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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53699-2021 (O&M)

Date of Decision: December 22, 2021

Lokesh Kumar @ Lokesh Soni

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Ramesh Goyat, Advocate
for the petitioner.

.....

RAJESH BHARDWAJ, J.

Instant petition has been filed under Section 482 Cr.P.C. praying for quashing of FIR No.90, dated 24.02.2021, under Sections 323, 406, 498-A, 506, 34 IPC, registered at Police Station City Tohana, District Fatehabad, with all the consequential proceedings arising out of it.

As per the facts of the case, the FIR in question has been lodged by the complainant-respondent No.2 Anita. It has been alleged that her marriage was solemnized with the petitioner on 13.04.2008. Her parents gave all type of dowry articles as per the demand and wishes of the accused persons and they spent about Rs.4,50,000/-. After the marriage, they were blessed with a girl child and father of the complainant had to bear the entire delivery and medical expenses. When she returned to her matrimonial home after two months of delivery she found that all her gold articles weighing 6 tolas had been sold out by the accused persons. The attitude of the in-laws was totally changed. They became ruthless because the complainant gave

birth to a girl child whereas they were expecting the male child. The accused persons were not happy with the dowry articles brought by the complainant in her marriage and they pressurized her to bring more dowry from her father. She was persistently being taunted for bringing less dowry and giving birth to a girl child. The petitioner told father of the complainant that he had no work and he wanted to open a jewellery shop at Tohana. Father of the complainant gave Rs.50,000/- to the petitioner. Thereafter the complainant was beaten a lot and she had to reside at her parental home. She filed an application on 31.05.2017 under Section 125 Cr.P.C. for maintenance, which is pending adjudication. The Court has directed the petitioner to pay monthly interim maintenance @ Rs.3000/- but the petitioner not paid even a single penny towards the same. The prayer was made to take legal action against the accused persons.

It has been contended by learned counsel for the petitioner that the petitioner has been falsely implicated in the FIR and no offence as alleged is made out against him. He submits that the complainant left the matrimonial home in August 2010 as she did not want to look after the aged mother of the petitioner, who was suffering from cancer. He contends that the dispute between the husband and the wife was not because of the demand of dowry, as alleged but the complainant wanted to remain separately from her in-laws, which was not acceptable to the petitioner. The petitioner filed an application under Section 9 of the Hindu Marriage Act seeking a decree of restitution of conjugal rights. As the complainant agreed to stay with the petitioner, the same was withdrawn. The complainant also filed a complaint under Section 12 of the Protection of Women from

registered by the complainant while she was residing with her parents since November 2011. Hence, there cannot be any type of harassment, as alleged. He has relied upon a judgment of Hon'ble Apex Court in State of Haryana and others vs Bhajan Lal and others (1992 supp (1) SCC 335) and has prayed for quashing of the FIR.

I have heard learned counsel for the petitioner and perused the record.

Admittedly, petitioner and respondent were married on 13.04.2008. As per the allegations levelled in the FIR, there are specific allegations regarding harassment and cruelty caused to the complainant at the hands of the petitioner. There are specific allegations regarding taunting, demand of dowry and beating to the complainant. The main thrust of the argument raised by counsel for the petitioner is that the petitioner has been falsely implicated in the FIR. Though he relied upon Bhajan Lal (supra), however, he failed to make out a case in view of the parameters laid down by the Hon'ble Apex Court, which reads thus:

“(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 FIR 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 FIR 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.”

The allegations levelled in the FIR failed to qualify the test laid down by Hon'ble Apex Court in **Bhajan Lal**'s case (supra). Case is full of disputed questions of fact, veracity of which could be decided only after leading the evidence before the trial Court. The Hon'ble Apex Court has settled the law on this issue that the High Court should invoke the power under Section 482 Cr.P.C. with circumspection and consciously. I am supported by judgment of Hon'ble Apex Court in **State of Odisha vs Pratima Mohanty etc.** CrI.Appeal Nos.1455-1456 of 2021, decided on 11.12.2021, wherein it has been reiterated by the Hon'ble Apex Court that the High Court should not carry out a parallel trial while invoking the jurisdiction under Section 482 Cr.P.C. The case in hand fails to qualify the test for invoking the jurisdiction under Section 482 Cr.P.C. Hence, the

petition being devoid of any merit is hereby dismissed.

However, petitioner is at liberty to avail his remedy as available to him under the law.

December 22, 2021
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(RAJESH BHARDWAJ)
JUDGE

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