no. 1 and Ms. Divya Sharma, Advocate, for respondent no. 2 have sought to reiterate their stand though accepting inter-se relationship between the petitioners and the complainant as well as filing of complaints and civil litigation between them. The respondents have reiterated the stand, the allegations of demand of dowry, physical and mental cruelty were duly substantiated during the inquiry conducted by the police and upon being satisfied over the veracity of the same, the matter was referred for appropriate legal action. It is contended that the openness of the complainant to rehabilitate herself in the matrimonial home is reflecting from her stand that she had

compromised the matter but the reticence of the accused who did not desist from carrying on their nefarious designs is illustrative that the complainant was forced to knock at the doors of the police leading to the registration of the present case. Terming the averments of the petitioners to be false and fabricated, sought dismissal of the same.

Appreciating the submissions of the two sides, the Hon'ble Apex Court in **State of Bihar vs. Murad Ali Khan, AIR 1989 SC 1** had enumerated the ambit of jurisdiction of the courts by virtue of Section 482 Cr.P.C. It has been laid down that such a jurisdiction has to be exercised sparingly and with circumspection and has given the guidelines that in exercising of that jurisdiction, the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. In a subsequent view, in the case of **State of Haryana and others v. Ch.Bhajan Lal and others' 1992 AIR SC 604**, the Hon'ble Apex Court had exhaustively dealt with the exercise of powers under Section 482 Cr.P.C. holding the categories by way of illustrations where such powers can be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It was further cautioned that no hard and fast straightjacket formulae can be laid down and the broader principles have been enumerated

as below to lay emphasis:-

- (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 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) 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.

Reverting back to the instant case to the specific query of this Court, counsel for the petitioners could not convince by any manner how and by what means it has been necessitated to exercise inherent powers by this Court. The only stand of the petitioners which has been canvassed in their grounds is that the complainant wanted the husband to be a *Ghar Jawai* and had raised illogical and unreasonable demands which could not be meted out or that the wife

was compelling the husband to have separate residence. The other reasons that have come forth in the pleadings as well as the submissions of the counsel for the petitioners are of the allegations being false, vague or the fact that the wife had earlier effected a compromise and withdrawn the police complaints and settlements are also made in the matrimonial proceedings. Rather such a stand of the wife support the case of the prosecution that it was the complainant who had benevolent enough to give another chance to the accused petitioners to reform themselves but did not do so and is thus illustrative of her bonafides and genuineness to settle the issues with her in-laws and the husband. More-so all these averments are and can be adjudged only after adducing the evidence and which is not permissible at this juncture. More-so in the exercise of inherent powers this Court is not supposed to carry on roving enquiry in the truthfulness of the allegations of the touchstone of probability. Thus, stand of the petitioners how applying the ratio which is argued even in the submissions of the petitioners side a justifiable cause for showing indulgence upon the petition of the petitioners is made out. Prima facie this Court does not feels any legal necessity to bring about exercise of powers under Section 482 Cr.P.C. The petition is nothing but misuse of the process of the

Court. Thus, the present petition stands declined and dismissed.

April 08, 2019
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No