

110.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-57384-2018

Date of decision: 13.03.2020

SURESH KUMAR KAMBOJ AND ORS.

... Petitioners

versus

STATE OF HARYANA AND ANR.

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Johan Kumar, Advocate,
for the petitioners.

Ms. Priyanka Sadar, AAG, Haryana,
for respondent No.1.

Mr. Nand Lal Sammi, Advocate, and
Mr. Hitesh Kumar Sammi, Advocate,
for respondent No.2.

HARI PAL VERMA, J. (Oral)

The petitioners, who are father-in-law, mother-in-law, brother-in-law (*jeth*) and sister-in-law (*jethani*), have filed the present petition under Section 482 Cr.P.C. for quashing the FIR No.199 dated 15.05.2018 registered under Sections 323, 377, 406, 498-A, 506 and 120-B of IPC at Police Station Farakpur, District Yamuna Nagar (Annexure P-1) and all consequential proceedings arising therefrom.

Briefly stated, the aforesaid FIR was registered at the behest of respondent No.2-Nitu Kamboj whose marriage was solemnized with Varun Kamboj (i.e. son of petitioners No.1 and 2) on 02.12.2008. As per the FIR, in the marriage, the parents of the complainant had incurred expenditure

more than their status and had given gold jewellery and other dowry items to the accused as *istridhan*. However, after the marriage, the complainant started living in the matrimonial home at House No.G-199, Sector 10, D.L.F., Faridabad, but after 15 days of marriage, the accused started harassing her while saying that they were expecting a luxury car in dowry, whereas her parents have not given them a luxury car. They received big proposals for the marriage of their son. Accused started demanding a car and cash of Rs.10 lacs and rather threatened that when she will go to meet her parents, then return after fulfilling their demands. They demanded Audi car and Rs.10 lacs cash. Parents of the complainant had shown their inability to meet the demands as they had already incurred enough expenses in the marriage, but still in order to make the complainant happy and on the demand of the accused, her parents had given Rs.50,000/- cash. But the accused did not mend their ways and continued to harass her. Two daughters were born to the complainant on 25.10.2009 and 15.07.2014. The accused continuously harassed and physically tortured the complainant for fulfilling their illegitimate demands. A plot (serial No.298, dated 04.03.2013) was purchased by the complainant with the help of her father and out of her savings, but after some days, the accused started giving beatings to the complainant for the purpose of transfer of said plot in their name. Before the birth of second child in the year, 2013, the in-laws pressurized the complainant for sex determination test and stated that they had talked to the concerned doctor that in case there is a male fetus, they will keep him and in case, it is a female fetus, the pregnancy would be aborted. However, the complainant refused for such test and on 01.04.2014, the

accused given beatings to her. They did not given her full diet and even did not get her checked from any good doctor. On August, 2011, the accused i.e. parents-in-law, *jeth-jethani* demanded from her Rs.2 lacs and said to take this amount from her parents. Accordingly, she informed her father and on 13.08.2011, her father gave Rs.1,25,000/- to the accused so that the greed of the accused can be satisfied. Again on 13.12.2013, father of the complainant given Rs.1,50,000/- to the accused, but the accused tortured and abused her continuously. On 01.03.2014 in the night, her husband came in a drunken condition and made unnatural sex relation with her without her consent, for which, she suffered the whole night, but the accused did not bother all this. All the accused in conspiracy separated the accused on 02.03.2014 and sent her to live in a rented house at Sector 11, Faridabad. They also stated that the plot which is situated in Sector 11, Tullip Housing Private Company, E-Block, Faridabad, is theirs (accused) and on allotment, the same will be given to the complainant. The accused also started to visit the rented house. During this time, the complainant came to know that one girl, namely Vandana Kaushik had come in relation with her husband. However, when she complained to the accused regarding this relationship of her husband, instead of stopping him, they said that she (complainant) is not beautiful, whereas the other lady (Vandana) is beautiful and it would be nice if Varun marry with that lady. In the first week of November, father of the complainant gave Rs.2 lacs to the accused, so that she could live peacefully in her matrimonial home, but still the accused did not mend their ways and on 14.08.2015, all the accused in collusion with each other put pressure on the complainant to fulfill their demands, but since she had shown her

inability to meet such demands, all the accused gave her beatings. Still her parents in October, 2015 made understand all the accused and on their demand, gave Rs.1 lac cash. In the night of 25.02.2016, her husband made unnatural sexual relations with her and she suffered with pain for the whole night on this count, but her husband (Varun) did not bother all this. She told this incident to her mother-in-law, but she (mother-in-law) did not listen to her and the next day i.e. 26.02.2016, her *jeth* (petitioner No.3-Gaurav Kamboj) dropped her husband-Varun at the house of Vandana. The accused did not improve themselves and continuously tortured her to sell out the plot. The money which was deposited in her name and in the name of her daughter Dhanya, petitioner No.2 (mother-in-law) by torturing her, got her signature affixed and drawn Rs.42,000/- on 07.11.2016 through cheque and Rs.13,000/- in cash. On 06.03.2017, petitioner No.1 (father-in-law) forcibly took a cheque from her for a sum of Rs.2,50,000/-.

Learned counsel for the petitioners submits that petitioners No.1 and 2 are old parents-in-law of the complainant. Moreover, petitioner No.2-Sanyogita Kamboj is a patient of cancer. Petitioners No.3 and 4, who are *jeth* and *jethani* of the complainant, are staying with petitioners No.1 and 2 in a separate house. He refers to the address given in the memo of parties and submits that the complainant and her husband are residing separately in different accommodation i.e. Sector 28, Faridabad. Earlier, they were residing in Sector 11, Faridabad. There is a tendency to implicate all the near relatives in the dispute like the present one. Moreover, the marriage between the parties was solemnized on 02.12.2008 and, therefore, the demand of dowry after 10 years of marriage is quite unrealistic. At the most, the

dispute, if any, is between the complainant and her husband and the petitioners cannot be made to suffer merely for the reason that they are the parents and brother & *bhabhi* of the husband of the complainant.

Learned counsel for the petitioners relies upon judgment of the Hon'ble Apex Court in ***Geeta Mehrotra and another Versus State of U.P. and another-2012(4) R.C.R. (Criminal) 812*** to contend that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute. He also refers to a judgment of this Court in ***Anita and others Versus State of Punjab-CRM-M-27044-2001, decided on 17.07.2003*** to contend that FIR under Sections 498-A, 406 of IPC lodged by wife against entire members of family of husband including four unmarried sisters and brother was quashed by this Court, as it is not believable that unmarried sisters or unmarried brother of the husband would be entrusted with any article of dowry separately. There is a tendency to involve all the relatives of the husband when the relations between the husband and the wife become strained.

Mr. Sammi, learned counsel for the complainant-respondent No.2 has argued that the petitioners and the complainant were staying in the same house and immediately after 15 days of marriage, all the accused started demanding Rs.10 lacs and a luxury car from the complainant and she was repeatedly harassed/tortured by the petitioners for demand of dowry. There are specific allegations against the accused. Moreover, at different times, the money was entrusted to the petitioners on their asking. The complainant had no option except to satisfy the demands of the accused and her parents have given amounts to the accused repeatedly. Even in the year

2014, they started living separately, but thereafter, the whole family started staying together. It is the father of the complainant who made investment in the plot and the petitioners have not contributed any amount in the plot. Thus, the plot was purchased from the fund received from the father of the complainant.

I have heard learned counsel for the parties.

There is no dispute that marriage of respondent No.2-Nitu Kamboj was solemnized with the son of the petitioners No.1 and 2, namely, Varun Kamboj on 02.12.2008 and out of this wedlock, two daughters were born to them on 25.10.2009 and 15.07.2014. The allegations against the petitioners are that they have been pressurizing the complainant to meet their demands of Rs.10 lacs and a luxury car. The address so given by the petitioners in the present petition is different to that of the petition filed by the co-accused Varun Kamboj who is none else but the husband of the complainant. From the perusal of the FIR, it is clear that there is no specific averment in the FIR that after 2014, the petitioners were staying with the complainant except that they visited the complainant and her husband on different times. Petitioner No.2 is stated to be a patient of cancer and this fact is not seriously controverted by the learned State counsel or the counsel for the complainant. It is clear from the FIR that the real dispute is between the complainant and her husband and that too because the husband was allegedly maintaining extra marital relations. This had probably caused differences in the family. In the case of ***Geeta Mehrotra (supra)***, it has been held that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute.

The relevant paras 17 to 21 are reproduced as under:-

“17. Their Lordships of the Supreme Court in this matter had been pleased to hold that the bald allegations made against the sister in law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband’s relatives as possible. It was held that neither the FIR nor the charge sheet furnished the legal basis for the magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge sheet, none of the alleged offences under Section 498 A, 406 and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant’s husband who was undisputedly not living with the family of the complainant’s husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister in law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.

18. In so far as the plea of territorial jurisdiction is concerned, it is no doubt true that the High Court was correct to the extent that the question of territorial jurisdiction could be decided by the trial court itself. But this ground was just one of the grounds to quash the proceedings initiated against the appellants under Section 482 Cr.P.C. wherein it was also alleged that no prima facie case was made out against the appellants for initiating the proceedings under the Dowry Prohibition Act and other provisions of the IPC. The High Court has failed to exercise its jurisdiction in so far as the consideration of the case of the appellants are concerned, who are only brother and sister of the complainant’s husband and are not alleged even by the complainant to have demanded dowry from her. The High Court, therefore, ought to have

considered that even if the trial court at Allahabad had the jurisdiction to hold the trial, the question still remained as to whether the trial against the brother and sister of the husband was fit to be continued and whether that would amount to abuse of the process of the court.

19. *Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.*

20. *It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of **G.V. Rao vs. L.H.V. Prasad & Ors. reported in 2000(2) R.C.R. (Criminal) 290: (2000) 3 SCC 693** wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:*

“there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about

rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.”

The view taken by the judges in this matter was that the courts would not encourage such disputes.

21. *In yet another case reported in AIR 2003 SC 1386 in the matter of **B.S. Joshi & Ors. vs. State of Haryana & Anr.** it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife under Section 498A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power.”*

Similar are the observations made in *Anita and others's case (supra)*.

Therefore, having perused the contents of the FIR and the aforesaid judgments, this Court is of the view that the present FIR qua the petitioners is liable to be quashed as the petitioners were named in the FIR being closely related with the husband, who had a matrimonial dispute with his wife. Moreover, the marriage between the parties was solemnized on 02.12.2008, and demand of dowry by such relatives after about 10 years of marriage is quite unrealistic.

Accordingly, the present petition is allowed and the FIR No.199 dated 15.05.2018 registered under Sections 323, 377, 406, 498-A, 506 and 120-B of IPC at Police Station Farakpur, District Yamuna Nagar and all consequential proceedings arising therefrom, qua the petitioners, is quashed.

(HARI PAL VERMA)
JUDGE

13.03.2020
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No