

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

CRM-M No.37506 of 2015 (O&M)

Date of decision: 28th August, 2019

Kirandip Singh & others

... Petitioners

Versus

State of Punjab & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Aman Arora, Advocate for the petitioners.

Mr. Harbir Sandhu, Assistant Advocate General, Punjab
for respondent No.1/State.

None for respondent No.2.

FATEH DEEP SINGH, J.

The petitioners Kirandip Singh, Harvinder Kirandip Swani and Harjiv Singh Swani, who are accused in case bearing FIR No.115 dated 06.09.2013 under Sections 406, 498A, 323, 324, 506, 120-B IPC pertaining to Police Station Balongi, District SAS Nagar (Annexure P5) have invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. seeking quashment of the FIR and all consequences arising therefrom.

The stand of the petitioners is that they have been falsely implicated and that the complainant has left the matrimonial home on her own and on false and fabricated grounds on account of petty issues between the husband and the wife, the present case has been got lodged to harass the husband and his family. It is also claimed that false

allegations of assault have been levelled as the very Out Patient Assessment Sheet of Jaslok Hospital and Research Centre shows the injuries to be as a consequence of fall. It is contended that the investigating team on their visit to Mumbai had recorded statement of the witnesses whereby no offence was made out and that on the representation of the petitioners, the DGP Punjab had constituted a Special Investigating Team whereby recommendations were made for deleting certain offences and therefore, substantiates the stand of the petitioners that it is a false and frivolous case. It is on the strength of the same, the accused petitioners have sought quashment placing reliance upon **‘State of Haryana and others v. Ch.Bhajan Lal and others’ 1992 AIR SC 604; ‘Preeti Gupta and another vs. State of Jharkhana and another’ (2010) 7 SCC 667; ‘Arnesh Kumar vs. State of Bihar and another’ (2014) 8 SCC 273; ‘Geeta Mehrotra and another vs. State of Uttar Pradesh and another’ (2012) 10 SCC 741; ‘Satish Mehra vs. State (NCT of Dehli) and another’ (2012) 13 SCC 614; ‘Smt. Neera Singh vs. The State (Govt. of NCT of Delhi) and others’ 2008 (3) RCR(Criminal) 287.**

The respondents in their response, besides preliminary objections, stated that the petition deserves to be dismissed as no substantial grounds exist and that the previous petition on behalf of the co-accused bearing CRM-M No.32262 of 2016 stands dismissed by this Court vide judgment and order dated 05.10.2013. On merits, it is categoric stand of the answering respondent that all the averments made

by the complainant are true, correct and have been correctly levelled and there have been serious allegations substantiated by evidence to further the case of the prosecution. It is pleaded that the petitioners are trying to take undue advantage and that there is no semblance of evidence to support the petitioners for this Court to show indulgence and has rather termed the allegations levelled by the complainant to be fully inquired into by the police and found to be truthful and thus has led to registration of the FIR, and sought dismissal of the petition.

Appreciating the submissions, the first and the foremost submission canvassed before this Court by the petitioners side that the SIT so constituted has given a favourable decision in favour of the petitioners, does not cut much ice as has been sought to be argued by the opposite side. In the light of well enshrined law that such inquiry reports are not binding upon the courts and it is the material and the evidence before the Court which is the determining factor and therefore, submissions of Mr.Aman Arora, Advocate for the petitioners do not carry the day for the petitioners.

It is admitted stand of the two sides that marriage between the couple was solemnized on 18.10.2003 wherein husband Parneet Singh Swany, whose petition besides other petitioners stood dismissed on 05.10.2013 by this Court vide orders (Annexure P15) and that out of this wedlock the couple was bestowed with a female child on 29.10.2004 who is named as Syesha. It is the case of the complainant wife that after birth of the child, attitude of the accused underwent a change and they had

been raising different demands in spite of the fact that sufficient cash, gold and costly items were given at the wedding to the accused side but the accused were not satisfied and had raised demand of rupees two crores to enable the husband of the complainant to open a new factory. It is intermittently there in the records that the wife was thrown out of her matrimonial home on different occasions and was rehabilitated upon part fulfillment of these alleged demands. The claim as to the physical injuries being on account of a fall in the bathroom or as a result of the assault by the accused side and as has been sought to be put to doubt by the respondent side that the same has been entered subsequently through fabrication to help the accused, are matters of evidence to be appreciated at the trial. This Court even in the earlier view expressed in judgment (Annexure P15 *ibid*) had detailed at length the allegations, counter-allegations between the parties and has discussed at length the law on the various issues that was argued and which are akin to the submissions that are sought to be made before this Court wherein this Court had refuted the submissions as to the lack of territorial jurisdiction of this Court in Mohali to try the offence and had even examined the MLR of the complainant and had drawn the observations expressing its doubt over the subsequent additions. Such contentions need not be reproduced. The Hon'ble Supreme Court in '**State of Haryana and others v. Ch.Bhajan Lal and others**' (*ibid*), has detailed at length and enunciated the principles relating to the exercise of inherent powers under Section 482 Cr.P.C. and which are reproduced 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.

Learned counsel for the petitioners could not show to this Court or convince how or by what means case of the petitioners is squarely covered by the ratios cited by him. All these points that have been canvassed, are matters of evidence and cannot be gone into at this stage, lest the parties might be prejudiced. The ratios so relied upon by the petitioners side are factually at much variance for which the petitioners cannot draw any benefit. More so, there is nothing suggestive that the prima facie allegations do not disclose commission of any offence by the accused or that the complainant had managed to misuse the process of the Court and merely because a statement is sought to be made that there is rampant misuse of the provisions, does not convince

the Court much. Furthermore, it needs to be appreciated that such like provisions are especially enshrined to ensure due protection to women and to prevent their exploitation at the hands of the husband and the in-laws and it cannot be accepted that the very case so launched by the estranged wife is misuse of the process and the Court has to strike a balance between the actual truth and the falsehood and which is a highly herculean task that needs to be left to the discretion of the trial Court lest any comments by this Court could have its ill-effects to the dispensation of justice by the trial Court. In the light of what has been detailed and discussed above, this Court is not inclined to show any indulgence. The petition being hopelessly without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

August 28, 2019
rps

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