

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

(1) Crl. Misc. M- 27391 of 2016 (O&M)
Date of Decision: 21.1.2020

Gurpreet Kaur and others

...Petitioners

Versus

State of Punjab and another

...Respondents

(2) Crl. Misc. M- 5087 of 2016 (O&M)

Sarabjeet Singh and others

...Petitioners

Versus

State of Punjab and another

...Respondents

(3) Crl. Misc. M- 45967 of 2016 (O&M)

Harinder Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Naveen Batra, Advocate,
for the petitioner in Crl. Misc. M 27391 of 2016.

Mr. Rajehwar Singh Thakur, Advocate
for the petitioners in Crl. Misc. M 45967 and 5087 of 2016.

Mr. Davinder Bir Singh, DAG, Punjab.

Ms. Amarjit Kaur, Advocate,
for respondent No. 2—complainant.

JAISHREE THAKUR, J.

1. By this common judgment, this Court proposes to decide the
aforesaid cases, as they arise out of the same set of facts and involves

similar question of law. In fact, these petitions arise out of matrimonial discord between Pargat Singh Saini and Sukhwinder Kaur, who were married on 2.3.2002 as per Sikh rites and ceremonies at Village Nikkuwal, Tehsil Anandpur Sahib, District Ropar.

2. Crl. Misc. M 27391 of 2016 has been filed by Gurpreet Kaur, Inderpal Singh, and Jaswinder Kaur, who are daughter, son and wife of maternal uncle of Pargat Singh Saini, namely Joga Singh. Crl. Misc. M 5087 of 2016 has been filed by Pargat Singh Saini himself, his mother Mohinder Kaur, his brother-in-law Sarabjit Singh and his sister Parwinder Kaur, whereas Crl. Misc. M 45967 of 2016 has been filed by Harinder Singh, who is not at all related to Pargat Singh Saini in any way.

3. In brief, the facts are that marriage of Pargat Singh Saini—petitioner No.3 (in Crl. Misc. M 5087 of 2016) was solemnized with the complainant—respondent No.2 on 2.3.2002 as per Sikh rites and ceremonies at Ropar and out of this wedlock one minor daughter, namely Simranjeet Kaur was born. The relationship between Pargat Singh Saini and Sukhwinder Kaur was not cordial and consequently several litigations ensued between the parties. One of the litigation being a complaint under Section 107/151 of the Code of Criminal Procedure (for short '**the Code**') filed against Pargat Singh Saini and his father, namely Avtar Singh who subsequently died. The matter was compromised between Pargat Singh Saini and the complainant and as per the terms of the compromise, they were to reside separately at village Burail, Union Territory, Chandigarh. Despite the fact that Pargat Singh Saini and the complainant started to reside separately, the matter did not end there and an FIR No. 97 dated 16.4.2004

under Sections 498-A IPC came to be registered at Police Station Sector 34, Chandigarh. Initially a complaint was given against Pargat Singh Saini, his father Avtar Singh and mother, but on investigation an FIR came to be registered against Pargat Singh Saini only, in which he was granted bail. During the pendency of FIR No. 97, another FIR No. 92 dated 17.9.2004 was registered by respondent No. 2 at Anandpur Sahib under Sections 406, 498-A read with Section 120-B IPC against eight persons, namely, Pargat Singh Saini (husband), Mohinder Kaur (mother-in-law), Avtar Singh (father-in-law), Parwinder Kaur (sister-in-law) and other four persons, namely, Gurbachan Singh, Kashmir Kaur, Simardeep Kaur and Harinder Singh, who all were granted anticipatory bail. Ultimately, during the pendency of a petition under Section 125 of the Code before the Court at Anandpur Sahib, a compromise arrived at between the parties on 20.12.2008 (Annexure P/6) and on the basis of that a Criminal Misc. Petition No. 34539 of 2008 was filed by Pargat Singh (husband), Parwinder Kaur (sister-in-law) and Mohinder Kaur (mother-in-law) before this Court for quashing of the FIR, which was allowed by this Court on 16.3.2009 (Annexure P/7). Similarly, other persons named in the FIR, namely, Gurbachan Singh, Kashmir Kaur, Simardeep and Harinder Singh also filed Criminal Misc. No. 24479 of 2005 for quashing of the FIR registered against them, which was allowed by this Court on 3.8.2009 (Annexure P/8). Despite the FIR having been quashed, the complainant launched various litigations under Section 125 of the Code, Protection of Women from Domestic Violence Act, 2005 etc. So much so, she moved complaints before the Senior Superintendent of Police, Union Territory, Chandigarh as well as Superintendent of Police

Anandpur Sahib for registration of a case under Section 406/498-A IPC. The police after investigation found that FIR No. 97 dated 16.4.2004 under Section 498-A IPC is already pending at Chandigarh and therefore, no action is called for. It is submitted that in those complaints, the complainant had levelled allegations against husband and mother-in-law only and not against any other person and when she failed to get the FIR registered, she filed a complaint under Section 156 (3) of the Code, in which the petitioners have been summoned to face trial by the Sub Divisional Judicial Magistrate, Anandpur Sahib, vide impugned order dated 30.5.2011, which has been challenged in the instant petitions.

4. Learned counsel appearing on behalf of the petitioners herein contends that Pargat Singh Saini is already facing trial under Section 498-A IPC in FIR No. 97 dated 16.4.2004 and therefore, he ought not have been summoned to face trial again for the same offence. It is further submitted that the Sub Divisional Judicial Magistrate, while summoning the petitioners, has failed to take into consideration that earlier FIR No. 92 dated 17.9.2004 registered at Police Station Anandpur Sahib under Section 406, 498-A and 120-B IPC had already been quashed by this Court qua all the persons, who have been summoned to face trial on the same set of allegations. It is further argued that all the gold articles were recovered by the police in the earlier proceedings that had been initiated under the FIR and any allegations that the petitioners have retained them are not sustainable. Apart from the contentions as raised above, learned counsel appearing in **Criminal Misc. M 27391 of 2016 titled Gurpreet Kaur and others versus State of Punjab and another**, submits that the petitioners are

distant relatives of Pargat Singh Saini who had a dispute with his wife Sukhwinder Kaur. The dispute between the complainant and her husband was resolved in the year 2008 by way of a compromise, wherein it had been decided that they would stay together but again on account of a dispute that arose, an FIR No. 97 dated 16.4.2004 was lodged against the husband only and subsequently FIR No. 92 dated 17.9.2004 was registered, which was quashed on the basis of a compromise, but now on the same set of allegations, the petitioners, who are only distantly connected with Pargat Singh Saini, have been summoned to face trial, while further arguing that they were not in joint residence and were residing separately. It is further submitted that petitioners, who are brother-in-law, sister, maternal uncle and wife and children of maternal uncle of Pargat Singh Saini have no role to play in harassing and humiliating the complainant—respondent No.2 and they have been unnecessarily dragged in these proceedings.

5. Per contra, learned counsel appearing on behalf of the respondent No.2 submits that only after due examination of evidence that was led that the petitioners herein have been summoned in the complaint filed by the complainant—respondent No.2 and no interference is warranted in the instant petitions.

6. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case.

7. The factum of the marriage is admitted and so is the fact that the matrimonial life of Pargat Singh Saini and his wife Sukhwinder Kaur was not smooth. This is evident from the fact that various litigations ensued between the parties, one being complaint under Section 107/151 of the

Code, which was registered against Pargat Singh Saini and his late father, which was later compromised. Based on the compromise, Pargat Singh Saini and his wife started living separately from other members of the family. However, first FIR No. 97 dated 16.4.2004 under Section 498-A IPC was registered at Police Station 34, Chandigarh, only against Pargat Singh Saini and thereafter FIR No. 92 dated 17.9.2004 was registered at Police Station Anandpur Sahib against eight persons, which was quashed by this Court on the basis of a compromise arrived at between the parties. A reading of the complaint filed would reflect that all the allegations raised therein are primarily against Pargat Singh Saini, husband of the complainant and his mother. The allegations of torture levelled against the petitioners, except husband and mother-in-law of the complainant, are extremely vague. In so far as, allegations of demand of dowry are concerned, there are no specific details given as to the time when the dowry was demanded or when the complainant was harassed at the hands of the petitioners No. 1 and 2 in Criminal Misc. M 5087 of 2016 and the other petitioners in Crl. Misc. M 27391 and 45967 of 2016. As already noticed, the petitioners—Gurpreet Kaur, Inderpal Singh, and Jaswinder Kaur (in Crl. Misc. M 27391 of 2016) are daughter, son and wife of maternal uncle of Pargat Singh Saini, namely Joga Singh, petitioners—Sarabjit Singh, Parwinder Kaur (in Crl. Misc. M 5087 of 2016) are brother-in-law (Jija) and sister of Pargat Singh Saini, whereas petitioner—Harinder Singh (in Crl. Misc. M 45967 of 2016) is a person who is not at all related to Pargat Singh Saini in any way. Therefore, they cannot be said to have harassed the complainant.

8. It is also worthwhile to note that on similar allegations of

demand of dowry, FIR No. 92 dated 17.9.2004 stands quashed by this Court on the basis of the compromise having been arrived at between the parties, whereas Pargat Singh Saini himself is still facing trial under Section 498-A IPC in FIR No. 97 dated 16.4.2004. Moreover, once a compromise had been arrived at between the parties, and Pargat Singh Saini and Sukhwinder Kaur—complainant had started residing separately in village Burail, Union Territory, Chandigarh, rest of the petitioners (other than the mother) could not have been said to be joint in residence and as such there was no occasion for them to commit any offence as alleged by the complainant. All the allegations are general in nature and no date and time with regard to demand of dowry articles has been mentioned. Even it has not been mentioned as to what and when the demand was made by the present petitioners. It has been noticed by the Hon'ble Apex Court in several cases that there has now been an increasing tendency of roping in every member of the family by registering a case which arises out of the matrimonial dispute and this practice has been deprecated time and again. In a case reported as **2003 (2) RCR (Crl.) 888 B.S. Joshi and others Versus State of Haryana and another**, 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 a well settled principle that in case

an FIR does not disclose the commission of offence, the Court would be justified in quashing the proceedings. In **Madhu Limaye v. 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.”

9. In **Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre 1988 (1) R.C.R. (Crl.) 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.”

10. In **State of Haryana and Ors. v. Ch. Bhajan Lal and Ors.**

1991 (1) R.C.R. (Crl.) 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.

11. There are a catena of judgments, one such case being **Preeti Gupta and another Vs. State of Jharkhand and another 2010 (4) RCR (Crl.) 45** where it has been held by the Hon'ble Apex Court that there is unfortunate tendency to rope in all family members in the matrimonial dispute. Even in the instant case herein, a bare reading of the FIR, as such, does not disclose commission of offence under Sections 498-A/406 IPC, as there are no specific allegations of either demand or entrustment of dowry qua the petitioners. Therefore, in the facts and circumstances of the case, this Court is of the considered opinion that continuing of proceedings against the petitioners in FIR would tantamount to an abuse of process of court and therefore, it is a fit case warranting interference under Section 482 of the Code of Criminal Procedure.

12. Resultantly, both Criminal Misc. M 27391 and 45967 of 2016 are allowed and the complaint as well as the summoning orders issued against the petitioners to face trial is set aside. In so far as Crl. Misc. M 5087 of 2016 is concerned, the same is partly allowed. The complaint as well as the summoning order qua Sarabjit Singh and Parwinder Kaur, petitioners No. 1 and 2 respectively is set aside, however, Pargat Singh Saini and his mother Mohinder Kaur, petitioners No. 3 and 4 to face the trial.

21.1.2020
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No