

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

CRM-M No.42816 of 2015 (O&M)

Date of decision: 23rd July, 2019

Jasbir Bajaj & another

... Petitioners

Versus

State of Haryana & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ashok K. Panigrahi, Advocate for the petitioners.

Mr. Baljinder S. Virk, Dy. Advocate General, Haryana
for respondent No.1/State.

Mr. Pankaj Kundra, Advocate for
Mr. Deepak Sabharwal, Advocate for respondent No.2.

FATEH DEEP SINGH, J. (ORAL)

Again an unfortunate episode, a story of an NRI husband deceiving and duping an Indian bride through matrimonial alliance has propped up its ugly head. This is the decadent that trickles down from the FIR (Annexure P1) got registered by respondent No.2 wife against her husband Kiku Bajaj, father-in-law Jasbir Bajaj and sister-in-law Jasneet Bajaj. The petitioners father-in-law and sister-in-law of the complainant wife have invoked the provisions of Section 482 Cr.P.C. seeking quashment of the FIR so got registered against them. The main grounds on which the petitioners have sought invocation are that the husband is a citizen of Australia and is not amenable to criminal jurisdiction of the

Courts in India and that no cause of action has arisen at Panipat which could confer jurisdiction for prosecuting the accused at Panipat. It is also the stand of the petitioners as a reason for this quashment that the wife had chosen Australian Court in divorce proceedings and therefore present process is nothing but a misuse of the process of the Court and prima-facie there is no evidence against the accused petitioners to put them up for trial.

The stand of the respondents in their reply is to the effect that the case was got registered on the complaint of the complainant wife in which the petitioners were arrested and were released on bail. It is the claim of the State that the principal accused husband Kiku Bajaj is evading his appearance before the law and that a guise has been set up to delay and frustrate the endeavours of the complainant to seek justice. It is duly conceded to that the husband is residing in Australia whereas the wife has been thrown out of Australia on account of willful and intentional misconduct of the husband, claiming that it was on the basis of truthful, genuine and bona fide allegations, the case has been got registered which is under trial in a Court at Panipat and terming each and every averment of the petitioners to be false and incorrect, sought its dismissal.

Upon hearing Mr. Ashok Kumar Panigrahi, Advocate for the petitioners, Mr. Baljinder Singh Virk, Dy. Advocate General, Haryana

representing respondent No.1/State; Mr. Pankaj Kundra, Advocate on behalf of Mr. Deepak Sabharwal, Advocate for respondent No.2/complainant and on perusal of the records. The allegations that have come about by the hapless and desolate wife Yamini Arora show that the marriage between the couple was solemnized on 10.11.2013 in India, where the accused Kiku Bajaj had come for that purpose and subsequently it was again given effect to in a Gurudwara at Delhi on 09.02.2014 and the marriage was got registered in India. The allegations of the wife are that besides the list of dowry articles detailed with the FIR, ₹ 6.00 lacs were given to the accused and ₹ 30.00 lacs were spent on the marriage. The wife claims that most of the jewellery was left in India with the accused petitioners and which stands usurped by them, alleging further that the accused petitioners were not happy with the dowry and had been taunting her on that score. While in Australia, the wife was asked for a big car by the husband and when the wife refused, she was physically assaulted leading to fracture of part of her left arm. The wife claims that the husband is a gay and is in a physical relationship with one Kale Adverts. The wife alleges that on 18.05.2014 she was sent back by the husband and while in India she could not initially stay with the in-laws who refused but subsequently she went to the in-laws place where she stayed for 10-12 days and there too the accused petitioners had assaulted her forcing the complainant to go back to her parental house in

Panipat. It was on the asking of the accused, father of the complainant got an FDR of ₹ 9.00 lacs and when as per this settlement, the wife went back to Australia on 01.08.2014, the accused husband upon discovering that the FDR was in the name of the wife, got angry and physically assaulted her, as a consequence of which due to ill-treatment by the husband she consumed sleeping pills and was hospitalized and thereafter, was sent to the cousin brother of the complainant. On her return on 23.09.2014, the husband refused to open the doors of the house at Australia and thus, the matter was informed to the local authorities and subsequently it is alleged that the husband withdrew his sponsorship to the wife forcing her to come back to India.

The stand of the petitioners and that of the complainant sides during the course of arguments and which is also reflected from the pleadings, shows that the marriage between the parties is not at all disputed and it is the wife's claim that on account of demand of dowry resulting in physical and mental torture by all the accused including the petitioners, she was driven out of her matrimony, forcing her to knock at the doors of Law.

The first and the foremost claim of the petitioner side that no cause of action arises at Panipat, has been well countered by the respondent side. As is there in the allegations, besides being a case under Section 323, 506, 34 IPC, there are allegations punishable under Section

498-A IPC. A close look at the allegations shows that part of this occurrence has taken place in India and part in Australia and being a continuing offence throughout this period of time forcing the wife to take refuge of her parental house where she has prosecuted the accused for their illegal acts. Though support is sought to be taken from **‘Harmanpreet Singh Ahluwalia and others vs. State of Punjab and others’ 2009(2) RCR(Criminal) 956** and **‘Tarsem Singh and others vs. Amrit Kaur’ 1995 Cri.L.J. 3560** by learned counsel for the petitioners, however, in the light of latest pronouncement of Hon’ble the Supreme Court of India in **‘Rupali Devi vs. State of Uttar Pradesh and others’ 2019 (2) RCR(Criminal) 795**, their Lordships in a three-Bench view have held as under:-

“14. The emotional distress of psychological effect on the wife, if not the physical injury, is bound to continue to traumatize the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress caused by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents

would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.”

It was further stressed by their Lordships as follows:-

“15. The provisions contained in Section 498-A of the Indian Penal Code, undoubtedly, encompasses both mental as well as the physical well-being of the wife. Even the silence of the wife may have an underlying element of an emotional distress and mental agony. Her sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home. Such consequences, by itself, would amount to distinct offences committed at the parental home where she has taken shelter. The adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would, in our considered view, amount to commission of cruelty within the meaning of Section 498A at the parental home... ..”

While concluding, their Lordships have held that the Courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would also have jurisdiction to entertain a complaint alleging commission of offences under Section 498-A IPC.

More so, giving a conjoint reading to provisions of Sections 178, 179, 180 and 184 Cr.P.C. ensures that where offences of different nature are committed by several persons, they can be charged with and tried together in the light of provisions enshrined under Sections 219 and 220 Cr.P.C. and therefore, in the light of the same, as has been sought to be argued, the petitioners cannot take refuge of Section 188 Cr.P.C. by raking up the plea that one of the accused being a citizen of Australia cannot be prosecuted without prior sanction of the Govt. of India, as part of the offences, too having been committed in the territorial jurisdiction of this country.

The second leg of submissions that has come about that mere FDR which is in the name of the wife cannot be a cause to attract offence under Section 406 IPC, certainly is misconceived. The prima facie allegations levelled by the complainant in the FIR with which the list of dowry articles is annexed, is reflective of the element of handing over of Istridhan to the accused and their criminal breach of trust qua them,

certainly erodes the pedestal on which the petitioner side has tried to take a stand.

The other claim of the husband that the wife has invoked the jurisdiction of Family Law Act in a Court in Australia, is not helpful, firstly on the grounds that nothing is suggestive from the divorce decree which could bring about scope and binding conclusive nature of these divorce proceedings in Indian courts. More so, being proceedings purely on the civil side cannot have its ramifications on the present criminal prosecution of the accused for commission of criminal offence within the territorial jurisdiction of this country, and therefore, the petitioners cannot hide under the façade of such an amendment. More so, learned counsel could not support his arguments how or by what means bars the wife from instituting criminal prosecution against the accused for illegal acts that have come about in India and by now, it is well enshrined principle of law that judgment of a Civil Court and that too a foreign judgment is not binding on trial of the case in a criminal case, especially when nothing is suggestive to show that the divorce decree so claimed by the petitioners have any relevance or bearing on the criminal proceedings that have been got instituted on the basis of the FIR (Annexure P1). Reliance placed on **‘Syed Askari Hadi Ali Augustine Imran & another vs. State (Delhi Admn.) & another’ 2009(2) RCR(Criminal) 520.**

The documents and the allegations that have come about from the side of the prosecution in the light of arguments that have been made by learned State counsel, prima facie shows commission of cognizable offences by the accused and which can only be adjudicated by means of evidence. This Court seeks support from '**State of Haryana and others v. Ch.Bhajan Lal and others**' 1992 AIR SC 604, wherein the exercise of powers under Section 482 Cr.P.C. has been well laid down by the Hon'ble Supreme Court and following eventualities have been provided for:-

- (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.

Nothing could be brought to the notice of this Court on behalf of the petitioners that there is express legal bar under the

provisions of any of the Law applicable to this country to institution and continuation of these proceedings or that the present proceedings are manifestly mala fide with ulterior motives to wreak vengeance upon the accused.

In the light of what has been detailed and discussed above, this Court does not feel inclined to show indulgence and the present petition being hopelessly without merit, stands dismissed.

(FATEH DEEP SINGH)
JUDGE

July 23, 2019
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No