

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.42226 of 2021 (O&M)

Date of decision : 11.03.2022

Ashwani Kumar Sharma alias Tony Sharma

....Petitioner

Versus

State of Punjab and another

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Amit Dhawan, Advocate
for the petitioners.

Mr. V.G. Jauhar, Sr. Deputy Advocate General, Punjab
for respondent No.1/State.

Mr. M.S. Sachdev, Advocate
for respondent No.2/Complainant.

(Proceedings through V.C.)

PANKAJ JAIN, J. (ORAL)

CRM-327-2022

This is an application for staying the proceedings before the Ld.

Trial court during the pendency of the present petition.

2. On 3rd March, 2022 when the matter came up for hearing, the following order was passed :-

“Mr. Nakul Sharma, Advocate has put in appearance on behalf of respondent No.2 and filed his memo of appearance in Court today, which is on record. He prays for time to file reply.

May do so on or before the next date of hearing with an advance copy to the counsel opposite.

Adjourned to 11.03.2022.

It is made clear that no further adjournment shall be granted and the final arguments will be heard on the next date of hearing.”

3. In view of the aforesaid order, respondent No.2/Complainant has filed reply, the same is taken on record.
4. Reply by way of an affidavit of Randhir Singh (PPS) Commissioner of Police, PBI-CAW & Children Jalandhar has also been filed on behalf of respondent No.1/State. The same is taken on record.
5. Since the pleadings are complete and the matter was fixed for final arguments as per order dated 3rd of March, 2022, Counsels are *ad idem* that the matter be finally heard.
6. Accordingly, the instant application stands dismissed not being pressed.

CRM-M No.42226 of 2021

The present petition has been moved invoking jurisdiction of this Court under Section 482 Criminal Procedure Code, 1973 (for short, the Code) by the petitioners for quashing of FIR No.0080 dated 3rd December, 2020, registered for offences punishable under Sections 406, 498-A of the Indian Penal Code, 1860 (offences under Section 420 and 120-B IPC added later on) at Police Station Women, District Police Commissionerate Jalandhar and all subsequent proceedings arising thereto.

2. In FIR, petitioner No.1 has been arraigned as accused No.6 and petitioner No.2 as accused No.5.

3. Ld. Counsel for the petitioners contends that after marriage of Vandana Sharma with Amit Sharma, they both moved to Canada. In Canada, owing to matrimonial discord, some dispute arose between husband and wife which has no connection with the present petitioners. Because of the aforesaid discord, the present FIR has been registered and the petitioners have also been falsely implicated. He further contends that the petitioners are residents of Mohali, whereas Vandana lived at her matrimonial home in Jalandhar before joining her husband in Canada. He submits that from bare perusal of the FIR, no offence is made out against any of the petitioners and thus, it is a case which falls within the parameters as laid down in the case of '**State of Haryana vs. Ch. Bhajan Lal**', 1991(1) R.C.R. Criminal 383.

4. Ld. State Counsel submits that Challan has been presented and the matter is now listed for framing of Charges and thus, the present petition deserves to be dismissed.

5. Ld. Counsel appearing for respondent No.2/Complainant has taken the Court to the contents of the FIR. On the basis thereof, he submits that there are specific allegations levelled against petitioner No.2 and thus she will not be entitled for quashing of FIR by this Court. Ld. Counsel further submits that keeping in view that the matter is now fixed for framing of Charges and all the pleas herein can be raised well before the Ld. Trial Court, it will not be a case where this Court should exercise its jurisdiction under Section 482 Cr.P.C. to quash the proceedings.

6. Qua Petitioner No.1, Ld. Counsel admits that so far as Sections

406 and 498-A are concerned, there are no specific allegations. He asserts that offences punishable under Sections 420 and 120-B of the IPC have been added later on and the allegations levelled against petitioner No.1 shall well fall within the ambit of Sections 420 IPC and 417 of the IPC.

7. Having heard Ld. Counsel for the parties and after carefully perusing the record, this Court finds that there are specific allegations *qua* petitioner No.2 and thus, at this stage it will not be a case to quash the FIR *qua* her. Resultantly, the present petition *qua* petitioner No.2 stands dismissed.

8. So far as offences punishable under Sections 406 and 498-A are concerned, Ld. Counsel for respondent No.2/Complainant has also agreed that there is no allegation *qua* petitioner No.1. However he relied upon the contents of FIR, which reads as under :-

“....It was represented by accused no.4 Isha Sharma that the house situated at 6 Guru Nagar Near Goal Market Mithapur Road Jalandhar is owned by accused no.1 Amit Sharma it was also represented by accused no.4 Isha Sharma that the house situated at Canada is also owned by accused no.1 Amit Sharma. The applicant and his daughter had given consent to the marriage on the said words which were reiterated by accused no.1, 2, 3, 5 and 6 who also stated that the said houses are owned by accused no.1 Amit Sharma and he has very well settled life in Canada....”

9. On the basis of aforesaid contents of the FIR, Ld. Counsel for respondent No.2/Complainant contends that offence under Section 417 of the IPC is made out against the petitioner No.1 as well, and thus he is not

entitled for the indulgence of this Court, at this stage. Section 417 of the IPC reads as under :-

“417. Punishment for cheating.—Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

10. In the considered opinion of this Court the offence punishable under Section 417 of the IPC is not made out against petitioner No.1. It is not a case where daughter of the complainant entered into wedlock on the representation made by petitioner No.1. Thus, to claim that the allegations levelled qua petitioner No.1 in the FIR shall constitute offence under Section 417 of the IPC, is bereft of any merit and the same stands rejected.

11. Law w.r.t. inherent power of this Court under Section 482 of the Code stands settled by the Apex Court in ***Ch. Bhajan Lal's case (supra)*** holding that -

107. 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 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 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.”

12. Thus, it being a trite law that 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, it will be a case to exercise jurisdiction under Section 482 of the Code. So far as plea w.r.t. stage of the trial and availability of a remedy in the form of raising pleas for discharge is concerned, the said issue is also no longer *res integra*. Supreme Court in the case of '**State of W. B. and others vs. Swapan Kumar Guha and others**', 1982(1) SCC 561 has laid down the legal proposition holding that -

21. *The position which emerges from these decisions and the other decisions which are discussed by Brother A.N. Sen is that the condition precedent to the commencement of investigation under section 157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under section 157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation*

must go on and the rule in Khwaja Nazir Ahmed (supra) will apply. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the F.I.R. does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received.”

(emphasis supplied)

13. Keeping in view the settled position of law and the facts of the present case, I find that it is a case which falls within the parameters laid down in **Ch. Bhajan Lal's case (supra)**. Once, FIR does not disclose any offence against petitioner No.1, there is no justification in allowing the investigation/Trial to continue against him.

14. Thus, present petition *qua* petitioner No.1 is allowed. Consequently, FIR No.0080 dated 3rd December, 2020, registered for offences punishable under Sections 406, 498-A of the Indian Penal Code, 1860 (offences under Section 420 and 120-B IPC added later on) at Police Station Women, District Police Commissionerate Jalandhar and all proceedings subsequent thereto are hereby quashed *qua* Petitioner No.1.

15. Petition *qua* Petitioner No.2 stands dismissed.

March 11, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes