

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M No.11847 of 2018 (O&M)
Date of Decision.18.03.2020

Surindervir Singh and another ...Petitioners
Vs
State of Punjab and another ...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

Mr. Suresh Kumar Sharma, Advocate
for respondent No.2.

-.-

JAISHREE THAKUR J.

1. This is a petition that has been filed for quashing of FIR No.15 dated 08.02.2016 registered at Police Station Women Cell, Patiala for offence punishable under Sections 406, 498-A IPC as well as impugned order dated 15.02.2018 passed by Judicial Magistrate 1st Class, Patiala whereby cancellation report has been rejected.

2. Brief facts of the case are that the aforementioned FIR was registered on statement of respondent No.2-complainant wherein it was alleged that marriage of the complainant was solemnized with one Deep Sukhman Singh s/o Surindervir Singh on 11.04.2010 in Chandigarh as per Sikh rites and rituals in a Gurdwara. Immediately thereafter they started living at Patiala in a rented house along with father-in-law, mother-in-law and sister-in-law. It was further stated that in the marriage father of the complainant had given 34 tolas gold and ₹1.5 lakhs in cash as *shagan* apart from other dowry articles. However, immediately thereafter in-laws of the complainant started torturing her physically and mentally and asked her to

bring cash from her father. Later on, when the complainant informed her father about the whole matter over phone, her father deposited money in the ICICI bank account of complainant from where her in-laws on 21.05.2010 had withdrawn a sum of ₹3.8 lakhs through cheque. As husband of the complainant was doing a job in U.K., few days after marriage he left for U.K. and the complainant lived with her in-laws for about two months. During this period of two months, sister-in-law of the complainant used to provoke her mother-in-law and father-in-law to ask for dowry. Two days after marriage, parents of complainant had given a diamond ring worth ₹10,000/- for the husband of her sister-in-law beside clothes. Despite giving dowry by parents of complainant to their capacity, her in-laws and their relatives had maltreated her on account of demand of more dowry.

3. In May, 2010, the complainant had gone to U.K. on dependent visa of her husband where also sister-in-law of the complainant and her husband provoked husband of the complainant to force her to do job and earn her expenses. One month thereafter, the complainant got a job with a salary more than her husband and her husband used to deposit whole salary of the complainant in his bank account. Father-in-law and mother-in-law of the complainant had been visiting in UK and had been torturing the complainant mentally and physically. On 18.12.2013, a daughter was born out of the wedlock. In-laws of the complainant were not happy with the birth of a female child and they started torturing her mentally and physically, due to which her health deteriorated and she remained admitted in hospital. They started threatening the complainant that in case she took any action against them they would cause harm to the child.

4. On 17.09.2014 when husband of the complainant gave her

beatings, she ran away from the house and called up U.K. Police on phone. The police came immediately and arrested husband of the complainant and kept him in lock up for 24 hours. He was released from lock-up on the condition that he will not go near the house of the complainant and her child. On the advice of one NGO and with their help, an order was obtained from Court for security of the complainant and her daughter and they also got facility to live in the same house. That order was challenged by husband of the complainant. Since the complainant was on dependent visa of her husband, he informed the U.K. Home Office that he had started living separately from the complainant due to which her visa was cancelled. Since the complainant lost her job on account of cancellation of visa and did not have any sources to sustain in U.K., she told her husband through some friends that she along with her daughter wanted to go back to India. Thereafter on 31.12.2014, complainant reached Ahmedabad. As soon as the complainant reached India, she filed a case against her alleging kidnapping of child and domestic violence. The FIR was got registered under Sections 406, 498-A IPC alleging demand of dowry and harassment etc.

5. During investigation, the accused persons gave applications to SSP Patiala pleading their innocence, which were marked to DSP (Investigation), Patiala for enquiry. He submitted a report dated 26.04.2016 to SSP Patiala stating therein that on enquiry, it had been found that in case any beating had taken place with the complainant or any type of dowry had been demanded from her or money had been withdrawn from her account, all this had happened in U.K. and in this regard, court cases are going on in England. Since no witness or proof had been presented by the complainant against her husband and in-laws, no proceedings are to be carried out by the

local police. Therefore, a cancellation report under Section 173 Cr.PC. was prepared and submitted before the Court.

6. The trial Court vide order dated 15.02.2018 rejected the cancellation report filed by the police and sent the matter back to the concerned quarters for further investigation after making entries in the relevant record.

7. Learned counsel for the petitioner herein would contend that the petitioners have been falsely implicated in the instant case, which is evident from the fact that after detailed investigation conducted by DSP (Investigation), Patiala, he came to the conclusion in his report that no offence is made out against the petitioners and prepared a cancellation report, which was approved by Senior Superintendent of Police, Patiala. He further argued that it is an admitted case that soon after a period of 40 days of marriage, complainant left for U.K. on a dependent visa of her husband and when a dispute arose between husband and wife, the complainant chose to file number of cases in England. The husband of the complainant had filed a petition for divorce, which was granted by the Family Court at Brantford on 29.04.2016. The said divorce order was passed by the Family Court at Brantford after considering the statements and letters given by the complainant-wife. In fact, she had also made written submissions to the Court that she had no intention to attend court proceedings in England.

8. He further argued that it is settled law that when a larger part of offence in a matrimonial dispute is ensued outside, taking recourse to proceedings in India would be a gross abuse of process of law and the investigating agency will have no jurisdiction for initiating proceedings under the Indian Penal Code. In support of his arguments, he relied upon judgment

Fatma Bibi Ahmed Patel Vs. State of Gujarat and another 2008(3) RCR (Criminal) 135 wherein the Hon'ble Supreme Court held that in case of FIR lodged in India for offence committed in Kuwait, Courts in India have no jurisdiction under Section 4 of Indian Penal Code and Section 188 Cr.P.C. would not be applicable. He further relied upon judgment passed by a Coordinate Bench of this Court rendered in **Bahadur Singh and others Vs. State of Punjab and another 2010(3) RCR (Criminal) 252** wherein it has been held that where larger part of offence has taken place in Canada and marriage has already been dissolved at Canada, lodging of FIR in India under Sections 406, 498-A IPC is nothing but an abuse of process of law. On similar lines, relied upon judgment rendered by Supreme Court in **Harmanpreet Singh Ahuwalia and others Vs. State of Punjab and others 2009(2) RCR (Criminal) 956** and therefore, prayed for quashing of FIR No.15 dated 08.02.2016 and impugned order dated 15.02.2018 passed by JMIC, Patiala whereby cancellation report has not been accepted.

9. Per contra, learned counsel appearing for respondent No.2 supported the order passed by the JMIC, Patiala by arguing that the investigating agency completely ignored the fact that there was a specific allegation in the FIR that during the stay of complainant at Patiala, she was harassed by her in-laws for bringing less dowry then her father deposited money in her ICICI bank account and the accused persons i.e. her in-laws, had withdrawn a sum of Rs.3,80,000/- on 21.05.2010 by way of cheque. It is also submitted that before leaving for U.K., she stayed with her in-laws at Patiala where she was harassed and beaten up for bringing more dowry. It is in this background, the trial Court rejected the cancellation report and ordered for further investigation in the matter.

10. I have heard learned counsel for the parties and have perused the paper book and the case laws cited.

11. Admittedly, the marriage did take place between the son of petitioners and the complainant namely Rajpreet Kaur on 11.04.2010 in Chandigarh. The allegations as set out in the FIR are that father of the complainant had given 34 tolas of gold, apart from giving clothes, blankets to all the relatives of in-laws and ₹1.5 lakhs in cash, however, the in-laws had physically and mentally abused her and she was subjected to beatings for not bringing enough cash in her dowry. On this account, her father deposited money in her ICICI bank account, which was withdrawn on 21.05.2010 by her in-laws through cheque. It is averred that she lived in her in-laws house with her mother-in-law and father-in-law for a period of 1-2 months, during which time her sister-in-law, who was living with her would provoke her in-laws to harass her. The complainant left for U.K. in May, 2010 to join her husband and they lived together as husband and wife. The sister of her husband namely Ujwaldeep Kaur and her husband would also provoke her husband to force her to earn, which earnings her husband would get deposited in his own bank account. It was alleged that she had been subjected to torture in England by all, meaning thereby by her husband and mother-in-law and father-in-law as well, whenever they used to visit their house in U.K. They were also unhappy on birth of daughter due to which her health deteriorated and she was admitted in hospital. The complainant further alleged that she was deprived of the company of her daughter, apart from allegations of being subjected to physical abuse at the hands of husband. Resultantly, she called up the police and husband was arrested and kept in custody for 24 hours. As she was on a dependent visa, he informed the U.K. Home Office that he was

living separately from his wife, due to which her visa got cancelled and she lost her job. As she did not have expenses to look after herself and that of her child, she had no option but to take her minor child and come back to Ahmedabad on 13.11.2014. It is thereafter the FIR registered.

12. A perusal of the FIR would reveal that there are general allegations regarding ill-treatment being meted out to her at the hands of the petitioners, who are none other than the father-in-law and mother-in-law, parents of the husband. No specific details have been given other than a statement that they used to beat her and were asking to call for cash from her father. It is to be noted that the complainant left for England on a spouse visa within a period of 1-2 months of her marriage and it is during the time she spent in England that there are allegations of her having been subjected to physical and mental abuse at the hands of her husband and at the hands of her in-laws when they were visiting them in England. So much so, the police was called on account of brutality meted out to her but said incidents pertain to events that took place in England. It is only on her return to India that an FIR bearing No.15 dated 08.02.2016 came to be registered under Sections 406, 498A IPC at Women Police Station, District Patiala. The allegations as set out in FIR did not reflect that the complainant had lodged any complaint with the police before leaving for U.K. on a spouse visa and therefore, this Court would come to the conclusion that the incidents complained of would not pertain to territorial jurisdiction of the Court at Patiala. A similar case came up for hearing before the Hon'ble Supreme Court in **Harmanpreet Singh Ahluwalia** (supra) wherein the parties were residing in Canada and FIR was registered at Jalandhar alleging demand of dowry and misappropriation of dowry articles, apart from being subjected to mental and physical cruelty.

The proceedings were quashed holding that the Court at Jalandhar would have no jurisdiction to entertain the matter. Similarly, in the instant case, all allegations of cruelty at the hands of husband and the in-laws, in fact, have taken place abroad. Therefore, judgment as relied upon by learned counsel for the petitioners in Harmanpreet Singh Ahluwalia (supra) is fully applicable to the facts of the instant case.

13. Even otherwise, the argument as raised by counsel for the respondent No.2 that parents-in-law had misappropriated a sum of ₹3.8 lakhs from her ICICI bank account by withdrawing money through a cheque on 21.05.2010 would not be enough for allowing the FIR to continue against the petitioners. The complainant at the relevant time did not file a complaint against the petitioners for withdrawal of the said amount from her ICICI bank account, leading one to the conclusion that she had issued a cheque in their favour. There is no averment that the said amount was thereafter misappropriated for their own personal use. Even otherwise, the amount so withdrawn pertains to the year 2010 and the instant FIR has been registered as late as 08.02.2016.

14. Therefore, the order passed by the trial Court for further investigation of the matter once a cancellation report has been filed is unwarranted in the facts and circumstances of the present case. Consequently, order dated 15.02.2018 passed by the trial Court is set aside and the FIR No.15 dated 08.02.2016 (Annexure P-1) being an abuse of the process of law is hereby quashed. The instant petition is allowed.

(JAISHREE THAKUR)
JUDGE

March 18, 2020

Pankaj*

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No