

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Miscellaneous No.M-3562 of 2021
Date of Decision: April 5th, 2022

Sukhvir Singh & others

..... PETITIONER(S)

VERSUS

State of Punjab & another

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE SANT PARKASH**

. . .

PRESENT: - Mr. Neeraj Sansaniwal, Advocate, for the petitioner.

Mr. V.G. Jauhar, Senior Deputy Advocate General,
Punjab.

Mr. Baltej Singh Sidhu, Senior Advocate with
Mr. Chandan Singh and Mr. Inderpal Singh, Advocates,
for respondent No.2.

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Sant Parkash, J

The present petition has been filed under Section 482 Cr.P.C. for quashing FIR No.177 dated 21.07.2020 (Annexure P-1) under Sections 420, 406, 120-B IPC, registered at Police Station, Kotbhai, Sri Muktsar Sahib alongwith consequent proceedings, as also to stay further proceedings in the aforesaid FIR case.

The present FIR came to be registered on the basis of complaint of respondent No.2 wherein he alleged that he was married with Navdeep Kaur (daughter of petitioner No.1) on 30.04.2018. After marriage, Navdeep Kaur was sent to Canada on his expenditure, who then called him also. Complainant alleged that she had maintained illicit relationships but on

questioning her, she made false complaint before Canada Police and registered a false case against him. After investigation, Canadian Government discharged him from all allegations but his wife raised a demand of \$ 40,000 to take back all the cases registered against him. Thereafter, complainant came back to India on 01.08.2019 but still he is receiving threats from relatives of Navdeep Kaur.

During inquiry into the aforesaid complaint, it was found that Navdeep Kaur daughter of petitioner No.1, had done IELTS. Matrimonial alliance of respondent No.2 and Navdeep Kaur was fixed in the year 2018 on the condition that family of respondent No.2 – Gursewak Singh will bear all the expenses of sending Navdeep Kaur abroad, in lieu of which, she will also call respondent No.2 by providing him PR. Ring ceremony was held on 14.02.2018. All the expenses were borne by the family of respondent No.2. Even thereafter, lacs of rupees were demanded by petitioners from the family of respondent No.2, on the pretext of sending Navdeep Kaur abroad. Marriage was solemnized on 30.04.2018 and Navdeep Kaur was sent Canada on 15.08.2018 on the entire expenses incurred by family of respondent No.2. On 19.02.2019, respondent No.2 also went Canada on receipt of Visa. On reaching there, he came to know that Navdeep Kaur had illicit relations with some other boy regarding which he produced a CD containing photos and video. Even a false case was got registered against him. On coming out of jail, he came back to India. During inquiry, Navdeep Kaur and petitioners, in their statements, leveled allegations against respondent No.2 of harassing Navdeep Kaur on account of dowry. However, during inquiry, nothing came into light regarding demand of dowry. After detailed inquiry proceedings, the present FIR was

registered against Navdeep Kaur, her father Sukhvir Singh (petitioner No.1), petitioner No.2, Jaspreet Singh (brother of Navdeep Kaur) and petitioner No.3, Gurwinder Kaur (mother of Navdeep Kaur).

Learned counsel for the petitioners has stated that a false case has been registered against them. Rather, respondent No.2 maltreated Navdeep Kaur in Canada. Even a complaint was filed by Navdeep Kaur against respondent No.2, whereafter he could be discharged only after executing a Peace Bond and on the condition that he would never maltreat her in future. He came back to India on 01.08.2019, however his Visa was not extended when Navdeep Kaur complained the Embassy about her maltreatment at the hands of respondent No.2. The intention of respondent No.2 behind lodging the present FIR is to escape his liability on the complaints of Navdeep Kaur with regard to incidents of domestic violence committed by him. The present case against the petitioners is nothing but an abuse of process of law.

Learned counsel for the State, on the basis of reply, submitted that petitioners misappropriated gold jewellery and other articles given to them and did not return the amount spent by complainant/respondent No.2 on the marriage, purchasing articles and sending Navdeep Kaur to Canada. The petitioners were having dishonest intention to cheat the complainant and his family members from the very beginning. The petitioners have cheated an amount of ₹ 50,62,847/-. Moreover, in the whole of the petition, the factum of complainant and his family members having paid/spent a huge amount on the marriage and for sending Navdeep Kaur to Canada, has not been denied by the petitioners.

While the petitioners are on bail, Navdeep Kaur is absconding. Challan was presented against the petitioners on 22.01.2021.

Learned counsel for respondent No.2 has contended that the respondent and his family members have been cheated by the petitioners by conspiring together from the very beginning for sending Navdeep Kaur to Canada on the expenses of respondent No. 2. Family members of Navdeep Kaur were fully aware about her illicit relations with the boy at Canada and when respondent No.2 came to know regarding this fact, he objected to the same, whereafter Navdeep Kaur, in order to save her skin, made a false complaint against him and further made e-mails to the embassy for the cancellation of Passport and for non-renewal of visa of respondent No.2.

It is further contended by Learned counsel for respondent No.2 that the intention of the petitioners and Navdeep Kaur can also be drawn from the Visa (Annexure R-2/1) of respondent No.2 sent by Navdeep Kaur which is a "Work Visa" and not the spouse visa for a period of 6 months. Respondent No. 2 has placed on record the photographs (Annexure R-2/2) in order to show the illicit relations of Navdeep Kaur with some other boy.

It is further contended by Learned counsel for respondent No.2 that the petitioners and Navdeep Kaur showed her as Baptized Sikh at the time of marriage and because of the said reason respondent No.2 and his family members got ready for the marriage but later on came to know about illicit relations of Navdeep Kaur and the habit of her drinking. Petitioners threatened respondent No.2 and his family members of dire consequences and also to falsely implicate them in case of dowry demand etc. The petitioners moved a complaint to Senior Superintendent of Police, Sri

Muktsar Sahib, Punjab and the said inquiry was marked to Deputy Superintendent of Police, Gidderbaha. From the said report dated 18.03.2020 it was concluded that Navdeep Kaur in coonivance with her father (petitioner no.1), brother (Petitioner No.2), mother (petitioner No.3) & grandfather (Darshan Singh) played fraud upon respondent No.2 and his family members by spending their about Rs. 50,62,847/- on going Canada besides expenses of marriage; college fees & misappropriation of gold. It was further found out that the complaint given by Navdeep Kaur and her father against the respondent No.2 and his family members was false. The said inquiry report had also been approved by the Senior Superintendent of Police, Sri Muktsar Sahib whereafter FIR (P-1) was registered against the petitioners and Navdeep Kaur.

It is further contended by Learned counsel for respondent No.2 that subsequent to registration of FIR, the investigation was carried out and final report dated 29.11.2020 was submitted before the court of competent jurisdiction against the present petitioners. No challan has been presented against Navdeep Kaur as she was not arrested till date and thereafter the trial court framed the charges against the petitioners vide order dated 02.09.2021.

Learned counsel for respondent No.2 has relied upon **Minakshi Bala v. Sudhir Kumar, (1994) 4 SCC 142** to contend that in exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence. The findings regarding commission of an offence cannot be recorded on the basis of affidavit evidence and at the stage of framing of charge the court cannot

usurp the functions of a trial court to delve into and decide upon the respective merits of the case.

Learned counsel for respondent No.2 has further relied upon **R.P. Kapur v. State of Punjab (1960) 3 SCR 388** to contend that in exercising the inherent powers of the High Court it would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage.

I have heard the rival submissions made by learned counsel for the parties and gone through the record available.

At the time of hearing of the case on 27.01.2021, learned counsel for petitioners argued that respondent No.2 was arrested by the police in Canada but failed to show any document with regard to same when this Court directed the petitioners to place on record any orders passed by a competent authority in Canada with regard to the arrest of respondent No.2. The petitioner through CRM No.6486 of 2021 placed on record a copy of the Peace Bond executed between Navdeep Kaur and respondent No.2 dated 29.07.2019 in Canada. The said Bond also does not show in any manner that respondent No.2 was arrested.

A perusal of the enquiry report submitted by Deputy Superintendent of Police, Gidderbaha would reveal that during the inquiry of the complaint made by respondent No.2/complainant, the petitioners were called and their statements were recorded. Petitioner No.1-Sukhvir Singh was asked to send the statement of her daughter Navdeep Kaur, who is

presently living in Canada, on the official e-mail, but no statement of Navdeep Kaur was received in the office of DSP Gidderbaha. During the said inquiry and from the statements of parties, it came out that since the inception of the marriage of respondent No.2 with Navdeep Kaur, total amount of Rs.50,62,847/- was incurred on solemnizing the said marriage including Canadian visa for Navdeep Kaur and further expenses for her education and living expenses at Canada which was borne by respondent No.2/complainant and his family. On receipt of work visa of respondent No.2, he also went to Canada and on reaching there, he found that Navdeep Kaur was having illicit relations with some other boy and a dispute arose between both of them. Navdeep Kaur complained to the police and got confined respondent No.2 in jail at Canada. She also made efforts to get the passport and visa of respondent No.2 cancelled by writing e-mails to the Embassy. Respondent No.2 came back to India on expiry of his work visa. Navdeep Kaur along with her parents and brothers levelled allegations against respondent No.2 and his family on account of having demanded dowry and harassing Navdeep Kaur. However, neither any complaint was given by the accused persons against respondent No.2 and his family regarding the said allegations nor any evidence was produced. Moreover, as per previous inquiry report of Deputy Superintendent of Police, Sub Division, Sri Muktsar Sahib, nothing has come into light regarding demand of dowry by respondent No.2 and his family from Navdeep Kaur. Moreover, on account of aforesaid inquiry, Deputy Superintendent of Police, Gidderbaha recommended that if approved, the SHO, Kotbhai may be ordered to register case under Sections 420, 406 and 120-B of IPC against

petitioners along with Navdeep Kaur (daughter of petitioner No.1) and Darshan Singh son of Joginder Singh.

Further, a perusal of the reply dated 07.03.2021 and 28.10.2021 filed by way of affidavit of DSP, Sub Division Gidderbaha, District Sri Muktsar Sahib would reveal that during the investigation, cognizable offences under Sections 420, 406 and 120-B of IPC had been made out against the petitioners; challan was presented before trial Court and charge has also been framed against all of them. All the petitioners are on bail but arrest of accused Navdeep Kaur is pending as she is absconding.

Now, the petitioners have approached this Court seeking quashing of FIR No.177 dated 21.07.2020 registered against them, under Sections 420, 406 and 120-B of IPC.

Keeping in view the facts of the present case, this Court does not find it appropriate to accede to the prayer made on behalf of the petitioners and the same is liable to be dismissed.

It is taken into consideration that the trial in the present case is still pending before learned trial Court and this Court is of the considered view that at this stage, this Court should refrain itself from going into the merits of the case by taking into consideration the affidavits and documents submitted by accused, in view of the law laid down by Hon'ble Supreme Court in the case of **State of Bihar and another versus Shri P.P.Sharma and another**, decided on 02.04.1991, wherein the Hon'ble Apex Court held as under:-

“The appreciation of evidence is the function of the criminal Courts and the High Court can not convert into trial Court in exercise of its inherent powers and should not assume jurisdiction putting an end to the process of investigation and trial provided under the law.”

It is also pertinent to mention here that Hon'ble Apex Court in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others, 1991(1) RCR (Criminal) 383, AIR 1992 Supreme Court 604**, has laid down certain guidelines with regard to the categories of cases, the High Court may in exercise of powers under Article 226 or under Section 482 Cr.P.C., may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any law or otherwise to secure the ends of justice. However, power should be exercised sparingly and that too in the rarest of rare cases. The categories of such cases are enumerated as below:-

- 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 even 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.”

It has been held by Hon'ble Apex Court in the aforesaid judgment that where allegations in the complaint constitute a cognizable offence justifying registration of a case & investigation thereon and do not fall in any of the categories of cases enumerated above, calling for exercise of extraordinary powers or inherent powers for quashing the FIR was not justified.

In view of the aforesaid guidelines laid down by Hon'ble Supreme Court, the facts of the present case do not match with any of the category of cases as enumerated above and therefore, this Court would not feel it justified to exercise its inherent powers for quashing the FIR in question.

Keeping in view the aforesaid, the instant petition is hereby dismissed.

**(SANT PARKASH)
JUDGE**

April 5th, 2022
avin/maninder

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No