

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

Crl. Misc. M 19064 of 2018 (O&M)
Date of decision: 11.2.2020

Ashish Jain

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Keshav Pratap Singh, Advocate,
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

None for respondent No.2.

JAISHREE THAKUR, J. (Oral)

1. The petitioner herein, seeks quashing of FIR No. 236 dated 27.3.2015 registered under Sections 323, 498-A, 406, 506, 34 IPC, Police Station Model Town, Panipat District Panipat, Haryana (Annexure P-1) and all the consequent proceedings arising out of the same.

2. In brief, the facts are that the marriage of the petitioner was solemnized with Vashudha Jain, daughter of the complainant on 27.6.2012 at Delhi. Thereafter, the couple left India for USA after 10 days of marriage on 7.7.2012. While living in USA, matrimonial disputes arose between the petitioner and Vasudha Jain and on one of the occasions, i.e. on 8.11.2014 the matter was reported to the local police. Both the parties were counselled vide Annexure P/2 and since then they are living separately. Thereafter on

12.1.2015, the daughter of the complainant filed a divorce petition before the Superior Court of Washington, County of King. Notice of divorce proceedings were received by the petitioner on 21.1.2015 and ultimately on 30.12.2015, the divorce was granted to the petitioner and Vasudha Jain. It is submitted that after filing of the divorce petition, the father of the complainant got lodged the present FIR against the petitioner and his parents, which is nothing but sheer misuse of process of law. The allegations as levelled are totally false and frivolous. It is pleaded that Panipat police had no jurisdiction to register the complaint as the marriage was solemnized at Delhi and the couple left for the U.S.A. soon after their marriage.

3. None has put in appearance on behalf of respondent No.2—complainant.

4. Reply has been filed by the State, wherein it has been stated that the Panipat police was well within its right to register the FIR as the complainant is the permanent resident of Panipat. It is also stated that FIR cannot be quashed until the petitioner joins the investigation, because his innocence will be proved before the court after the trial. Since the petitioner is trying to avoid the legal procedure, therefore, is not entitled to any relief.

4A. Learned counsel for the petitioner submits that the couple remained in India for 10 days before going abroad on 7.7.2012. It was urged that the wife filed a divorce petition in January 2015 and the father of the wife lodged the FIR on 27.3.2015. It was urged that the complainant's daughter had come to India in April 2016 and she did not make any statement and divorce had been granted in December 2015. It was urged that

a separation agreement was drawn up and 25,000 dollars was the settlement amount. It was urged that the girl was a software engineer and was working in U.S.A. and there was no complaint before the couple left India in July 2012 and all the allegations made by the complainant pertain to the incidents of alleged cruelty in U.S.A. It was urged that there was no complaint that any dowry had been demanded before marriage or at the time of marriage and the FIR came into existence only after the complainant's daughter had filed for divorce. It was urged that the FIR is an abuse of the process of law and the police could not register any FIR and cognizance could not have been taken as the alleged incident took place in U.S.A. and divorce decree had been passed by U.S. Courts and therefore, the proceedings are liable to be quashed. It is urged that the petitioner has approached the Court before the charge was framed and framing of charge will not take away the jurisdiction as they have challenged the consequential proceedings that may have arisen thereafter. Reliance was placed upon *Manish Ratan and others versus State of M.P. and another* 2007(1) SCC 262, *T. Venkateshwarlu and others versus State of A.P. and others* 1999 CriLJ 39, *Priya Vrat Singh and others versus Shyam Ji Sahai* 2008(8) SCC 232, *Mangat Ram versus The State of Haryana and another* 1988(2) RCR (Criminal) 349, *Swapnil and others versus State of Madhya Pradesh* 2014(13) SCC 567, *Gurdial Singh versus State of Punjab and another* 2015(45) R.C.R. (Criminal) 982, *Harmanpreet Singh Ahluwalia versus State of Punjab and others* 2009(7) SCC 712 and the judgments passed by this Court in *CRM-M-26882-2014* titled *Pankaj Sharma and another versus State of Punjab and another* decided on 20.9.2016 and *CRM-M-35337-2015* titled

Shalu and another versus State of Haryana and another decided on 14.2.2018.

5. On the other hand, the submission made on behalf of the State is that the cruelty is a continuing offence and it had started immediately after marriage when the couple was here and the extraordinary remedy cannot be invoked by the petitioner.

6. I have heard learned counsel for the parties and with their assistance have perused the pleadings as well as the documents annexed with the petition.

7. Few facts which are not disputed are that the parties were married in Delhi in June 2012. The couple left for U.S. within 10 days of their marriage. It has not been shown that the wife who had returned to India in 2016 even got an FIR registered. It is the father who got the FIR lodged and referred to the acts of cruelty committed by the son-in-law in U.S. He had also made allegations that there was demand of dowry before and at the time of marriage which is difficult to accept as the complaint was given after the daughter had approached the U.S. Courts seeking divorce and no such complaint was given there. The couple had stayed together for almost three years and it has not been shown that in the initial years there was any dispute or complaint.

8. Though, the divorce proceedings were initiated by the wife but ultimately those were not contested and a divorce decree was passed in December 2015. A separate settlement agreement was drawn up and 25,000 dollars was paid by the husband. A query was made to the State counsel with respect to any statement given by the girl. It was stated that there was

no statement and their file did not have her statement though it was stated that the girl had been cited as a witness.

9. Learned counsel for the State is unable to show any averment that the petitioner had committed any maltreatment or had made any demand of dowry in India during those ten days. It appears that the FIR was lodged by the father of the girl to harass the petitioner as well as his parents as the marriage was not going well. The wife did not come back to lodge the FIR. It is her father who got the FIR registered at a time when the parties were admittedly staying abroad. The daughter of the complainant had persuaded her father to file the litigation and is pursuing a proxy litigation.

10. On perusal of all the above said factual background, it is found that the story put-forth in the impugned FIR is based on concoctions and these baseless allegations amount to a blatant misuse of process of law. The complainant had concocted a story that there was a demand of dowry before marriage and at the time of the marriage, however, there is no complaint made then or soon after the couple had left. Had the maltreatment or harassment taken place in U.S., the daughter would have made a complaint to the authorities in U.S. The allegations of cruelty, harassment and torture, if any, took place in United States and cognizance of it could not have been taken by the police in India. The parties had invoked the jurisdiction of U.S. Court for their matrimonial dispute and all disputes stand settled. Chapter XIII of the Code of Criminal Procedure deals with the jurisdiction of the criminal courts in inquiries and trials. Section 177 Cr.P.C. states that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. Section 178 of Cr.P.C. reads as under:-

“178. Place of inquiry or trial. (a) *When it is uncertain in which of several local areas an offence was committed, or*
 (b) *where an offence is committed, partly in one local area and partly in another, or*
 (c) *where an offence, is a continuing one, and continues to be committed in more local areas than one, or*
 (d) *where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.”*

11. For the purpose of constituting offence, the territorial jurisdiction has to be looked at. In the instant case, all the offences itself complained of arose in U.S.A. and hence the FIR at Panipat would not be sustainable qua the petitioner.

12. In a case reported as **2003 (2) RCR (Crl.) 888 B.S. Joshi Versus State of Haryana**, it was observed that the object of introducing Section 498-A in the Indian Penal Code was to prevent the torture of a woman at the hands of her husband or relatives. The Hon’ble Apex Court went on to hold that if the FIR, as it stands, does not disclose specific allegations against the accused, more so against the co-accused, specially in a matter arising out of the matrimonial bickering, it would be a clear abuse of process of law and judicial process to mechanically send the named accused in the FIR to undergo trial. It was further held that it is well settled principles laid down that in case an FIR does not disclose the commission of offence, the Court would be justified in quashing the proceedings.

13. In **Madhu Limaye v. The State of Maharashtra [1977] 4 SCC 551** a three-Judge Bench of Hon’ble the Apex Court held as under:

“... In case the impugned order clearly brings out a situation

which is an abuse of the process of the Court, or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. Such cases would necessarily be few and far between. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. The present case would undoubtedly fall for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, that the invoking of the revisional power of the High Court is impermissible.”

14. In **Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors.** 1988 (1) R.C.R. 565 the Hon'ble Apex Court observed in para No. 7 as under:

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court, chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

15. In **State of Haryana and Ors. v. Bhajan Lal and Ors.** 1991 (1) R.C.R.383 Hon'ble the Apex Court, in the backdrop of interpretation of

various relevant provisions of the Code of Criminal Procedure under Chapter XIV and of the principles of law enunciated by the Supreme Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.P.C., gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice.

(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 made in the first information report and other materials, if any, accompanying the FIR 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”

16. Resultantly, this petition is allowed and the FIR No. 236 dated 27.3.2015 registered under Sections 323, 498-A, 406, 506, 34 IPC, Police Station Model Town, Panipat District Panipat, Haryana (Annexure P-1 and all subsequent proceedings arising are quashed qua the petitioner.

11.2.2020
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No