

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

250

**CRM-M-7647-2021
Date of decision: 26.03.2021**

Monika Sharma and anotherPetitioners

Versus

State of Haryana and othersRespondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Balvinder Sangwan, Advocate
for the petitioners.

Ms. Geeta Sharma, DAG, Haryana
for respondent No. 1

Mr. Ivan Khosa, Advocate
for respondent No. 3

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

1. Petitioners- **Monika Sharma** and **Jitender** have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.41 dated 02.02.2021 registered under Section 346 of the Indian Penal Code, 1860 (for short, "the IPC") at Police Station Saran, District Faridabad, Haryana (**Annexure P-1**) along with all consequential proceedings arising therefrom.

2. The above said FIR was registered on statement of Bablu Sharma, uncle of petitioner No. 1 Monika Sharma who express the suspicion that his niece Monika Sharma aged 20 years left the house out of her own and did not return the house. Despite efforts he could not find her. He has suspicion that someone had secretly confined his niece.

3. The petition has been filed on the averments that the petitioners solemnized marriage on 19.12.2020 in Arya Samaj Mandir Trust (Regd.) at Faridabad against the wishes of the parents of the petitioner No. 1 as they wanted her to marry some other boy from their own caste whereas the petitioner No. 2 is of a different caste. It is second marriage of petitioner No. 2. Petitioner No. 1 was forced to return to her parental home on 22.12.2020 where she was mentally and physically tortured and pressurized not to go back to petitioner No. 2. Petitioner No. 1 stayed with her maternal uncle till 14.01.2021 but thereafter joined petitioner No. 2 and stayed with him till 22.01.2021. On being pressurized petitioner No. 1 went to stay with her maternal uncle but thereafter against joined petitioner No. 2 on 29.01.2021. The present FIR was got registered on 02.02.2021 with intent to put the state police machinery to chase and harass petitioner No. 2 and his relatives. The allegations made in the FIR do not satisfy essential ingredients of Section 346 of the IPC. The FIR being an abuse of process of law may be quashed.

4. The petition has been opposed by learned State Counsel. However, no reply has been filed on behalf of respondent No. 1-State.

5. As per office report, respondent No. 2 has been duly served but none has appeared for respondent No. 2.

6. Mr. Ivan Khosa, Advocate has appeared for respondent No. 3- Sapna, first wife of petitioner No. 2 and has filed his power of attorney which is taken on record.

7. Learned Counsel for respondent No. 3 does not want to file any reply and has no objection to quashing of the above said FIR.

8. I have heard learned Counsel for the petitioner, learned State Counsel and learned Counsel for respondent No. 3 and gone through the relevant record.

9. Learned Counsel for the petitioners has submitted that petitioner No. 1 went with petitioner No. 2 and solemnized marriage with him out of her own free will and petitioner No. 2 cannot be said to have wrongfully confined her in secret. Therefore, the FIR in question being abuse of process may be quashed.

10. On the other hand learned State Counsel has submitted that petitioner No. 2 is already married and his second marriage being bigamous is void. The matter is under investigation and the petition may be dismissed.

11. Learned Counsel for respondent No. 3 has, without prejudice to rights of respondent No. 3, submitted that respondent No. 3 has no objection to quashing of the FIR in question.

12. Section 346 of the IPC, which provides punishment for the offence of wrongful confinement in secret, reads as under:-

"346. Wrongful confinement in secret.—Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement."

13. In the present case petitioner No. 1 Monika Sharma, who is admittedly major being aged about 20 years, appeared before this Court through video conferencing on 18.02.2021 and stated that she had gone

with petitioner No. 2 Jitender out of her own free will and solemnized marriage with him on 19.12.2020 and she had not been enticed or illegally detained by petitioner No. 2 Jitender. In view of averments made in the present petition and also averments made in her statement before this Court in the course of proceedings of the present case by petitioner No. 1 Monika Sharma, the petitioner No. 2 cannot be said to have enticed and wrongfully confined Monika Sharma in secret and petitioner No. 2 cannot be said to have committed offence punishable under Section 346 of the IPC.

14. In *State of Haryana and others Vs. Bhajan Lal and others : 1991(1) R.C.R. (Criminal) 383* Hon'ble Supreme Court observed as under:-

“107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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 in the First Information Report and other materials, if any, accompanying the F.I.R. 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 F.I.R. 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 F.I.R. 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.*

108. *We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; **that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint** and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”* (emphasis supplied)

15. In ***Varala Bharath Kumar v. State of Telangana, (SC) :***

2017(4) R.C.R.(Criminal) 113 Hon'ble Supreme Court observed as

under:-

“It is by now well settled that the extraordinary power under Article 226 or inherent power under section 482 of the Code of Criminal Procedure can be exercised by the High Court, either to prevent abuse of process of the court or otherwise to secure the ends of justice. Where allegations made in the First Information Report/the complaint or the outcome of investigation as found in the

Charge Sheet, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case against the accused; where the allegations do not disclose the ingredients of the offence alleged; where the uncontroverted allegations made in the First Information Report or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the accused; 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, the power under Article 226 of the Constitution of India or under section 482 of Code of Criminal Procedure may be exercised.”

16. In view of the above-referred judicial precedents and the facts and circumstances of the case, continuation of the proceedings against petitioner No. 2 will be gross abuse of the process of law and will result in grave miscarriage of justice. Continuation of the same will put petitioner No. 2 to great oppression and extreme injustice will be caused to petitioner No. 2 if the FIR and all consequential proceedings are not quashed.

17. In view of the above, the petition is allowed and FIR No.41 dated 02.02.2021 registered under Section 346 of the IPC at Police Station Saran, District Faridabad, Haryana (**Annexure P-1**) is quashed along with all consequential proceedings arising therefrom.

26.03.2021
kavneet singh

(ARUN KUMAR TYAGI)
JUDGE

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