

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

CRM-M-4790 of 2016.

Decided on:- May 10, 2019.

Neha.

.....Petitioner.

Versus

State of Haryana and another

.....Respondents.

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

Present:- Mr. Sumit Sangwan, Advocate
for the petitioner.

Ms. Mahima Yashpal, A.A.G., Haryana.

Mr. B.R. Gupta, Advocate
for respondent No.2-complainant.

HARI PAL VERMA, J.

Petitioner Neha, who is an unmarried sister-in-law of the respondent No.2-complainant has filed this petition under Section 482 Cr.P.C. for quashing of FIR No.39 dated 23.10.2015 under Sections 498-A, 323, 506 and 406 read with Section 34 IPC as well as Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, the SC/ST Act) registered at Women Police Station, Bhiwani and all subsequent proceedings arising therefrom.

The aforesaid FIR was registered at the behest of respondent No.2 Deepa, who was married with Abhinav Pal on 11.05.2014. The other co-accused, namely, Abhinav Pal is husband and Veenu is mother-in-law.

As per the FIR, father of the complainant spent sufficient amount on her betrothal and marriage ceremonies. She lived with her husband in Modern Housing Complex, Manimajra, Chandigarh. However, after the marriage, behaviour of her husband, mother-in-law and sister-in-law (present petitioner) was not good towards her. They raised demand of more dowry and started harassing her. She was subjected to cruelty for insufficient dowry. Her father gave cash of Rs.30,000/- and certain gifts on the occasion of Diwali festival. Again he gave cash amount of Rs.30,000/- and some gifts to her in-laws on the occasion of Lohri festival. The complainant belongs to Scheduled Caste (Chamar) community, whereas her father-in-law belongs to Backward (Kamboj) community. They also called her with bad names and used derogatory words against her father. Since she was consistently being harassed, she moved a complaint to the Superintendent of Police, Bhiwani on 19.10.2015 leading to registration of the present F.I.R.

Learned counsel for the petitioner has argued that, in fact, marriage between respondent No.2-complainant with Abhinav Pal was a love marriage. The complainant is well-qualified lady holding a gazetted post. She herself opted to get married with a boy, who is about 8 years younger to her. Since the complainant belongs to Scheduled Caste, whereas the petitioner belongs to Backward class, the provision of offence under Section 3 of the SC/ST Act has been misused. At the time of marriage, the complainant was posted as Assistant Professor in Government College, Panchkula and after marriage, she joined as Assistant Professor in Government College, Bawani Khera in July, 2015. The complainant got herself transferred from Panchkula

to Bawani Khera on 02.07.2015 on the ground of completing her service in rural areas in fulfilment of condition of the Government policy.

He has further argued that since the parties to the marriage could not pull well, a divorce petition was filed by Abhinav Pal against respondent No.2-complainant in District Court, Chandigarh on 15.10.2015. However, respondent No.2 moved an application before this Court seeking transfer of said petition to Bhiwani Court. Since it was a love marriage between the parties, no dowry articles were exchanged and as it was marriage of the liking of the parties, the petitioner, who is unmarried elder sister of Abhinav Pal, was not going to be benefitted with any dowry articles.

He has further contended that there is no specific allegation against the petitioner for demand of dowry or harassment caused to respondent No.2. The only allegation against the petitioner is that she was a party with the husband and mother-in-law in harassing the complainant.

As per the complainant, in the month of September, when parents-in-law of the complainant had gone to their native place Yamuna Nagar to attend a marriage in some close relations, the petitioner had cut the hair of the complainant and handed over the same to her mother-in-law. The allegation is that whenever the complainant used to come from her college and to take rest in a room, then the petitioner and mother-in-law of the complainant used to oust her from the room and used to say that the complainant does not belong to a royal family and, therefore, directed the complainant to do the household works. Without taking rest, the complainant used to fulfil the obligations as per the wishes of her in-laws.

Learned counsel for the petitioner has further argued that the petitioner is being victimized of prevalent syndrome of roping in every member of the family in such type of matrimonial criminal litigations. There is no legal evidence clearly or manifestly adduced by the complainant to substantiate the allegations. The allegations in the FIR, if taken at their face value, do not constitute the offence alleged qua the petitioner as she is unmarried sister of the husband of complainant. In case the petitioner is made to face the trial, it would prove a stigma on her life. The law should be vigil that no innocent person is made to suffer from the rigmarole of the trial. All allegations of cruelty and dowry demand were at Chandigarh in Manimajra, whereas the complainant in order to harass the petitioner and her family members had filed the complaint at Bhiwani at her own convenience. Moreover, she herself got transferred to Bawani Khera, District Bhiwani so as to complete rural service which is a condition of her service. No case is made out against the petitioner under Sections 498-A, 323, 506 and 406 read with Section 34 IPC as well as Section 3 of the SC/ST Act. In case the complainant was tortured from the very inception, there would not have been such an inordinate and unexplained delay in lodging the present FIR. It is the complainant who has committed cruelty upon the petitioner by implicating her in a false case. The complainant should not be permitted to take benefit of her own wrong. The marriage between Abhinav Pal and the complainant was love-marriage and hardly any dowry was exchanged, but in order to settle the score, the complainant has made false and baseless allegations against the petitioner and the whole family. The petitioner is working on contractual basis in GMCH, Sector-32, Chandigarh and the story propounded by the

complainant is concocted which is aimed at to humiliate and harass the whole family of the petitioner. Now-a-days, it has become a tendency to involve the whole family in the proceedings like the present one.

Learned State counsel while making reference to the reply submitted by way of affidavit of Vijay Deswal, HPS, DSP, Bhiwani has argued that the FIR was registered on the complaint submitted by the complainant and during investigation, accused Abhinav Pal (husband) was arrested. The Challan was presented against him before the trial Court on 22.11.2015. Thereafter, supplementary Challan has been presented prepared against the petitioner on 04.02.2016.

Learned counsel for respondent No.2-complainant has argued that marriage between Abhinav Pal and the complainant was solemnised on 11.05.2014 and after the marriage, her husband, mother-in-law and sister-in-law (petitioner herein) started harassing the complainant for demand of dowry. Since the complainant belongs to Scheduled Caste, she was named under the caste. The petitioner and her family used to say that as the complainant belongs to Scheduled Caste, they cannot eat the food cooked by her. Sometimes, the complainant had noticed that her clothes were found cut from different places. At the same time, the mother-in-law of the complainant used to spend three hours in worship in the room of the petitioner. On asking about such offending act, the mother-in-law of the complainant used to pull hair of the complainant, whereas the petitioner used to move her hair in the air. The accused used to perform “*dian-jadu*” on the complainant, which had bad/adverse effect on the mind and body of the complainant.

He has further argued that Challan against the petitioner has been presented before the trial Court. Therefore, the FIR cannot be quashed qua the petitioner. He has referred to ***Sazid Khan Versus State of Haryana and another 2018(3) RCR (Criminal) 992*** to contend that after investigation, police found angle of conspiracy which involved the petitioner as well. Once the police has found material against the accused and had presented Challan against the petitioner, the FIR cannot be quashed. He has also placed reliance upon ***Smt. Ravinder Kaur Versus Central Bureau (CBI) 2015 (2) RCR (Criminal) 871*** wherein this Court has held that the Court cannot quash the proceedings when the matter has been investigated and charge-sheet has been submitted. The documents have to be examined and tested during the proceedings pending before the trial Court.

On the strength of judgment of Hon'ble Bombay High Court in ***Satish Dharmu Rathod and others Versus The State of Maharashtra and another 2017(1) AIR Bom. R (Cri) 779***, learned counsel for respondent No.2 has argued that when the allegations levelled in the FIR make out a prima-facie offences of mental and physical cruelty as well as unlawful demand of money, the proceedings cannot be quashed under Section 482 Cr.P.C. Reliance has also been placed upon ***Rahul Bhargava Versus State (NCT) of Delhi and another 2018(4) RCR (Criminal) 658***, wherein Hon'ble Delhi High Court has held that the question as to whether the averments made by the complainant were the gospel truth or not can only be decided after the parties are relegated to trial. The Court, at this stage, cannot grant the prayers made in the petition and no case is made out for quashing either the complaint

or the FIR registered at the behest of the complainant under Sections 498-A and 406 read with Section 34 IPC.

Learned counsel for respondent No.2 has further relied upon ***Jeba Tabassum Versus Md. Khalil Ahmed @ M.K. Ahmed and others 2018 All SCR (Crl.) 644*** to contend that when charge sheet is filed and there is material against the accused persons, proceedings against them cannot be quashed without giving cogent reasons. Reliance has also been placed upon ***State of Bihar and another Versus P.P. Sharma and another AIR 1991 Supreme Court 1260(1)*** to contend that when after completion of investigation in the FIR, a report has been submitted by the police to the Magistrate and a prima-facie case is made out against the accused, the High Court should not interfere at this stage while exercising its inherent powers under Section 482 Cr.PC. The quashing of charge-sheet before cognizance is taken by the criminal Court amounts to killing a still born child. The High Court cannot quash the proceedings by taking into consideration the affidavit and documents submitted by the accused and the High Court cannot convert itself to a trial Court in exercise of its inherent jurisdiction.

I have heard learned counsel for the parties.

The petitioner is an unmarried sister-in-law of the complainant and is working in GMCH, Sector-32, Chandigarh. The report reveals that marriage between the complainant and her husband was a love-cum- arranged marriage as before the marriage, the parties were known/close to each other. The age difference between the complainant and her husband Abhinav Pal further substantiates the fact that they were known to each other much before the marriage. At the relevant time, when the FIR in question was registered,

the complainant was not residing in Chandigarh, rather, she was posted as Assistant Professor in Bawani Khera, District Bhiwani, whereas the petitioner never shifted to Bawani Khera and was living at Manimajra i.e. in Chandigarh only.

There is no allegation of entrustment of any dowry article to the petitioner. The complainant has named the petitioner, who is her unmarried sister-in-law probably because she was under the influence of some superstitions and was giving its effect upon the complainant. The petitioner is already well-placed in service and was in no need of any financial help and, therefore, it is too unrealistic to allege that the petitioner ever harassed the complainant for demand of dowry.

The argument of learned counsel for respondent No.2-complainant that once the report has been submitted to the Magistrate and a prima-facie case is made out from the FIR and charge-sheet is issued, the High Court should not interfere at this stage and quash the FIR in exercise of its inherent powers, has been considered by the Apex Court in ***Satish Mehra Versus State of N.C.T. of Delhi and another 2013(2) RCR (Criminal) 883*** wherein the Apex Court has held that the High Court in its inherent powers can quash such proceedings. The relevant paragraph No.15 of the said judgment reads as under:

“15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal

proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused.”

Similarly, the Apex Court in ***Geeta Mehrotra and another Versus State of U.P. and another 2012(4) RCR (Criminal) 812*** has held that in criminal cases arising out of a matrimonial dispute, a fact borne out of experience cannot be overlooked that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute.

Merely because the charge-sheet has been framed against the petitioner is no ground to decline the relief to the petitioner. There are bald allegations against the petitioner which suggest the anxiety of the informant to rope in as many as relatives of the husband as possible. The FIR is based on with self-imposed motives and was lodged against the petitioner, who was undisputedly not living with the complainant at Bawani Khera at the time when the FIR was registered and, therefore, the petitioner should not be made to suffer the ordeal of trial. Petitioner is unmarried sister-in-law of the complainant and, if trial against her is allowed to proceed in the matter, it shall bound to have adverse effect on her marriage prospect.

Coming to the facts of the case when the contents of the FIR are perused, it is apparent that there is no specific allegation against the petitioner for demand of dowry and it shows that she has been named/included in the FIR but for the reason that she is the unmarried sister of husband of the complainant. In ***Geeta Mehrotra and another's case (supra)***, Hon'ble Supreme Court, while quashing the FIR against the family members of the husband has made following observations in paragraph Nos.21 to 24 of the judgment:

*“21. In yet another case reported in AIR 2003 SC 1386 in the matter of **B.S. Joshi & Ors. vs. State of Haryana & Anr.** it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of*

dowry. But if the proceedings are initiated by the wife under Section 498A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power.

22. *In the instant matter, when the complainant and her husband are divorced as the complainant-wife secured an ex-parte decree of divorce, the same could have weighed with the High Court to consider whether proceeding initiated prior to the divorce decree was fit to be pursued in spite of absence of specific allegations at least against the brother and sister of the complainant's husband and whether continuing with this proceeding could not have amounted to abuse of the process of the court. The High Court, however, seems not to have examined these aspects carefully and have thus side- tracked all these considerations merely on the ground that the territorial jurisdiction could be raised only before the magistrate conducting the trial.*

23. *In the instant case, the question of territorial jurisdiction was just one of the grounds for quashing the proceedings along with the other grounds and, therefore, the High Court should have examined whether the prosecution case was fit to be quashed on other grounds or not. At this stage, the question also crops up whether the matter is fit to be remanded to the High Court to consider all these aspects. But in matters*

arising out of a criminal case, fresh consideration by remanding the same would further result into a protracted and vexatious proceeding which is unwarranted as was held by this Court in the case of **Ramesh vs. State of Tamil Nadu (supra)** that such a course of remand would be unnecessary and inexpedient as there was no need to prolong the controversy. The facts in this matter on this aspect was although somewhat different since the complainant had lodged the complaint after seven years of delay, yet in the instant matter the factual position remains that the complaint as it stands lacks ingredients constituting the offence under Section 498A and Section 3/4 Dowry Prohibition Act against the appellants who are sister and brother of the complainant's husband and their involvement in the whole incident appears only by way of a casual inclusion of their names. Hence, it cannot be overlooked that it would be total abuse of the process of law if we were to remand the matter to the High Court to consider whether there were still any material to hold that the trial should proceed against them in spite of absence of prima facie material constituting the offence alleged against them.

24. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognisance

of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.”

Merely by making general allegations that the petitioner was also involved in physical and mental torture of respondent No.2-complainant, without mentioning even a single incident against the petitioner as also the fact as to how she could be motivated to demand dowry when she is only related as sister of complainant's husband, this Court finds that the criminal proceedings initiated against the petitioner are liable to be set aside being a total abuse of process of law.

Similar view was taken by Hon'ble Supreme Court in ***Preeti Gupta and another Versus State of Jharkhand and another 2010(4) RCR (Criminal) 45***, wherein it has been held that in dowry harassment cases, a large number of complaints are not *bona fide* and a majority of complaints are

filed on advice with exaggerated versions. The relevant paragraphs No.28 to 31 of the said judgment are reproduced as under:

“28. *It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.*

29. *The courts are receiving a large number of cases emanating from section 498-A of the Indian Penal Code which reads as under:*

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.--For the purposes of this section, 'cruelty' means:

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

30. *It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.*

31. *The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.”*

The judgment in ***Sazid Khan’s case (supra)*** cited by learned counsel for respondent No.2-complainant has no applicability in the facts and circumstances of the present case as the said judgment relates to the offence under Sections 420, 406 and 120-B IPC as well as Section 138 of the Negotiable Instruments Act, 1881. Similarly, another judgment cited by learned counsel for respondent No.2-complainant in ***Smt. Ravinder Kaur’s case (supra)*** relates to the offence under the Prevention of Corruption Act, 1988.

This Court has reason to look into the judgment cited by learned counsel for respondent No.2-complainant in ***Satish Dharmu Rathod and others' case (supra)*** and finds that the said case was in the background of territorial jurisdiction.

This Court, no doubt, is conscious of the fact that it is settled principle of law that for exercise of inherent powers under Section 482 Cr.PC, it is essential to proceed entirely on the basis of allegations made in the complaint or documents accompanied with it *per se*, but the Court has no jurisdiction to examine the correctness or otherwise of the allegations. The Apex Court in the matter of ***State of Haryana Versus Bhajanlal and others AIR 1992 SC 604*** has delineated the guidelines in paragraph No.109 of the judgment, which reads as under:

“109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”

But at the same time, in the case in hand, this Court finds that no motive is established on the part of the petitioner to demand any dowry and as observed in the earlier part of this judgment, the complainant is probably influenced with a superstition. Moreover, the FIR in question was registered at Bawani Khera, District Bhiwani, whereas the petitioner, who is unmarried sister-in-law of the complainant, is residing in Chandigarh and is working in

GMCH, Sector-32, Chandigarh. At no point of time, petitioner ever stayed in Bawani Khera.

Therefore, having recourse to the provisions of Section 482 Cr.P.C., this Court finds that registration of the FIR against the petitioner is a total misuse of the process of law on the part of the complainant.

Accordingly, the present petition is allowed and the FIR No.39 dated 23.10.2015 under Sections 498-A, 323, 506 and 406 read with Section 34 IPC as well as Section 3 of the SC/ST Act registered at Women Police Station, Bhiwani and all consequential proceedings arising therefrom qua the petitioner are quashed.

May 10, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No