

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(119)

CRM-M-17918-2022

Date of Decision: 29.04.2022

Jitu @ Jitender

--Petitioner

Versus

State of Haryana & another

--Respondents

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

Present:- Mr. Ankush Chowdhary, 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.208 dated 22.6.2021 under Sections 376, 506 IPC, registered at Police Station, Sector 14, Gurugram, and all the subsequent proceedings arising therefrom.

As per facts of the case, present FIR was lodged by prosecutrix (name concealed). Summarizing the allegations in the FIR it had been alleged that the marriage of the prosecutrix took place on 4.2.2016 with Jeetu @ Jitender i.e. the present petitioner. After the marriage he started beating the prosecutrix daily and she was ousted from the matrimonial home. She had to file a petition under the Domestic Violence Act for granting maintenance. In the meanwhile, accused/petitioner Jitender got an ex-parte decree of divorce and thus the marriage between the prosecutrix and the petitioner was dissolved. Thereafter the accused called the prosecutrix in a hotel on 23.3.2021. On one pretext or the other he again called her in a hotel on 6.4.2021 and finding her alone he committed rape with her. The FIR was lodged to take legal action against the petitioner.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in the present FIR. He submits

that prosecution of the petitioner in the present FIR is nothing but an abuse of the process of law. He submits that petitioner was married with the prosecutrix and due to some matrimonial discord the marriage was dissolved by an ex-parte decree of divorce. He submits that soon after the decree of divorce the petitioner got remarried in the year 2019. Knowing the same respondent no.2 i.e. the prosecutrix got revengeful and just to wreak the vengeance she implicated the petitioner in the present FIR. He submits that even after dissolution of the marriage, respondent no.2 remained in contact with the petitioner by frequently sending Whatsapp messages and both of them remained in friendly relationship. He has submitted that as per the allegations in the FIR the occurrence took place on 6.4.2021, whereas the FIR was lodged on 22.6.2021 and thus there was a huge delay which casts a shadow on the genuineness of the FIR. He submits that in the facts and circumstances of the case the offence under Section 376 IPC is not made out. In this regard counsel has placed reliance upon the judicial precedents of ***Rajiv Thapar & Ors. Vs. Madan Lal Kapoor (2013) 3 SCC 330*** and ***Prashant Bharti V. State (NCT of Delhi) (2013) 9 SCC 293***.

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

Evidently the prosecutrix and the petitioner were earlier husband and wife, however, thereafter the matrimonial discord took place and the marriage was dissolved by an ex-parte decree of divorce passed by the Family Court, Gurugram. Thereafter the relationship between the petitioner and the prosecutrix continued as per allegations in the FIR and the petitioner alleged to have committed rape with the prosecutrix by calling her in a hotel. The allegations of rape have been levelled against the

petitioner when both of them were no more husband and wife. The contentions raised by counsel for petitioner regarding consensual relationship between both of them can be established only by weighing the evidence adduced on the touch stone of the Evidence Act. The allegations are totally disputed questions of facts which cannot be accepted by this Court while exercising the inherent jurisdiction under Section 482 Cr.P.C.

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 ac- cused;

(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 investi- gation 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 petitioner in ***Rajiv***

Thapar and Prashant Bharti's cases (supra) have no relevance as the

same are distinguishable in the facts and circumstances of the present case.

This Court cannot ignore the facts that this case pertains to the offence of rape, which is a heinous offence.

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.

Thus, this Court is of the opinion that the case of the petitioner does not qualify for exercising its powers by this court under Section 482 Cr.P.C. Resultantly, the petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

29.04.2022

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