

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

120

**CRM-M-48116-2021
Date of decision : 17.11.2021**

YOGESH

.....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present : Mr. Gaurav Sharma, Advocate
for the petitioner.

SANT PARKASH, J. (ORAL)

1. The case has been taken up for hearing through video conferencing.
2. Prayer in this petition under Section 482 of the the Code of Criminal Procedure, 1973 is for quashing of FIR No.123 dated 09.03.2017 registered under Sections 323, 341, 498-A and 506 of the Indian Penal Code, 1860 in Police Station City Bhadurgarh, District Jhajjar with all consequential proceedings arising therefrom on the ground that the complainant-respondent No. 2 who is main witness, turned hostile vide her statement dated 06.12.2017.
3. The above said FIR was registered on complaint made by respondent No. 2-Kavita. In her complaint, respondent No. 2 alleged that her marriage was solemnized with Yogesh (petitioner) on 21.02.2009 in accordance with Hindu rites and ceremonies. One son, namely, Nakul was born out of the wedlock. Her son, aged 6 years, studies in Bawana Private School. The petitioner made dowry demands

left the company of her husband Yogesh and came to her parental house. On 09.03.2017, respondent No. 2-Kavita went to the school of her son at Bawana where her husband Yogesh came outside the school at around 2.00 PM and blocked her way. The accused person gave her beating and threatened her.

4. Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case. Respondent No. 2 herself left the company of the petitioner and the present FIR has been lodged against him on the basis of wrong facts and by concocting a false story. Respondent No. 2-complainant had herself made statement before the trial Court that she was happily residing with her husband (petitioner) and she never had any dispute with him. Thereafter, respondent No. 2 again left her matrimonial home on 09.02.2018 and started pursuing the above said FIR. Challan has been presented way back in the year 2017 and only two witnesses out of eleven have been examined by the prosecution. No other case is pending against the petitioner. Continuation of trial will be an abuse of process of law as the complainant has already turned hostile.

5. I have heard learned Counsel for the petitioner and gone through the case file.

6. Section 482 of the Cr.P.C., which saves inherent powers of the High Court, reads as under :-

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any orders of this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice".

7. Hon'ble Supreme Court has laid down guidelines in relation to exercise of powers under Section 482 Cr.P.C. In **Rishipal Singh v. State of U.P. and another, 2014(4) Recent Apex Judgments 324**, it has been observed as under:-

“10.A bare perusal of Section 482 Cr.P.C. makes it crystal clear that the object of exercise of power under this section is to prevent abuse of process of Court and to secure ends of justice. There are no hard and fast rules that can be laid down for the exercise of the extraordinary jurisdiction, but exercising the same is an exception, but not a rule of law. It is no doubt true that there can be no straight jacket formula nor defined parameters to enable a Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The Courts have to be very circumspect while exercising jurisdiction under Section 482 Cr.P.C.

*11. This Court in **Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. And Others, 2000(2) R.C.R.(Criminal) 122 : 2000 (3) SCC 269**, has discussed at length about the scope and ambit while exercising power under Section 482 Cr.P.C. and how cautious and careful the approach of the Courts should be. We deem it apt to extract the relevant portion from that judgement, which reads:*

"Exercise of jurisdiction under inherent power as envisaged in section 482 of the Code to have the complaint or the charge sheet quashed is an exception rather than rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution with the lodgement of First Information Report. The ball is set to roll and thenceforth the law takes it's own course and the investigation ensures in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and it's undue expansion is neither practicable nor warranted. In the event, however, the Court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge sheet on the fact of it does not constitute or disclose any offence alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situations as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness

through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount".

12. This Court in plethora of judgments has laid down the guidelines with regard to exercise of jurisdiction by the Courts under Section 482 Cr.P.C. In **State of Haryana v. Bhajan Lal**, 1991(1) R.C.R.(Criminal) 383 : 1992 Supp(1) SCC 335, this Court has listed the categories of cases when the power under Section 482 can be exercised by the Court. These principles or the guidelines were reiterated by this Court in (1) **Central Bureau of Investigation v. Duncans Agro Industries Ltd.**, 1996(3) R.C.R.(Criminal) 60 : 1996 (5) SCC 592; (2) **Rajesh Bajaj v. State NCT of Delhi**, 1999(2) R.C.R.(Criminal) 160 : 1999 (3) SCC 259 and; (3) **Zandu Pharmaceuticals Works Ltd. v. Mohd. Sharaful Haque & Anr.**, 2004(4) R.C.R. (Criminal) 937 : (2005) 1 SCC 122. This Court in **Zandu Pharmaceuticals Ltd.**, observed that:

*"The power under section 482 of the Code should be used sparingly and with to prevent abuse of process of Court, but not to stifle legitimate prosecution. There can be no two opinions on this, but if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of Court, the power under section 482 of the Code must be exercised and proceedings must be quashed". Also see **Om Prakash and Ors. v. State of Jharkhand**, 2012(4) R.C.R.(Criminal) 662 : 2012(5) Recent Apex Judgments (R.A.J.) 127 : 2012 (12) SCC 72.*

*What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the Court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482 Cr.P.C. **While exercising the power under the provision, the Courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact.**"* (emphasis supplied)

8. Accordingly, it is now well settled that High Court, in exercise of its inherent jurisdiction under Section 482 of the Cr.P.C., would not make any roving inquiry into the questions of fact and record any findings. High Court has only to scrutinize the FIR /complaint and take the allegations/averments made in the complaint on their face value and quash the proceedings if the FIR/complaint does not disclose commission of any offence. For judicial precedents, reference may also be made to the judgments of this Court in ***Gurbachan Singh Bhasin Vs. State of Punjab 2013 (4) RCR (Criminal) 512 and Arvind Vs. State of Haryana 2014 (38) RCR (Criminal) 290.***

9. In the present case, the petitioner has filed the present petition on the averments that complainant/respondent No. 2 is lady of quarrelsome nature and immediately after the marriage started quarreling with the petitioner along with his mother on petty issues. In the month of 10.12.2016, respondent No.2 left the company of her husband and the present FIR was lodged. Thereafter, complainant/respondent No. 2 herself started residing with the petitioner and made statement before the trial Court that she was happily residing with her husband and never had any dispute with him. She got hurt due to slippage in the house. Subsequently, on 09.02.2018, the complainant/respondent No. 2 again left her matrimonial home and started pursuing the present FIR.

10. From the above, it is clear that though complainant/respondent No. 2 turned hostile vide her statement dated 06.12.2017 before the trial Court but afterwards, she again left the company of her husband and has started pursuing the present FIR. The

statement, vide which the complainant/respondent No. 2 had turned hostile, cannot be the basis for quashing of the present FIR particularly when the complainant/respondent No. 2 is not residing with her husband in her matrimonial home and is currently pursuing the present FIR.

11. Further, the petitioner has got equal efficacious remedies to put his defence before the learned trial Court. It is not the case of the petitioner that he is being denied the right of putting his defence to the witnesses. Out of eleven witnesses, only two witnesses have been examined and there will be proper opportunity with the petitioner to cross-examine those witnesses.

12. In view of the factual aspects and the law laid down by the Hon'ble Apex Court, no case is made out for quashing of the present FIR. The petition, being devoid of any merit, is accordingly dismissed.

13. The observations made by this Court are strictly for the purpose of disposal of the present petition and nothing in this order shall be treated as expression of any opinion on merits of the case pending before the trial Court.

17.11.2021

kavneet singh

**(SANT PARKASH)
JUDGE**

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