

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-8714-2021

Date of Decision: 24.02.2021

Kunal Garg Petitioner

Versus

State of Haryana and another..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

...

(through video conferencing)

Present: Mr. Vineet Chaudhary, Advocate
for the petitioner.

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MANJARI NEHRU KAUL, J. (Oral)

The instant petition has been preferred by the petitioner-husband for setting aside the impugned order dated 25.01.2021(Annexure P8) vide which the Addl. Sessions Judge, Faridabad, allowed the criminal revision No.621-2019 filed by respondent No.2-wife to impugn order dated 25.11.2019 (Annexure P6) whereby an application moved by her under Section 173(8) Cr.P.C. seeking further investigation in case FIR No. 144 dated 06.03.2017 under Sections 406/498-A IPC registered at Police Station Central Faridbad was dismissed.

Learned counsel has *inter alia* contended that the court gravely erred in allowing the criminal revision by misconstruing and not correctly appreciating the provisions of Section 173(8) Cr.P.C. It has been urged that

since charges already stood framed against the petitioner in the FIR in

question and the prosecution evidence was already underway, the directions given to the investigating officer to conduct further investigation was not maintainable more so in the peculiar facts and circumstances of the case. The learned counsel submitted that the marriage between the petitioner and respondent No.2 had broken down irretrievably. A petition under Section 13 (i) (b) of the Hindu Marriage Act, 1955 for dissolution of their marriage had been filed by the petitioner. However, thereafter as a counter-blast to the petition filed by the petitioner under Section 13 of the Hindu Marriage Act, a false and fabricated case had been foisted upon him by respondent No.2 leading to the registration of the FIR in question. It was also submitted that in fact the respondent No.2 along with her mother had indulged in rioting, wrongful confinement, trespassing and criminal intimidation as a result of which the petitioner had got registered FIR No. 281 dated 06.10.2019 under Sections 147, 149, 342, 383, 452, 506, 511 IPC at Police Station Charkhi Dadri against respondent No.2 and her mother. It was thereafter with an ulterior and obvious motive the respondent No.2 moved an application under Section 173 (8) Cr.P.C dated 06.11.2019, annexed as Annexure P4 with the petition which was rightly dismissed vide order dated 25.11.2019 passed by the ACJM, Faridbad (Annexure P6). The learned counsel further urged that in the given facts and circumstances of the case the court below while passing the impugned order failed to appreciate that there were also glaring contradictions in the testimony of respondent No.2 when she stepped into the witness box as PW1; not only that, the application filed under Section 173 (8) Cr.P.C. wherein allegations had been levelled against the petitioner of having illicit relations with another woman were not even part of the complaint on the basis of which the FIR

was registered initially under Sections 406/498-A IPC but were fabricated later on by her in order to cause harassment and embarrassment to the petitioner without as much as there being any shred of evidence or iota of truth. It was also further submitted that it was a settled proposition of law that merely having an extra-marital affair would not *ipso facto* amount to cruelty for the purpose of offence punishable under Section 498-A IPC though it may be termed as cruelty in a petition filed for divorce under the Hindu Marriage Act.

I have heard the learned counsel at length and perused all the material on record as well as the impugned order. It would be apposite to reproduce Section 173 (8) Cr.P.C. :-

Section 173(8) in The Code Of Criminal Procedure, 1973

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

A reading of Section 173(8) Cr.P.C. leaves no manner of doubt and explicitly provides for in no uncertain terms that if certain fresh facts come to light, the investigating officer can be directed to undertake further investigation in respect of an offence. It needs to be clarified that there cannot be a cap to the number of investigations which can be carried out in a crime because the foremost consideration for further investigation is to

arrive at the truth for doing substantial justice. By 'Further investigation' it could be implied, receipt of any additional information qua the alleged crime.

Coming to the instant case, respondent No.2 by way of an application under Section 173(8) Cr.P.C. is seeking to place on record some documentary evidence with respect to the alleged relationship between the petitioner and one Ms. Pankaj Verma which came into her possession and notice during the pendency of the trial in FIR No. 144 dated 06.03.2017. I have no hesitation in concurring with the observations of the learned revisional court that though the said allegations of live-in relationship of the petitioner and one Pankaj Verma were not part of the FIR in question at the time of its registration, however, since it had come to light subsequently it could go a long way in lending credence to her allegations of being subjected to mental cruelty and harassment at the hands of her husband i.e. the petitioner. Moreover, Section 498-A IPC is a continuing offence and the essence of an offence under Section 498-A IPC is cruelty. Each time when a woman is subjected to cruelty by her husband irrespective of whether at that point in time she was staying at or away from her matrimonial home, would be a new starting point of limitation. Still further, the reliability and authenticity of the allegations levelled in an application under Section 173(8) Cr.P.C. with respect to the alleged illicit relationship between the petitioner and another lady would be investigated when further investigation is carried out. The innocence, if any, of the petitioner with respect to the allegations levelled against him by the respondent No.2 would come to the fore during further investigation.

As a sequel to the above, this court is not inclined to exercise

its inherent jurisdiction under Section 482 Cr.P.C.

The petition is dismissed.

24.02.2021

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(MANJARI NEHRU KAUL)
JUDGE

Note: Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No