

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

CRM-M-43013-2022

Date of decision : 19.09.2022

Rajeev Saini @ Rajiv Saini

.....Petitioner

versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Saajan Singla, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Petitioner has approached this Court by way of the present petition filed under Section 482 Cr.P.C. praying for setting aside the order dated 06.06.2019 passed in Case No.CHI/205 of 2019 (CNR No.PBLDB1002009-2017) arising out of FIR No.02 dated 06.01.2016, under Sections 498-A, 406 of Indian Penal Code, 1860, registered at Police Station Women, Jagraon by the learned Judicial Magistrate Ist Class, Jagraon wherein the cancellation report submitted by the investigating agency was not accepted and the petitioner was summoned to face the trial and impugned order dated 21.07.2022 passed by the learned Additional Sessions Judge, Ludhiana whereby the revision petition filed by the petitioner was dismissed and the order dated 06.06.2019 passed by the Judicial Magistrate Ist Class, Jagraon was upheld.

Learned counsel for the petitioner has submitted that the petitioner was falsely implicated by respondent No.2 in the present case.

He has submitted that the petitioner solemnized marriage with respondent

No.2 on 29.06.2012. Both of them are government teacher. As the

respondent No.2 could not adjust in the matrimonial home after the marriage, there occurred a matrimonial discord between the husband and wife. On the lame excuses respondent No.2 left the matrimonial home and went to her parental home. The petitioner has filed petition under Section 9 of the Hindu Marriage Act for the Restitution of Conjugal Rights. Respondent No.2 appeared in the same and filed petition under Section 24 of the Hindu Marriage Act for the maintenance *pendente lite*. He has submitted that instead of joining the matrimonial home, respondent No.2 filed the FIR of false and frivolous allegations against the petitioner and his family members. The police duly investigated the case and found no truth in the allegations made. Hence, the police filed the cancellation report. Notice was issued to respondent No.2 by learned Judicial Magistrate Ist Class and she opposed the cancellation report so filed. After hearing the arguments, learned Judicial Magistrate Ist Class declined to accept the cancellation report and took cognizance against the petitioner vide impugned order dated 06.06.2019. Aggrieved by the same, the petitioner assailed the order dated 06.06.2019 by way of filing the revision petition before the learned Additional Sessions Judge, Ludhiana. However, after hearing counsel for the parties, learned Additional Sessions Judge, Ludhiana has declined the revision filed by the petitioner vide order dated 21.07.2022.

Learned counsel for the petitioner has submitted that both the Courts below have fallen in error in declining the cancellation report so filed. He has submitted that there were vague, general and omnibus allegations made by the complainant against the petitioner. Thereafter, a thorough inquiry was conducted in which the allegations levelled were

not substantiated and thus, the investigating agency, finding no truth in the allegations levelled, rightly filed the cancellation in the same. He has submitted that as per Section 198-A Cr.P.C., the trial Court was not competent to take the cognizance of the offence upon the police report. He has submitted that the learned Court has taken cognizance of the offence without verifying there being any evidence on record. Thus, he has submitted that both the impugned orders passed by the Courts below are illegal and thus, deserve to be *set aside*.

I have heard counsel for the petitioner and perused the record.

Admittedly, the petitioner was married with respondent on 29.06.2012. After the marriage, matrimonial discord took place between the husband and wife, due to which, a rift between both of them kept widening. Resultantly, respondent No.2-complainant filed the present FIR on the basis of the allegations contained therein. After the investigation, the investigating agencies did not find any truth in the allegations made and hence filed the cancellation report before the learned Judicial Magistrate Ist Class, Jagraon i.e. the Court of competent jurisdiction. Learned Court issued the notice to the complainant and heard both the sides. After hearing, learned Court declined to accept the cancellation report so filed and proceeded to take the cognizance. Aggrieved by the same, the petitioner filed the revision petition before the learned Additional Sessions Judge, Ludhiana and on hearing both the sides, dismissed the revision petition. For appreciating the arguments raised by counsel for the petitioner, the relevant statutory provisions are to be appreciated.

Section 190 of Cr.P.C. read as follows:

190. Cognizance of offences by Magistrate- (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

As per the statutory provisions of Section 190 Cr.P.C., the Magistrate can take cognizance on the basis of the conditions as mentioned therein. In the case in hand, the FIR was lodged by the complainant and on conclusion of the same, cancellation report was filed. After filing the cancellation report by the prosecution, the learned Magistrate has an option to adopt one of three courses:-

- 1) he may accept the report and drop the proceeding; or
- 2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process; or
- 3) he may direct further investigation to be made by the police under sub-section (3) of Section 156.

I am supported by the judgment of the Hon'ble Supreme Court in **Bhagwant Singh Vs. Commissioner of Police and another, (1985) 2 SCC 537.** The learned Magistrate has opted for one of the above options and took cognizance on the basis of the cancellation report so filed. The Judicial Magistrate Ist Class, Jagraon has committed no illegality in taking the cognizance of the case as he was legally empowered to exercise any of the three options available to him. The Magistrate cannot be compelled to exercise any specific option, out of the three options available unless the same is arbitrary. This Court finds the action of the learned Magistrate as in accordance with law.

Learned counsel for the petitioner raised the contentions pertaining to Section 198-A Cr.P.C. containing that the Court could not have taken cognizance for the offence under Section 498-A IPC. Reading of the Section would make it evident that the arguments raised by counsel for the petitioner is totally misplaced. Section 198-A Cr.P.C. mandates that the Court can take cognizance of the offence on the basis of police report or upon the complaint made by the aggrieved person. In the case in hand, the FIR was lodged by the aggrieved wife which was duly investigated by the police and thereafter, police report was filed which was the cancellation report so prepared by the investigating agencies on the conclusion of the investigation. Thus, learned Judicial Magistrate Ist Class, Jagraon and the Revisional Court has committed no illegality in taking the cognizance of the offence under Section 498-A of IPC and hence, there was no contravention of the statutory provisions of Section 198-A Cr.P.C. There are concurrent findings of both the Courts against

the petitioner.

Weighing the facts and circumstances of the present case on the anvil of the law settled, this Court finds no merit in the petition filed and the same is hereby dismissed.

19.09.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No