

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-40288-2021

Date of decision : 25.08.2022

Ms.Shweta Sharma and others

... Petitioners

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.K.P.S.Virk, Advocate for
Mr.K.S.Dhaliwal, Advocate
for the petitioners.

Mr. Dhruv Sihag, AAG, Haryana.

Ms.Aditi Sharma, Advocate for
Mr. C.S. Bakhshi, Advocate
for the complainant.

VIKAS BAHL, J.(ORAL)

1. This is a petition under Section 482 Cr.P.C. praying for quashing of FIR no.47 dated 25.02.2021 registered under Sections 323, 34, 406, 506 IPC at Police Station Bhiwani, District Bhiwani and all the subsequent proceedings emanating therefrom.

2. Learned counsel for the petitioners has submitted that the present FIR deserves to be quashed since the FIR has been registered after a delay of 2 years inasmuch as the articles including gold articles, as per the allegations in the FIR, had been entrusted in the month of February 2019 whereas the FIR has been registered on 25.02.2021. It is further submitted that in fact petitioner no.1 is married to the son of respondent no.2 and for the said fact, the Ld. Counsel for the petitioners has referred to a

photographs (Annexure P-5) and has submitted that since in the FIR complete facts have not been mentioned thus, the FIR deserves to be quashed on the said ground also. It is further submitted that the present FIR is a counter blast to the FIR dated 02.05.2021 (Annexure P-3) which has been registered on the basis of a complaint dated 02.09.2020 (Annexure P-8).

3. Learned State counsel and learned counsel for the complainant have opposed the present petition by raising the following objections:-

i) It has been argued that the matter is still under investigation and the challan has not been filed and the averments made in the present petition raise disputed questions of facts and do not raise any legal argument for quashing of the FIR, and thus, deserves to be outrightly dismissed.

ii) It has been argued that a perusal of the FIR would show that specific allegations with respect to entrustment of gold articles have been made in the FIR and it has also been specifically stated that a request was made to the petitioner to return the said gold jewellery belonging to the complainant and the petitioners refused to return the said jewellery and rather, threatened and beat up the husband of the complainant and thus, the offence under Section 406 IPC stands made out.

iii) It is argued that specific allegations have been made in the FIR to the effect that two males, i.e Sunit Aggarwal and Om Dutt Joshi, petitioners no.3 and 4 had beaten up the husband of the complainant and thus, the offence under Section 323 IPC is also, prima facie, made out.

iv) It is argued that there are specific allegations in the FIR that, at the time when petitioners no.3 and 4 had beaten up the husband of the complainant, they had also given a warning to the effect that in case, key of the flat, which is owned by the complainant, was not returned to the petitioners, then they would kill the complainant and the husband of the complainant and even after they had left Zirkipur for Bhiwani, 2/3 persons from the gang had visited the complainant in Bhiwani also and had stated that in case, they would not give the keys of the flat and asked them to return the gold jewellery or inform anybody then, they would kill the complainant and her husband. It is argued that on the basis of said allegations, the offence under Section 506 IPC is also prima facie made out.

v) With respect to the allegation of delay, it has been argued that after having entrusted the gold jewellery to the accused, the complainant and her husband had repeatedly asked the petitioners to return the gold jewellery but thereafter, were beaten up and even threats of killing them were levelled and the accused persons had refused to return the gold articles and thereafter, the present FIR has been registered. It is further submitted that respondent no.2 and her husband are senior citizens and thus, they were afraid of the petitioners and have now mustered the courage to get the present FIR registered against the wrong doings of the petitioners.

4. Learned counsel for the petitioners has pointed out that in fact the complaint dated 02.09.2020 (Annexure P-8) is not the complaint on the

basis of which the FIR no.293 dated 02.05.2021 was registered and the earlier argument raised to the said effect was, incorrect and that it is the complaint dated 29.08.2020 (Annexure P-2) on the basis of which the FIR no.293 dated 02.05.2021 was registered.

5. This Court has heard the learned counsel for the parties and has perused the paper book and finds that the present petition is completely misconceived and thus, deserves to be dismissed on the following grounds:-

i). A perusal of the FIR would show that specific allegations have been made in the same with respect to the accused persons first gaining trust of respondent no.2 and thereafter, taking gold jewellery items including one diamond ring (worth Rs.65,000/-), 130 grams gold chain (worth Rs.1.5 lacs), one diamond gold neckless (worth Rs.3 lacs), two gold bangles worth (Rs.2 lacs) and also Rs.1 lac in cash and in spite of several calls and requests made, refused to return the said jewellery articles and thereafter, the key of the flat, which was in the ownership of the complainant and her husband, had been given by them to the petitioners, was taken back on the pretext of wanting to stay in the said flat and went to their flat in the month of February 2019 to Zirakpur and after staying there for some days, had requested petitioners no.1 and 2 on phone to return the gold jewellery items which they did not return and instead, petitioners no.3 and 4 came to the flat and the husband of the complainant was beaten up. The said allegations would prima facie show the commission of offence under Section 406 IPC. No meaningful argument has been raised on behalf of the

petitioners to show that the said offence is not prima facie made out. Even the arguments of learned counsel for the petitioners to the effect that petitioners no.1 and 2 were earlier known to respondent no.2 and had an earlier relationship contrary to what has been depicted in the FIR, would in fact, go against the petitioner inasmuch as it would substantiate the allegations with respect to entrustment, which is one of the ingredients of offence under Section 406 IPC .

ii). A perusal of the FIR would show that specific allegations have been made to the effect that once the complainant and her husband had asked for return of their gold jewellery, petitioners no.3 and 4 had come to their flat and had beaten up the husband of the complainant and had threatened the complainant and her husband with dire consequences unless they returned the keys of the flat which was owned by the complainant and not to ask for the return of gold jewellery and in case, they did not do the same, then said petitioners no.3 and 4 would kill the complainant and her husband and there are further allegations that on the next day, the complainant and her husband had left Zirakpur for Bhiwani in their car but even thereafter, 2/3 persons were sent from the gang of the petitioners to Bhiwani who had again threatened them in case they asked for return of gold jewellery or did not return the key or if informed anybody about the same. Keeping in view the above, offences under Sections 323 and 506 IPC are prima facie made out. Further from the allegations levelled in the FIR, prima facie, it is clear

that all the petitioners had a common intention to commit the said offences and thus, Section 34 IPC is, prima facie, attracted.

iii). That in the present case it is not in dispute that the matter is still under investigation and the report under Section 173 Cr.P.C. has not been filed yet. This Court is of the opinion that in the present case, the investigation in pursuance of the allegations made is necessary so as to collect the material in support of the same and seeking quashing of the FIR prior to filing of the report under Section 173 Cr.P.C. without raising any legal argument and on the basis of disputed questions of fact, is completely misconceived and thus, on the said short ground alone, the present petition deserves to be dismissed. Specific and serious allegations have been levelled by respondent no.2 who is a senior citizen, and the material in support of the same will be collected during the course of investigation which would necessarily have to be seen and the investigation cannot be brought to a halt by allowing the present petition under Section 482 Cr.P.C. for quashing of the FIR. None of the parameters as laid down in various judgments so as to quash the FIR, are met in the present case.

iv) The arguments raised by the learned counsel for the petitioners to the effect that there is a delay in the registration of the FIR and on the said basis, the present FIR deserves to be quashed is misconceived and is rejected inasmuch as a perusal of the FIR would show that after the entrustment of jewellery articles, respondent no.2 and her husband had even gone to

Zirakpur in February 2019 to stay in their flat and had thereafter, repeatedly asked for return of jewellery articles but the petitioners had threatened them with dire consequences and it is thereafter that the present FIR has been registered. No law has been cited by learned counsel for the petitioners that an FIR could be quashed merely on the ground that there is delay in registration of the FIR.

v) The argument to the effect that the present FIR is a counter blast to the earlier complaint / FIR and thus, the FIR should be quashed on the said ground is also misconceived. As noticed above, a bare reading of the FIR, prima facie, discloses the offences under Sections 323, 406, 506, 34 IPC and merely because there were some earlier complaints, the same would not be a ground for quashing of the present FIR. No law in support of this argument has been cited by learned counsel for the petitioners. Initially, the learned counsel for the petitioners had stated that the FIR dated 02.05.2021 which is subsequent to the present FIR dated 25.02.2021 had been registered on the basis of complaint dated 02.09.2020 (Annexure P-8) but subsequently, the counsel has argued that the said FIR dated 02.05.2020 has been registered on the basis of complaint dated 29.08.2020. A perusal of the FIR dated 02.05.2021 moreso, its vernacular which is on page 21 of the paper book would show that the date of information has been mentioned as 08.03.2021, which is the date subsequent to the date of the present FIR i.e, 25.02.2021.

Learned counsel for the petitioners has not been able to satisfy the Court as to on what basis the said argument has been raised that FIR no.293 dated 02.05.2021 (Annexure P-3) has been filed on the basis of complaint dated 29.08.2020 (Annexure P-2) inasmuch as the averments / allegations made in the complaint and the FIR and complaint dated 02.09.2020, are substantially different. It is thus, apparent that the said argument regarding counter blast has, neither any factual basis nor any legal basis.

vi) Reliance placed upon the photographs and other documents are also disputed questions of facts and the said documents are neither per se admissible documents nor they are a part of the investigation, thus, this Court, on the basis of said documents, cannot go into realm of factual assertions so as to entertain the petition filed under Section 482 Cr.P.C. for quashing of the FIR moreso, when specific allegations have been made in the FIR which constitute offences under which the FIR has been registered.

6. Keeping in view the above said facts and circumstances, the present petition is dismissed.

7. The observations made in the present order are only for the purpose of adjudicating the present case and the investigation and the trial would be conducted/ adjudicated independent of the observations made in the present order.

(VIKAS BAHL)
JUDGE

August 25, 2022

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No