

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

CRR 2436 of 2016
Date of Decision: August 19, 2019

1. Raja Ajit MahajanPetitioner

Versus
State of Haryana Respondent

CRR 2437 of 2016

2. Sunil AnandPetitioner

Versus
State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. N.S. Shekhawat, Advocate
for the petitioner.

Mr. Baljinder Virk, DAG, Haryana.

Mr. Deepinder Singh, Advocate
for private respondents.

FATEH DEEP SINGH, J. (Oral)

Both these above detailed criminal revisions by the
aid of Section 401 Cr.P.C. (CRR 2436 of 2016 by accused Raja

Ajit Mahajan) and (CRR 2437 of 2016 by accused Sunil Anand) are directed against the order of learned Additional Sessions Judge, Faridabad passed in FIR No. 468 dated 05.08.2015 under Sections 498-A, 406, 109, 354-A, 354-C, 376 and 34 IPC registered at Police Station Sector 7, Faridabad framing charges against both these accused under Sections 498-A, 406 read with Section 34 IPC and Sections 376, 354-A, 354-C and 109 IPC

Upon hearing Mr. N.S. Shekhawat, learned counsel for the petitioners and Shri Deepinder Singh learned counsel for the complainant assisting by Mr. Baljinder Virk, DAG, Haryana and on perusal of the records.

The FIR in question had come about on the complaint of the complainant/wife Anita Mahazan alleging that the present marriage of the complainant was third one with accused/husband Raja Ajit Singh, which has come about on 26.09.2014.

It has been alleged by the complainant that her husband was not happy with the marriage and used her as a tool to satisfy his physical needs. The husband at the instigation of his parents often used to physically abuse her and on lame excuses used to assault her and in the process had been demanding dowry articles. Accused/brother-in-law Sunil Anand is habitual to heavy drinking and was having an evil eye on the complainant and on

flimsy pretext would try to take undue liberties with the complainant. It is during the course of events, the complainant alleges that the husband prompted and instigated his co-accused, brother-in-law to enter into extra marital relations and one day while the complainant was alone, accused Sunil Anand forcibly defiled her against her wishes and, thereafter, led to souring of relations between the parties leading to filing of the complaint on 15.06.2015 by the wife, on the basis of which, the FIR was got registered on 05.08.2015 and in which the complainant's statement was recorded on 06.07.2019 and report was sent on 8th July, 2015. During the course of investigation, statement under Section 164 Cr.P.C. of the complainant was recorded on 06.10.2015.

Mr. Sekhawat, learned counsel for the petitioners has vehemently argued that from the filing of the complaint on 15.06.2015 till the recording of statement under Section 164 Cr.P.C. on 06th October 2015, the complainant has never levelled any allegations of rape or obscene acts of brother-in-law and belatedly these allegations have come about and, therefore, framing of charges for commission of offence under Sections 376, 354-A, 354-C and 109 IPC are not made out and has sought to seek support from **Preeti Gupta and another Vs. State of**

Jharkhand and another, 2010(7) SCC 667; **Chandralekha and others Vs. State of Rajasthan and another**, 2013(1) CLR 745; **Ramesh and others Vs. State of Tamil Nadu** 2005(2) R.C.R. (Criminal) 67; **Daljit Singh and others Vs. Sukhwinder Kaur and another** 2016(4) R.C.R. (Criminal) and **Vijay Kumar Kaura Vs. U.T. Chandigarh and another** 2015(3) Law Herald 2171.

Mr. Baljinder Virk, DAG, Haryana for the State and Mr. Deepinder Singh, Advocate for the complainant have sought to vehemently oppose the submissions on the grounds that in the very initial stage in the FIR (Annexure P3), the complainant has levelled all these allegations and, therefore, not much leverage can be taken of by the petitioner side. Further, it is contended that being a matter of evidence, its worth would be decided at the time of trial and the Court cannot with the aid of Section 482 Cr.P.C. appreciate the evidence at this juncture, which will be prejudicial for the trial. Learned counsel for the complainant has also placed reliance on **R.S. Nayak Vs. A.R. Antulay and another**, 1986 AIR (SC) 2045 and **State of Bihar Vs. Ramesh Singh**, 1977 AIR (SC) 2018.

Going through the arguments of the two sides and the laws of Hon'ble Apex Court as laid down in **R.S. Nayak Vs. A.R.**

Antulay and another, 1986 AIR (SC) 2045, their Lordships have laid the “test of prima facie case” as the sole ground, which could be for framing of charge. The FIR (Annexure P3) in itself clearly enumerates the role of each of the accused in the commission of various offences. In subsequent views expressed in **State of Rajasthan Vs. Fatehkaran Mehdu** 2017(2) R.C.R. (Criminal); **Soma Chakravarty Vs. State (Th. CBI)**, 2007(2) Andh LD (Criminal) 272; **P Vijayan Vs. State of Kerala and another** 2010(1) JT 459 and **State of Delhi Vs. Gyan Devi** 2000(4) Crimes 164, so relied upon by the respondents side, their Lordships have laid the principle that power to quash a charge sheet under Section 482 Cr.P.C. is to be exercised in rarest of rare cases and there could not be meticulous examination of the evidence and has even gone to the extent that where a Court forms an opinion that accused might have committed offence so as to frame charges besides the fact that at the time of framing of charges the very verbatim value on the material on record including evidence cannot be gone into and, therefore, the material of the prosecution ought to be accepted on the face of it. Thus, the same rightly answers the arguments of learned counsel for the petitioners Mr. Shekhawat, that allegations of the complainant are belated one and unexplained by any material

evidence and these matters are clearly within the domain of the trial Court, which are to be adjudicated at the time of the trial and not by resorting to provisions of Section 401 Cr.P.C., which deals only with the legality and propriety of a finding.

Furthermore in the present case, at the very threshold of the initiation of prosecution, both the accused refute the prima facie allegations levelled by the complainant, wife of the principal accused and the very truthfulness and veracity of which are likely to be judged on the touchstone of evidence led at the trial. Counsel for the petitioner could not convince this Court how there has been illegality or perversity in the finding evident on record which could necessitate intervention by this Court.

Finding no merit, both the petitions stand dismissed.

August 19, 2019
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No