

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M -12526-2020 (O&M)
Date of Decision: 11.12.2020

Dr. Mandeep Dhillon alias Mandeep KaurPetitioner

Versus

State of Punjab and anotherRespondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. K.S.Dadwal, Advocate for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

Mr. Harinder Sharma, Advocate
for respondent No. 2.

HARNARESH SINGH GILL, J.

Case is taken up for hearing through video conferencing.

This is a petition under Section 482 Cr.P.C. for quashing of FIR No. 265 dated 15.10.2013 registered under Sections 406, 498-A IPC and Section 201 IPC (added later on), Police Station Phase-1, District S.A.S. Nagar (Mohali) (Annexure P.1) and all the consequential proceedings arising therefrom including the order dated 09.02.2015 (Annexure P-3), declaring the petitioner as a proclaimed offender.

The petitioner is an unmarried sister of Kanwarjit Singh, whose marriage was solemnized with respondent No. 2 on 13.4.2013. The above noted FIR was registered by respondent No.2-Sukhdeep Kaur (complainant) against Kanwarjit Singh (husband), Smt. Balwinder Kaur (mother-in-law) and the

petitioner (sister-in-law – Nanad). The allegations against the petitioner in the said FIR are that she used to taunt the complainant-respondent No. 2 for not bringing a big car, whereas one gold set and gold ring were given to the petitioner at the time of marriage.

Said co-accused Balwinder Kaur and Kanwarjit Singh were tried for the aforesaid offences and ultimately, vide judgment dated 27.11.2017 (Annexure P.6), the Chief Judicial Magistrate, SAS Nagar, acquitted them of the charges framed against them. It is the further averment of the petitioner that at one stage during investigation, finding no evidence against her, the police had exonerated the petitioner.

The petitioner went to USA on 24.07.2013 i.e. prior to the registration of the FIR on 15.10.2013 and she was declared a proclaimed person vide order dated 24.2.2014, without giving any notice. It is further averred that the petitioner challenged the said order by filing CRM-M-10894-2014 and vide order dated 9.4.2014 (Annexure P-2) passed by the Co-ordinate Bench of this Court, operation of the order declaring the petitioner a proclaimed person, was stayed. Thereafter, the petitioner had surrendered before the trial Court. The petitioner again went to U.S.A. due to her ill health and she had been declared a proclaimed offender vide the impugned order dated 09.02.2015 (Annexure P-3).

While adverting to the aforesaid factual position, learned counsel for the petitioner has vehemently contended that the case of the petitioner is on a better footing than the other two co-accused, who have since been acquitted of the

charges framed against them, by the trial Court. It is further submitted that the evidence being the same, no purpose would be served by continuing with the criminal proceedings as against the petitioner. In this regard, he has placed reliance upon a Division Bench judgment of this Court in Sudo Mandal @ Diwarak Mandal Vs State of Punjab, 2011(4) RCR (Criminal) 453 and a Single Bench judgment of this Court in Rajesh Kumar @ Billa Vs. State of Punjab, 2019(3) RCR (Criminal) 351.

It is further submitted that in the matrimonial cases, there is a tendency of roping in all the relations of the husband by leveling omnibus allegations against them and thus, there being no substance in the allegations contained in the FIR against the petitioner, the criminal proceedings are liable to be quashed by this Court. Reliance is placed upon the judgment of the Hon'ble Apex Court in Ramesh and others Vs. State of Tamil Nadu, 2005(2) RCR (Criminal) 67 and a Single Bench judgment of this Court in Gunmala Vs. State of Haryana and another, 2016(2) Law Herald 1718.

It is further submitted that the petitioner being the unmarried sister of the husband of the complainant, cannot be said to have usurped or misappropriated the Istri-dhan of the complainant and thus, prosecution of the petitioner is an abuse of process of law. Reliance in this regard is placed upon a Single Bench judgment of this Court in Kulwinder and others Vs. Asha Rani, 2002 (2) RCR (Criminal) 358.

Still further, it is argued that the customary gifts given by the complainant's side to the relatives of the boy at the time of marriage cannot be termed to be dowry articles. In

support of his arguments, he has relied upon a Single Bench judgment of this Court in Harmel Singh and another Vs. State of U.T., Chandigarh, 2007(1) RCR (Criminal) 789.

Learned counsel for the petitioner has further contended that the petitioner went to USA for the research work and she has been suffering from chronic disease i.e. Systemic Lupus Erythematosus and her brother expired on 11.04.2020 and now she has been looking after herself as well as her old aged mother.

On the other hand, learned State counsel has argued that the entire case of the petitioner is based on the judgment of Sudo Mandal's (supra). However, the judgment in the said case based on the re-appreciation of evidence in appeal, is distinguishable. He has further argued that the petitioner has not come to the Court with clean hands inasmuch as the petitioner has been in the habit of jumping the bail and she has been declared proclaimed offender twice. Thus, keeping in view the act and conduct of the petitioner, she is not entitled to any equitable relief from this Court.

Learned counsel appearing for complainant-respondent No.2 has argued that the complainant is a practicing Advocate and at the time of her marriage, one gold ring and gold set were given to the petitioner. It is further argued that the allegations against the petitioner are that she along with other co-accused, with the common intentions, gave beatings to the complainant-respondent No. 2 on 08.6.2013 and 01.7.2013 and the petitioner pulled her hair on 12.7.2013 and she was also threatened by the petitioner to leave the house. It is further

argued that initially a complaint was given to the police on 10.7.2013 by the father of the complainant regarding the harassment caused to the complainant by the petitioner and other co-accused, whereupon on 13.7.2013 all of the accused persons were called by Superintendent of Police, Headquarters, Mohali. Thereafter the complainant was thrown out of her matrimonial home and she made a complaint on 17.7.2013 to the Senior Superintendent of Police, Mohali. It is further argued that on the basis of inquiry, the FIR in question was registered against the petitioner and other co-accused, but the petitioner did not appear before the Women Cell or the Investigating Officer and in order to evade the said process and avoid any action against her, she had fled to USA. The proceedings under Section 82 Cr.P.C. were initiated against the petitioner and she was declared a proclaimed person on 24.02.2014. Learned counsel has further argued that the petitioner came back to India and filed a petition bearing No. CRM-M-10894-2014, wherein as noticed above, operation of the order declaring the her proclaimed person was stayed. However, the conduct of the petitioner was exposed when she having not complied with the order, jumped bail and she was again declared proclaimed offender on 09.2.2015.

Learned counsel for complainant-respondent No.2 has further argued that an appeal against the judgment of acquittal dated 27.11.2017 passed by the trial Court, has been filed before the Sessions Court, which is pending. He has further argued that in the proceedings under Section 125 Cr.P.C., an amount of Rs.10,000/- per month w.e.f. February,

2014, stands awarded to the complainant, but till date, not a single penny has been paid, except an amount of Rs.50,000/-. It is further submitted that even the property of her deceased husband has also been attached, but the complainant has not been allowed to execute the sale of the said property for recovery of the maintenance amount.

I have heard learned counsel for the parties and with their able assistance have also gone through the case file.

Indisputably, the petitioner is an unmarried sister-in-law (Nanad) of complainant-respondent No.2. It could not be disputed that the allegations against the petitioner in the aforesaid FIR were regarding having caused beatings and pulling of the hair of the complainant. Similar were the allegations against the brother and mother of the petitioner (i.e. complainant's husband and mother-in-law, respectively). As noticed above, they have since been acquitted by the trial Court vide judgment dated 27.11.2017. Still further, brother of the petitioner (complainant's husband) passed away on 11.4.2020.

In Kulwinder's case (supra), the Single Judge of this Court, while quashing the FIR against the unmarried sisters, held as under:-

“4. There is, however, a tendency to involve all the relatives of the husband when relations between the husband and the wife become strained. The object of Section 482 of the Code of Criminal Procedure is to ensure that process of the Court is not abused. Admittedly, all the three petitioners were unmarried sisters of the husband. There

can, therefore, be no question of misappropriation of stridhan of the complainant by them. Unless there is some material to show this, it is against the interest of justice to make the unmarried sisters of the husband to face allegations of misappropriation of stridhan or harassment for dowry on vague allegations. The investigating agency has exonerated them. Though there can be no inflexible rule, it has been repeatedly held that it is not safe to permit prosecution of all the relatives of the husband.

5. In the statement of the complainant, which was treated as F.I.R., it is alleged that at the time of engagement, parents of the complainant gave certain dowry items and on the marriage day also, certain dowry items were given out of which, it is alleged, that a Cooler was given to Vidya, a Sewing Machine was given to Seema and a Mixi was given to Kulwinder. When all the dowry articles taking it as stridhan were handed over to husband or his father, there is no occasion of a Cooler or Mixi or Sewing Machine being given separately to the three unmarried sisters as a trust property to be restored to the bride of which misappropriation may have taken place at their instance. These allegations have been made merely to implicate the unmarried sisters of the husband with a view to harass them on account of their relationship with the husband.”

In Harmel Singh's case (supra), it was held that the customary gifts given by the girl's side to the relatives of the boy without demand, cannot form part of Istri-dhan. It was held as under:-

“11. Even if it is taken that for all intents and purposes, the reinvestigation was nothing but further investigation, it did not reveal any direct evidence of complicity of the petitioners. In the FIR, there was no specific allegation levelled against the petitioners. It was alleged that all the accused had been harassing and maltreating the complainant. It was stated specifically that a pendent set each was given to Ranjit Kaur and Sonia Padda, while a gold ring each to Harmel Singh and Kulwinder Singh Padda, their respective husbands. These items given to the petitioners could not form part of her *istri dhan*. These items, by their very nature were customary gifts given by the girl's side to the relatives of the boy. There is no specific allegation whatsoever that any of the petitioners specifically demanded any dowry or maltreated/harassed the complainant. The allegations qua the petitioners are vague in nature and would not attract Section 406 Indian Penal Code. It appears that the prosecution tried to spread net too wide so as to rope in the petitioners. It may not be out of place to mention here that the complainant/respondent No. 2 along with her husband Sandeep Singh Dhillon resided at Goraya after marriage, whereas petitioner Ranjit Kaur and her husband Harmel Singh (in CrI. Misc

No. 44196-M of 2006) resided at village Muzaffarpur, near Nakodar, District Jalandhar, while petitioners Sonia Padda and her husband Kulwinder Singh Padda (in CrI. Misc. No. 48942-M of 2006) resided at Mumbai.”

In Kans Raj v. State of Punjab and others, 2002(2) RCR(CrI.) 695 (SC), the Hon'ble Apex Court observed that a tendency has developed for roping in all the relations in dowry cases and if it is not discouraged, it is likely to affect case of the prosecution even against the real culprits. The efforts for involving the other relations ultimately weaken the case of the prosecution even against the real accused.

Still further, the Division Bench, in the case of Sudo Mandal (supra), held that when on the same set of evidence, the accused tried earned acquittal, the same benefit deserves to be given to the absconding accused. It was held as under:-

“24. The above provisions recognize the inherent powers of the Court to do real and substantial justice, preventing the abuse of the process of the Court. The statutory recognition of the inherent jurisdiction of the criminal Court indicates that there is a power for the criminal Courts to make such an order as may be necessary to meet the ends of justice. We are conscious of the fact that the powers under Section 482 of the Code of Criminal Procedure are to be exercised very sparingly and in

exceptional cases where abuse of the process of the Court would result in serious miscarriage of justice. The inherent powers of the Court should not be exercised to stifle legitimate prosecution. But at any rate the settled position is that this Court has the jurisdiction to quash the entire criminal proceedings to prevent the abuse of the process of the Court in order to secure the ends of justice. In our considered view the same inherent powers can be exercised when this Court finds that the innocent accused, who had absconded would simply face the empty formality of trial with the very same unbelievable and untrustworthy evidence, which would ultimately lead to their acquittal. Bringing the absconding accused to face the trial in this case in the above facts and circumstances would amount to abuse of the process of the Court. To secure the ends of justice, we hereby quash the entire proceedings as against the absconding accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal pending before Judicial Magistrate Ist Class, Bathinda/Sessions Judge, Bathinda, as no useful purpose will be served even if they are procured and ordered to face the trial in this case.”

In the above backdrop, continuation of the criminal

proceedings against the petitioner is nothing but a futile exercise and an empty formality. Hence, the FIR and all other consequential proceedings arising therefrom, are liable to be quashed. However, complainant-respondent No.2 deserves to be compensated for defending the proceedings before this Court, by imposing suitable costs upon the petitioner.

Learned counsel for complainant-respondent No.2 has laid much emphasis on the documents annexed by the petitioner with CRM-26702-2020 for permitting her to go abroad, alleging that there is an overwriting in the said documents. However, as the question examined by this Court is purely legal in nature and when this Court is inclined to quash the very FIR and all the consequential proceedings arising therefrom, there is no need to go into that aspect of the matter.

Accordingly, the present petition is allowed. The FIR along with all consequential proceedings, including the order dated 09.2.2015 (Annexure P-3), are hereby quashed, subject to costs of Rs.1.00 lakh (Rupees One Lakh) payable by the petitioner to complainant-respondent No.2, within a period of 15 days from the receipt of a certified copy of this order. It is made clear that in the event of failure to pay the costs, the present petition shall stand dismissed automatically.

(HARNARESH SINGH GILL)
JUDGE

11.12.2020
Gurpreet/ds

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