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

CRM-M-25509-2021

Date of Decision: July 07, 2021

Avtar Singh and another

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Simranjeet Singh,Advocate
for the petitioners.

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RAJESH BHARDWAJ, J.

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Petitioners have approached this Court by way of present petition under Section 482 Cr.P.C. for quashing of FIR No.14, dated 21.11.2018 under Sections 406, 498A, 494 IPC, registered at Police Station NRI, District Bathinda alongwith all the consequential proceedings arising therefrom.

As per the facts narrated, it has been found that FIR (Annexure P1) in question was registered by complainant-respondent No.2-Rinki. As per the allegations in the FIR it has been alleged that complainant-respondent No.2 was married with petitioner No.1, who is an NRI and he

performed his second marriage without taking divorce from his first wife.

The marriage took place on 18.09.2012 as per the Sikh rites and parents of complainant-respondent No.2 spent a sum of Rs.15.00 lacs, which was more than their capacity. Soon thereafter, the petitioners started making various demands from parents of complainant-respondent No.2. They demanded Rs.5.00 lacs from her parents for going to Canada. Besides number of allegations, petitioner No.2, who is mother-in-law of the complainant, also started giving taunts regarding bringing less dowry. The cruelty caused to the complainant has been alleged in detail. The factum of second marriage of petitioner No.1 has also been found mentioned in the FIR. Due to all this, the complainant has to run from pillar to post to get justice. Finally, finding no alternative, she lodged the present FIR.

Petitioners before this Court have approached for quashing of the FIR primarily on the ground that the same is totally a misuse of the process of law as the complainant-respondent No.2 has lodged various other complaints against the petitioners and thus, she is a habitual litigant. It has been alleged that at number of times the parties have entered into compromise also but the complainant subsequently backed out and hence, the same could not materialise. The compromises arrived at between the parties are annexed as Annexures P2 to P6. It has been further contended that the petitioners have paid Rs.11.00 lacs to complainant-respondent No.2 but she is not sincere towards settling the dispute. He further contends that from bare perusal of the allegations in the FIR, no offence, as alleged, is made out and thus, the FIR may be quashed.

I have heard learned counsel for the petitioners and perused the

record made available.

A perusal of the FIR would show that the complainant has levelled specific allegations against her in-laws including both the petitioners. The factum of compromises at various stages and the litigation already pending between the parties is evident from the record. No doubt the power under Section 482 Cr.P.C. is meant to check the abuse of the process of the Court and for securing ends of justice, however, where a definite conclusion is to be drawn in the disputed question of facts, the same requires a trial for weighing the evidences produced by the parties. The same could not be resorted to by this Court under Section 482 Cr.P.C. merely on the basis of allegations and counter-allegations levelled by the parties. Such an issue have been dealt with by Hon'ble the Supreme Court on various occasions. In one such case, i.e. Taramani Parakh vs State of Madhya Pradesh and others (2015) 11 Supreme Court Cases 260, it has been as under:-

“10. The Law relating to quashing is well settled. If the allegations are absurd or do not make out any case or if it can be held that there is abuse of process of law, the proceedings can be quashed but if there is a triable case the Court does not go into reliability or otherwise of the version or the counter version. In matrimonial cases, the Courts have to be cautious when omnibus allegations are made particularly against relatives who are not generally concerned with the affairs of the couple. We may refer to the decisions of this Court dealing with the issue.

11. Referring to earlier decisions, in Amit Kapoor vs. Ramesh Chander, (2012) 9 SCC 460, it was observed:

“27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the

power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule

of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

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27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.”

From the parameters laid by their Lordships, it is evident that the Court should not marshal the record to decide the admissibility . The

anvil of the Evidence Act.

A bare perusal of the FIR in question and the other documents placed on record, restricts this Court from interference under Section 482 Cr.P.C., in view of the parameters settled by the Hon'ble Apex Court.

Thus, in view of the disputed question of facts involved in the case and the law settled by Hon'ble the Supreme Court in **Taramani Parakh** (supra), this Court is of the opinion that exercising the jurisdiction under Section 482 Cr.P.C. in the present case is not warranted as the same is totally a matter of evidences.

Thus, the present petition, being devoid of any merit, is hereby dismissed.

July 07, 2021
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(**RAJESH BHARDWAJ**)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |