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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: January 07, 2021

Pronounced on: February 17, 2021

+ **CRL.M.C.1660/2020**

BRAHAM PRAKASH & ORS.

..... Petitioners

Through: Mr. M. Dutta, Adv.

Versus

**GOVT. OF NATIONAL TERRITORY OF DELHI
& ANR.**

..... Respondents

Through: Mr. Panna Lal Sharma, APP for State
with SI Lakshmi Singh, PS Ashok
Vihar.

Mr. Raymon Singh, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

The hearing was conducted through video conferencing.

1. The present petition has been filed by the petitioners under Section 482 Cr.P.C. seeking quashing of FIR No.0187/2019 dated 27.05.2019, registered at Police Station Ashok Vihar, Delhi.

2. Petitioner Nos.1 and 2 are the parents (father and mother) of the petitioner No.3. They are permanent residents and citizens of the country of Sweden, since 15.01.2002, 01.05.2002 and 01.05.2002, respectively. Petitioner No.1 is an Engineer and Academic by profession. He obtained his B.Sc. Engineering (Mechanical) and thereafter, M. Tech. and Ph.d. from India's prestigious Indian Institute of Technology (Delhi). The said petitioner has served the industry and field of academics in various assignments with that prestigious industry giants, the Tokyo University of Science (Tokyo, Japan), the Tokyo Institute of Technology (Tokyo, Japan) and the Lulea University of Technology (Lulea, Sweden). Presently, petitioner No.1 is engaged as a Professor Emeritus at the Lulea University of Technology, Sweden.

3. Petitioner No.2 is a house-wife and social worker committed to social issues and causes. She remains committed and steadfast in her involvement towards aiding and assisting those inflicted by the unfortunate "down" syndrome.

4. Petitioner No.3 is also a qualified Engineer with a degree in M.Sc. Engineering. The said petitioner is a Global Business Development Manager having served at Sandavik Coromant AB, Sweden and Cogent Orb Electric

Steels, United Kingdom. Presently, he is employed at a senior level with SurahammarBruk AB, Sweden (d Division of Tata Steel, Europe). The said petitioner and the respondent No.2 on their own volition fell in love and got married on 04.09.2014 at New Delhi, India. At that time, the respondent No.2 was a resident of Delhi, India. Subsequent to their marriage, the respondent no.2 by her application/request dated 10.11.2014 applied for emigrate to Sweden. By her “application for a residence permit based on family ties in Sweden”, the same is annexed herein as Annexure A-2.

5. Accordingly, with the aid and assistance of petitioners, the respondent No.2 obtained the necessary leave and permission from the Government of Sweden and in due course emigrated/moved to Sweden around March, 2016. On emigration and relocation to Sweden, the petitioner No.3 and the respondent No.2 organised and set-up their matrimonial home at Knutsgatan 9A, 722 14 Vasteras, Sweden.

6. Learned counsel for petitioner submitted that the respondent No.2 did not live with the petitioner Nos.1 and 2. While they lived/resided at "Lulea", the petitioner No.3 and the respondent No.2 lived/resided at their matrimonial home at “Vasteras”, located at a distance of (approx.) 900 kms. from the residence of petitioner Nos.1 and 2. After the petitioner No.1's

retirement from the Lulea University, at Lulea, Sweden on 31.01.2019, the petitioner Nos.1 and 2 moved to the city of Vasteras, Sweden. However, they maintained separate residence and never lived with their son (petitioner No.3) and their daughter-in-law (respondent No.2). Even at Vasteras, Sweden their residences were at a distance of more than 20 kms. Upon and after her emigration/relocation to Sweden, the respondent No.2 secured due employment at Sweden. She is today gainfully employed and a permanent resident of Sweden. Soon thereafter, serious irreversible and irreconcilable differences arose in their matrimony threatening their marriage. Despite various attempts and advice of the petitioner Nos.1 and 2, they were unable to amicably resolve and reconcile such differences. Consequently, the petitioner No.3 filed a case for divorce/nullification of their marriage on 19.03.2018 before the competent Swedish Divorce Court. With summons being effected upon the respondent No.2, by e-mail(s)/ pleas dated 17.04.2018 and 17.10.2018, she sought “six months’ reconsideration time” from the competent Swedish Divorce Court on the premise/ plea “to save the marriage”.

7. Further submitted that with the petitioner No.3 being a Swedish citizen, the respondent No.2 being a permanent Swedish Resident and both

parties unequivocally accepting it's jurisdiction, the competent Swedish Divorce Court was pleased to accede to and grant a period of six months to the respondent No.2 for “consideration and reflection”. Since there was no improvement in their matrimonial status and the period of “six months of the consideration and reflection” had adequately lapsed, the competent Swedish Divorce Court by Judgment/Order dated 13.12.2018 was pleased to pass a decree of divorce terminating the marriage between the petitioner No.3 and the respondent No.2.

8. Insofar as matrimonial properties, if any, were concerned, the competent Swedish Court after recording the respondent No.2's prayer/ plea “Parul Tewatia contends that the District Court shall appoint an Estate Administrator to arrange for the apportionment of the Parties matrimonial property” was pleased to further record the mutual consent of both Parties, “Neither Party has had any objection to Rebecca Josefsson being given the assignment as Estate Administrator”. Consequently, with the consent of both parties and subject to their desire, the competent Swedish Divorce Court was pleased to appoint the aforesaid Estate Administrator, to apportion the matrimonial property/(ies), if any, between the petitioner No.3 and the respondent No.2.

9. Being aggrieved, an appeal filed by the respondent No.2 against the aforesaid decree of divorce before the competent "Svea Court of Appeal", the same was also dismissed by the Appellate Court's order/decision dated 28.01.2019. Amongst others, the Appellate Court held as under:

"The High Court has gone through the case and concluded that there is no reason to grant a trial in this case."

"The High Court does not grant a trial permission. The district court's decision is therefore final."

10. Despite the aforesaid facts, the police authorities instead of closing the bogus purported complaint of the respondent No.2, proceeded to register an FIR bearing No.0187 dated 27.05.2019 at Police Station Ashok Vihar, Delhi against the petitioners herein, for the offences punishable under Sections 498A, 406 and 34 of the Indian Penal Code. Subsequent to the registration of the aforesaid FIR, the respondent No.1 by e-mail dated 08.01.2020 has desired and directed the petitioners to attend the investigation proceedings arising and pending against them. Consequent thereon, the petitioners by their replies dated 25.01.2020 and 10.02.2020 have filed a detailed response before the respondent No.1, intimating and informing the said respondent about absurdities in the complaint, including the fact that they were; a) Swedish citizens; b) the marriage between the parties stood dissolved by a

decree of divorce; and c) the respondent No.1 did not possess any jurisdiction to either register the aforesaid FIR or conduct any investigation against the petitioners. While the aforesaid FIR bearing No.0187/2019 has remained pending, the respondent No.2 apparently also filed other criminal proceedings against the petitioner No.3 before the competent Authorities at Sweden. After examining all allegations, the Office of the Prosecutor, Vasteras, Sweden by their decision dated 06.04.2020 was pleased to close all/any investigation against the petitioner No.3, on the premise as under:

“There is no reason to pursue the preliminary investigation. The available material that now exists cannot prove the nature of the person or persons who have been suspected of having committed a crime”.

11. The purported complaint of the respondent No.2 was closed with the further finding *“no suspicion remained in the case”*. Relevant extracts of the Prosecutor’s decision dated 06.04.2020 is annexed and marked herein as Annexure A-11.

12. Thereafter and recently, the Estate Administrator Ms. Rebecca Josefsson appointed at the behest of respondent No.2 by the Vastmanland District Court to apportion the matrimonial properties between the petitioner No.3 and the respondent No.2, was pleased to pass her Order dated 15.05.2020 apportioning the respective shares of cash, jewellery/stri-dhana

etc., of each party. A Copy of an e-mail dated 05.07.2020 issued by the respondent No.2 to the petitioner No.3 accepting the Order dated 15.05.2020 passed by the Estate Administrator is annexed and marked herein as Annexure A-12.

13. Learned counsel for the petitioner submitted that consequently, there is no dispute whatsoever surviving between the petitioner No.3 and the respondent No.2. Admittedly, the marriage in question stands dissolved and all assets etc., of parties including stridhan stands divided and apportioned. Other criminal allegations leveled against the petitioners, have also been closed being without any merit. In these circumstances, the present FIR is bogus, absurd and do not require any investigation, since no grievance whatsoever arises or can arise against the petitioner. The petitioners cannot be investigated pursuant to the aforesaid FIR for reasons already disclosed and narrated above. Continuance of any purported investigation against the petitioners would be a gross abuse of the process of law and undoubtedly a travesty of justice. The aforesaid FIR is without jurisdiction, incompetent in law, without authority and beyond the provisions of the IPC. Thus, impugned FIR be quashed with emanating proceedings therefrom, if any.

14. On the other hand, learned counsel for respondent No.2 submitted that the present petition is baseless and misconceived filed under Section 482 Cr.P.C. by the petitioners *inter-alia* seeking quashing of the aforesaid FIR and stay of further investigation/summons qua the petitioners in the said FIR. The present petition has been filed on the pretext that the petitioners were desirous of coming to India to meet an ailing relative, once international travel resumes, however, in spite of categorical statement, the petitioners till date have not come to India and further have refused to join the investigation. It is important to state that despite of being served with notices to join investigation on multiple occasions, the petitioners have failed to join the investigation without any cogent reason. The Hon'ble Supreme Court in the case of ***The State of Telangana Vs. Habib Abdullah Jeelani and Ors.*** AIR 2017 SC 373 held that:-

“...16.It has noted and correctly that the investigation is in progress and it is not appropriate to stay the investigation of the case. It has disposed of the application Under Section 482 Code of Criminal Procedure and while doing that it has directed that the investigating agency shall not arrest the accused persons. This direction “amounts” to an order Under Section 438 Code of Criminal Procedure, albeit without satisfaction of the conditions of the said provision. This is legally unacceptable....

....23.The Courts should oust and obstruct unscrupulous litigants from invoking the inherent

jurisdiction of the Court on the drop of a hat to file an application for quashing of launching an FIR or investigation and then seek relief by an interim order. It is the obligation of the court to keep such unprincipled and unethical litigants at bay...”

15. Therefore, in view of the said settled position of law, the present FIR which is at a nascent stage of investigation can not to be quashed nor an order of the nature of interfering the process of investigation may be passed. Furthermore, if after investigation, the investigating agency finds at any stage that no case is made out, it is well within its power to file a closure report with regard to the offence in question.

16. Further submitted that the present FIR satisfies the primary test, as it *prima facie* discloses commission of a cognizable offence within the territory of India. Furthermore, present FIR is still pending and is at a nascent stage of investigation, therefore, the defence of the petitioner can only be considered at an appropriate stage. In case of ***Ravindra Kumar Madhanlal Goenka and Anr. Vs. Rugmini Ram Raghav Spinners Pvt. Ltd.*** AIR 2009 SC 2383, the Apex court held that defence material cannot be considered in proceedings filed under Section 482 Cr.P.C. The relevant portion is reiterated herein below:

“...18. While entertaining a petition under Section 482 CrPC, the materials furnished by the defence cannot be

looked into and the defence materials can be entertained only at the time of trial. It is a well-settled position of law that when there are prima facie materials available, a petition for quashing the criminal proceedings cannot be entertained. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases.

19. While considering the facts of the present case, we are of the considered opinion that the present case is not one of those extreme cases where criminal prosecution can be quashed by the Court at the very threshold. A defence case is pleaded but such defence is required to be considered at a later stage and not at this stage. The appellants would have ample opportunity to raise all the issues urged in this appeal at an appropriate later stage, where such pleas would be and could be properly analysed and scrutinised....”

17. In view of the aforesaid settled position of law, this Court in exercise of its powers under Section 482 Cr.P.C. ought not to consider the defence of the petitioner at this preliminary stage of investigation. Furthermore, it would not be appropriate for this Court, to evaluate the merit of the contentions and authenticity of the documents filed by the petitioners annexed with the present petition. Such materials can be produced by the petitioners before the appropriate authority in accordance with law. Furthermore, the petitioners have sought the quashing of the present FIR on the ground that it does not reveal or disclose detailed facts and

circumstances, however, it has been laid down by the Apex Court in **Satpal V. State of Haryana** (2018) 6 SCC 610 that an FIR is not to be read as an encyclopedia requiring every minute detail of the occurrence to be mentioned therein. Therefore, the present petition is neither maintainable nor tenable. Thus, deserves to be dismissed.

18. Heard learned counsel for the parties and perused the material on record.

19. Sections 1 and 4 of IPC read with Section 188 of Cr.P.C. make it abundantly clear that the provisions of the Code apply and extend; a) only within the territory of India; and b) to citizens of India beyond the territory of India. The provisions of IPC and Cr.P.C. thus make it unambiguously and unequivocally clear that they are inapplicable to; a) territories beyond the territory of India except and in case of Indian citizens; and b) to foreigners non-Indian citizens beyond the territory of India. In interpreting and commenting on the aforesaid provisions, the Supreme Court in case of **Central Bank of India versus Ram Narain** AIR 1955 SC 36, categorically held as under:

“If however, at the time of the commission of the offence the accused person is not a citizen of India, then the provisions of these sections have no application whatsoever.”

20. In the present case, the impugned FIR has been registered against the petitioners who are foreigners/citizens of the Country of Sweden. Thus, no criminal proceedings including the impugned FIR can be registered nor any investigation as sought to be pursued by the respondent No.1 against the petitioners under the provisions of either the Indian Penal Code or the Code of Criminal Procedure on the grounds as under:

“a) the matrimonial home of the parties herein /(the petitioner No.3 and the respondent No.2) was located at Sweden and not at India/or within the territorial jurisdiction of this Court;
b) every and all purported offence alleged to have been committed by the petitioners are alleged to be so committed during the period of matrimony at Sweden;
c) none or no offence was and is alleged to have been committed at Delhi or within the territorial jurisdiction of this Court; and
d) lastly, no complaint whatsoever alleging any form of violence or criminal wrong was ever filed by the respondent No.2 against the petitioners during her period of matrimony between 2015 and December, 2018 before any Forum whatsoever at Sweden.”

21. Be that as it may, admittedly, the marriage between the parties was duly terminated by the competent Swedish Divorce Court by a decree of divorce dated 13.12.2018. Even the appeal filed against such decree by the respondent No.2, was also dismissed by the competent Appellate Court on

28.01.2019. Moreover, the respondent No.2 admittedly accepted and acceded to the jurisdiction of the competent Swedish Divorce Court and voluntarily participated in divorce proceedings held before the competent Swedish Divorce Court. Having accepted and acceded to the jurisdiction of the competent Swedish Divorce Court, the respondent No.2 being a permanent resident of Sweden is bound by the decree of the Swedish Divorce Court.

22. The impugned FIR dated 27.05.2019 is evidently filed subsequent to the decree of divorce and the dismissal of appeal against the decree of divorce as an apparent act of vengeance and personal grudge, knowing the petitioners were foreigners and apprehensive of the Indian law enforcement authorities. Despite the respondent's knowledge that the petitioner Nos.1 and 2 never resided at the matrimonial home of the parties, false, absurd and baseless allegations have been levelled against them, again only to wreak vengeance, grudge and animosity.

23. On the contrary, it is and was the respondent No.2's very own case before the Swedish Divorce Court that she may be granted a period of six months to enable her to "reconsider" and "reflect" upon the matter. Accordingly, the Swedish Divorce Court granted such time to the

respondent No.2 and it is only upon the expiration of such time/period of six months with parties failing to reconcile their differences, the Swedish Divorce Court proceeded to pass and grant decree of divorce in favour of the parties.

24. The aforesaid grounds and facts as pleaded in the present petition does emphatically establish that the impugned FIR is without jurisdiction, unlawful, malafide, malicious and an evident act of personal vengeance and grudge. The malafides and malice apparent in the present FIR further borne from the facts that despite the parties having duly divorced, the FIR is conspicuously silent in failing to disclose and reveal that a decree of divorce had been granted by the competent Swedish Divorce Court.

25. The only and sole incident attributed to the territorial jurisdiction of this Court, pertain to alleged jewellery and stridhan being retained by the petitioner No.2 at New Delhi in a locker maintained with HDFC Bank, New Delhi. This sole and isolated plea is evidently vague, ambiguous and without description. It fails to specify when such stridhan was taken by the petitioner No.2 and why such a plea was not raised before the Swedish Divorce Court. The parties were married in 2014 and it is for the first time in 2019 that the respondent No.2 is raising such a claim. Thus, from the facts, it establishes

that such plea was absolutely belated, delayed and subjected to unwarranted embellishment and exaggerations.

26. In addition to above, post-registration of the FIR dated 27.05.2019, the respondent No.2 filed/leveled serious criminal allegations against the petitioner No.3 alleging violation of Women's Rights and Rape during their period of matrimony before the competent Swedish Authority at Vasteras, Sweden. The Office of the Prosecutor, Vasteras, Sweden through its Prosecutor Ms.Anna Elmlov by her Order dated 06.04.2020, while rejecting all / any such allegations and directing closure of all investigations, held as under:

“There is no reason to pursue the preliminary investigation. The available material that now exists cannot prove the nature of the person or persons who have been suspected of having committed a crime.”

In conclusion, the Prosecutor further held “no suspicion remained in the case.”

27. It is apparent that similar allegations of violation of Women's Rights are contained in the present FIR, which have been duly closed by the competent Swedish Authorities. Evidently, the Estate Administrator by her Order dated 15.05.2020 has apportioned and distributed all assets including

bank deposits, jewellery/stridhan etc., between the respective parties. Consequently, nothing further survives for distribution/retention by anyone/or the other party.

28. In view of the aforesaid facts, in my considered view, nothing further survives in the present FIR to be investigated or pursued. Any and everything of consequence has been duly addressed and adjudicated by the competent Swedish authorities. The respondent No.2 having accepted and acceded to the jurisdiction of; a) the competent Swedish Divorce Court; b) the Estate Administrator appointed by the Swedish Divorce Court; and c) the office of the Public Prosecutor, Vasteras, Swedish is bound by their findings/decisions and cannot disregard them. The aforesaid narrative establishing the futility of the present FIR, equally establishes it's malice, malafides and abuse of the criminal justice system for personal vendetta and vengeance, however, I hereby deprecate such type of practice being misuse of judicial process.

29. Accordingly, I hereby quash impugned FIR No.0187/2019 dated 27.05.2019, registered at Police Station Ashok Vihar, Delhi with emanating proceedings therefrom, if any.

30. The present petition is allowed and disposed of.

31. Judgment be uploaded on website of this Court forthwith.

(SURESH KUMAR KAIT)

JUDGE

FEBRUARY 17, 2021/rk

