

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-25562-2021(O&M)

Date of Decision: 07.07.2021

Dr. Aditi Goyal & another

--Petitioners

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Yusuf Khan, Advocate for the petitioners.

RAJESH BHARDWAJ.J (Oral)

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

The petitioners have filed the present petition seeking quashing of FIR No.95 dated 9.4.2021 under Sections 323, 34, 406, 498-A, 506 I.P.C, registered at Police Station, Urban Estate, Hisar.

It has been contended that petitioner no.1 is a Homeopathic Doctor and works as Associate Professor in Bakson Homeopathic Medical College, Greater Noida. Petitioner no.2 is a Software Engineer and has more than 15 years experience in Multinational Companies. Petitioners no.1 and 2 are sister-in-law and brother-in-law of the complainant Tanu Gupta. It is contended that petitioners are living separately and have never caused any interference or cruelty in the married life of the complainant. Rather they have always added love and respected the complainant and her husband, who is the brother of petitioner no.1. However, it has been alleged that after the marriage, the behavior of the complainant started becoming worse day by day and she started troubling the peaceful life of her

matrimonial home on one pretext or another. The interference of her family members kept on increasing day by day which reached to the pinnacle to the extent that the brother of petitioner no.1 submitted a complaint dated 13.5.2019 to the S.H.O., Police Station, Ranhola, New Delhi. Thereafter, aggrieved by the conduct of the complainant, brother of petitioner no.1 filed a divorce petition i.e. HMA-2122-2019 against the complainant before the Family Court, Dwarka, New Delhi. It has been further alleged that the complainant moved out of the matrimonial home of her own with all her Istridhan leaving behind her 8 years minor son on 30.3.2020. It is contended that the behavior of the complainant became so intolerable that the mother of petitioner no.1 filed a domestic violence case i.e. MC No.357/2020, which is also pending at Dwarka Court, New Delhi. The petitioner contends that it is because of this reason that as a counter blast to this, the present FIR is registered against all the family members of complainant's husband just in order to pressurize the whole family. It is contended that by bare perusal of the FIR, no case is made out against the petitioners. However, learned counsel for the petitioners has relied upon the laws laid down by the Hon'ble Supreme Court in ***State of Haryana Vs. Bhajan Lal, 1992 Supp (1) SCC, 335*** and various other rulings pronounced by Hon'ble Supreme Court and thus prayed for the quashing of the FIR qua the petitioners.

I have heard learned counsel for the petitioners at length and have gone through the records made available.

A bare perusal of the FIR would show that there are specific allegations against the petitioners for causing mental and physical harassment. Besides this, there is a chequered history, where the

complainant and her in-laws are at logger heads as evident from the various complaints pending against each other. No doubt the petitioners are the brother-in-law and sister-in-law of the complainant and are living separately but in the facts and circumstances, it is not possible for this Court to draw any conclusion either way by simply looking into the allegations leveled in the FIR. There is no dispute regarding the law settled by Hon'ble Supreme Court in **Bhajan Lal's** case (supra) but I am afraid that the facts and circumstances of the present case do not qualify the parameters set by their Lordships. Their Lordships in the same rulings have laid down various parameters, wherein in Guideline No.1, it is laid down that “*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.*” Weighing the present petition on the anvil of these parameters, the case of the petitioners fails and requires to examine the disputed questions of facts by the Trial Court on the basis of evidence produced. 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.”

Thus, applying the law settled to the case in hand, it is not possible to conclude that the allegations made by the complainant are so absurd that no case is made out against the petitioners, as contended.

Hence, this Court is of the considered view that the present petition is beyond the scope of Section 482 Cr.P.C and thus, fails. As a result, petition being devoid of any merit, is dismissed.

(RAJESH BHARDWAJ)
JUDGE

07.07.2021

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