

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(123)

CRM-M-18003-2022

Date of Decision: 29.04.2022

Ashish

--Petitioner

Versus

State of Punjab & another

--Respondents

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

Present:- Mr. Shivam Malhotra, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 482 Cr.P.C praying for quashing of FIR No.43 dated 11.9.2020 under Section 498-A IPC, registered at Police Station, Women Cell, District Jalandhar and setting aside of order dated 25.1.2022 passed by learned JMIC, Jalandhar whereby the petitioner has been declared as Proclaimed Offender and all the subsequent proceedings arising therefrom.

As per facts of the case, present FIR was lodged by complainant/respondent no.2. Sum and substance of the allegations in the FIR was that the complainant was married with petitioner Ashish. After marriage, on 18.4.2020 she gave birth to a girl child, however, the same did not go well with the in-laws as they were not happy with the birth of a girl child. Her husband and in-laws started harassing and taunting her for the same. Her mother-in-law put the condition to throw out the complainant of the matrimonial home. When the mother-in-law came back to the house she immediately called the husband of the complainant in a room and told him to oust the complainant along with her daughter. On her resistance her mother-in-law gave her abuses and the husband twisted her arm and mother-in-law slapped her and asked her to leave the matrimonial home. On one

pretext or the other she was harassed and tortured by her husband and in-laws. She had to call the police for her safety. Having no other alternative she finally lodged the present FIR against the petitioner husband and in-laws for taking legal action against them.

After registration of FIR the investigation commenced. The petitioner failed to appear before the investigating agency and hence proclamation proceedings were initiated against him. Finally he was declared Proclaimed Offender by the learned JMIC, Jalandhar vide his order dated 25.1.2022.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in the present FIR. He submits that matrimonial dispute between the petitioner and the respondent no.2 wife is due to the temperamental differences and the wife is still residing in the matrimonial home, whereas the petitioner is residing in Gurdaspur. He submits that the petitioner has even filed a petition under Section 9 of Hindu Marriage Act which is pending adjudication at Gurdaspur. He submits that respondent no.2 has usurped and occupied the entire house and the petitioner and his family members are residing at different places.

Besides this, counsel for the petitioner has contended that the learned Trial Court has declared the petitioner as proclaimed offender vide order dated 25.1.2022, which is totally illegal. He submits that the procedure adopted is totally in contravention to the statutory provisions and the law settled and hence the same deserves to be set aside. To fortify his arguments counsel has relied upon the judicial precedent of ***Sonu Vs. State of Haryana, 2021 (1) R.C.R (Criminal) 319.***

I have heard learned counsel for the petitioner at length and have gone through the record carefully.

After hearing the arguments advanced by learned counsel for the petitioner and perusing the record, it is apparent that the present case arises from a matrimonial discord of the petitioner and respondent no.2. The relationship between both of them is not under dispute. However, after the marriage the rift kept widening between both of them and finally they started living separately.

The complainant has levelled specific allegations against the petitioner husband. There are allegations regarding the demand of dowry, the mental harassment caused to the petitioner on giving birth to a girl child. Besides this, it has been alleged that she was repeatedly being beaten by the husband and mother-in-law. The allegations and counter allegations are totally disputed questions of facts. The veracity of same can be evaluated from the appreciation of the evidence led by both the parties.

The Hon'ble Supreme Court has settled the law time and again regarding exercising the jurisdiction under Section 482 Cr.P.C for quashing of FIR. A reference in this regard may be made to the law settled in case of ***State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335***, wherein following parameters have been given:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to

secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

(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.”

Further, Hon'ble Supreme Court in ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, 2021 SCC Online SC 315*** has held that quashing of FIR is an exception rather than an ordinary rule and the High Court should exercise the powers under Section 482 Cr.P.C sparingly with circumspection.

The reliance placed upon by counsel for petitioners in ***Sonu Vs. State of Haryana (supra)*** has no relevance as the same is distinguishable in the facts and circumstances of the present case.

Taking into consideration the above facts and circumstances of the present case in the light of the law settled, the present case does not fall in the category of cases for invoking the inherent powers under Section 482 Cr.P.C. The parameters laid down by the Hon'ble Supreme Court mandate that in a case where from the bare reading of the allegations in the FIR no cognizable offence is made out or it has been lodged to wreak the vengeance then the High Court may intervene. The veracity of the allegations levelled by the complainant can be assessed only after a thorough investigation and thereafter by the Trial Court on the basis of the evidence led before it. The case in hand do not qualify on the anvil of law settled. Hence no case is made out for quashing the FIR.

So far as the arguments raised by counsel for petitioner regarding impugning the order dated 25.1.2022 whereby petitioner has been declared Proclaimed Offender, with utmost respect and humility, there is no dispute regarding the judgement relied upon by the petitioner, however, the impugned order dated 25.1.2022 is not an interlocutory order and hence the

revision against the same is very much maintainable before the court of competent jurisdiction. Hon'ble Supreme Court has time and again held that the inherent jurisdiction under Section 482 Cr.P.C should be invoked in a situation when there is no specific provision provided under Cr.P.C for the redressal of a particular grievance. The impugned order being not an interlocutory order would be a revisable order and hence this Court is not inclined to intervene in the same under Section 482 Cr.P.C. The petitioner is at liberty to avail the alternate remedies as available to him in accordance with law.

Petition is disposed of in the above terms.

(RAJESH BHARDWAJ)
JUDGE

29.04.2022

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