

229 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-42653-2014

DECIDED ON: 31st OCTOBER, 2022

SUNIL KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Inderjit Sharma, Advocate
for the petitioner.

Mr. Shubham Kaushik, AAG, Punjab.

Mr. Ritesh Pandey, Advocate
for respondent No.2.

SANDEEP MOUDGIL, J

By virtue of present petition, the petitioner has sought the quashing of FIR No. 336, dated 06.12.2013, under Section 379 of the Indian Penal Code, 1860 (for short 'IPC') and Section 67 of Information Technology Act, 2000 (hereinafter referred to as 'Act'), registered at Police Station Civil Lines, Batala (Annexure P-1).

The present FIR was registered at the instance of Ranbir Singh-complainant alleging that his marriage had taken place with Harminderjit Kaur in April 1993, having one daughter and one son aged about 14 years and 12 years, respectively. It is alleged that he came to India on 31.10.2012 and on 04.01.2013, his wife went to Punjab National

did not come back. It is further alleged that he has doubt that his wife was abducted by Gagandeep @ Gagan on the pretext of marriage and to usurp her property. Accordingly, the afore-said FIR was registered.

Learned counsel for the petitioner has vehemently argued that the present FIR is an abuse of process of law and is totally bereft of merit and does not disclose commission of any offence. In fact, the allegations against Gagandeep @ Gagan have been made specifically to the effect that he has abducted Harminderjit Kaur, with an intention to marry her and to grab her property. The assertion is that the complainant has been nursing grudge against the petitioner and his family members as the petitioner and wife of the complainant are residing in live-in-relationship at abroad. More so, the complainant has also registered FIR No. 29, dated 08.01.2013, under Sections 365 and 366 IPC, Police Station Civil Line, Batala, wherein, the petitioner and his family members were released on anticipatory bail.

It is asserted that the complainant in order to wreck vengeance and teach lesson to the petitioner, levelled false and frivolous allegations. All the allegations contained in the FIR are false and fabricated. In fact, neither the petitioner nor his brother Gagandeep Singh has stolen the ATM card of the complainant and have not withdrawn any amount from the account of the complainant/respondent No.2. A perusal of the earlier FIR (Annexure P-2) shows that similar allegations were levelled by the complainant/respondent No.2 regarding the withdrawal of money from ATM against Gagandeep Singh (brother of the petitioner).

It is further asserted that when earlier FIR (Annexure P-2) was registered against Gagandeep Singh, petitioner and his parents,

Harinderjit Kaur herself sent an e-mail bearing No. 384, dated 05.03.2013 to Senior Superintendent of Police, Batala, along-with photographs, stating that she is staying some where else at her own sweet will and without any pressure of anyone. It has further been mentioned in the said e-mail that she has left her house due to bad habits of her husband (respondent No.2) and now her husband is harassing some person of Mohalla Mann Nagar, Batala, including Ajit Ram and his family members. As such, FIR is liable to be quashed.

Learned State counsel appearing on behalf of the respondent-State assisted by the learned counsel for respondent No.2, has vehemently submitted that the allegations contained in the FIR discloses all the ingredients of the alleged offences and moreover, the criminal proceedings have not been initiated with *mala-fide* intention. It is asserted that the established principle of quashing of an FIR is that at the stage of cognizance all that a Court is required to see if *prima facie* an offence is made out and courts should restrain itself from throttling legitimate prosecutions at the threshold and the law should be allowed to take its course. Substantiating the same, it was submitted that the respondent No.2 has made a specific allegation of inducement by the accused persons. Further, from the perusal of CD, which was taken into custody, during investigation as well as the statements of Bank Managers of State Bank of India, Branch Batala and HDFC Bank, Branch Batala, it was found that both the accused were withdrawing the amount by using the stolen ATM card of the complainant. Challan in the present case stands presented on 20.12.2014.

Assertion is that the present FIR was rightly registered against

the petitioner which was duly substantiated during the investigation, therefore, subsequent proceedings are legal and valid, and no question of quashing the FIR arises in any manner.

Having heard learned counsel for the parties at length.

Before proceeding further, it would be appropriate to mention that investigation is complete, the final report has been filed and charges have been framed against the petitioner. A salutary principle that governs the exercise of inherent power is that where the trial court, has proceeded to frame charges, the High Court would generally desist from quashing the FIR.

In the celebrated case of *State of Haryana & Ors. Vs. Bhajan Lal & Ors. 1992 Supp (1) SCC 335* the scope of inherent powers of the High Court under Section 482 Cr.P.C. to quash the FIR has been discussed in detail. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:

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 FIR 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 Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the 21 proceedings and/or where there is a specific provision in the Code or the Act concerned, 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.*

It would be necessary to mention here that after investigation, the police has filed the final report before the trial court, against the petitioner. Charges have been framed and the trial is in progress. The petitioner has, however, failed to impugn the final report or the order of framing charges, which was the remedy available to him at that stage.

Even otherwise, from the perusal of reply dated 23.02.2015 filed by the State, it is abundantly clear that the present petitioner and his co-accused were seen in the CCTV footage while withdrawing the amount by using the ATM card of the complainant/respondent No.2. Thus, *prima-facie* culpability of the accused cannot be ruled out at this stage. The plea of false implication at the hands of the complainant/respondent No.2 will stand decided during the course of trial, as such, pleas need adducing of evidence by the parties concerned. This Court, while exercising powers under Section 482 Cr.P.C. cannot enter into the arena of factual matrix, which if left, to be decided by the trial Court, would be a better proposition.

does not find any reason in the exercise of inherent powers to quash the
FIR and consequently dismiss the present petition finding no merit therein.

SANDEEP MOUDGIL
JUDGE

31st OCTOBER, 2022.

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- 1. Whether speaking/ reasoned : Yes / No
- 2. Whether reportable : Yes / No