

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

CRM-M-30816 of 2020

Date of Decision: 12th October 2020

Lakhbir Kaur and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Bikramjit Aroua, Advocate for the petitioners.
Mr. Joginder Pal Ratra, DAG, Punjab.

AVNEESH JHINGAN, J.(oral)

The matter has been taken up for hearing through video conferencing due to COVID-19 situation.

The present petition is filed under Section 482 Cr.P.C. for quashing of order dated 27.2.2020, passed by Additional Chief Judicial Magistrate, Amritsar (for short, 'ACJM').

The brief facts are that marriage of petitioner No. 1 with grand son of respondent No. 4 was solemnized on 5.4.2014. As relations between husband and wife were strained, petitioner No. 1 left the house on 21.10.2018. There is an alleged incident of 6.11.2018 when petitioner No. 1 and her parents along with minor son went to the matrimonial house but they were refused entry. FIR No. 77 dated 23.3.2019, under Sections 323/452/427/506/ 295-A/34 IPC was registered at Police Station Sadar, Amritsar at the instance of respondent No. 4 against petitioners. An application was moved by petitioner No. 1 that she is innocent and the FIR has been registered on the basis of a concocted story. The police filed cancellation report. The complainant filed a protest petition against the cancellation report.

The ACJM vide impugned order directed attaching of the cancellation report with the protest petition and fixed the case for 24.3.2020 for evidence of the complainant.

Learned counsel for the petitioners submits that the protest petition was treated as complaint under Section 190 Cr.P.C.

Learned counsel for the State appearing on advance notice submits that the police has filed the cancellation report and the complainant is exercising his statutory right against the cancellation report.

The contention raised by learned counsel for the petitioners that fixing of matter for evidence of the complainant, amounts to treating protest petition as complaint under Section 190 Cr.P.C. is not well founded. The cancellation report filed by the police is not binding on ACJM. The Magistrate may accept the report or on receipt of protest petition or even suo-motu direct re-investigation or further investigation and protest petition filed can be treated as complaint petition, if *prima facie* a case is made out.

Supreme Court in Popular Muthiah v. State represented by Inspector of Police, 2006(7) SCC 296 held as under:

“49. We have noticed hereinbefore that the jurisdiction of the learned Magistrate in the matter of issuance of process or taking of cognizance depends upon existence of conditions precedent therefor. The Magistrate has jurisdiction in the event a final form is filed (i) to accept the final form; (ii) in the event a protest petition is filed to treat the same as a complaint petition and if a prima facie case is made out, to issue processes; (iii) to take cognizance of the offences against a person, although a final form has been filed by the police, in the event he comes to the opinion that sufficient materials exist in the case diary itself therefor; and (iv) to direct re-investigation into the matter.”

Moreover, the petitioners will have the occasion to raise the objections before the Magistrate at appropriate stage of the proceedings. As of now, the impugned order cannot be set aside on mere apprehension that protest petition has already been treated as a complaint under Section 190 Cr.P.C.

The petition is dismissed.

Needless to say that in case a cause of action arises at a later stage, dismissal of this petition will not bar the petitioners from pursuing remedies available in accordance with law.

12th October 2020
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No