

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

129

CRM-M-10520-2023

Date of Decision: 20.04.2023

Balwinder Kataria

..... Petitioner

Versus

State of UT Chandigarh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Kamal Chaudhary, Advocate
for the petitioner.

Mr.J.S.Toor, APP for U.T.Chandigarh.

Mr. Gautam Bhardwaj, Advocate
for respondent No.2.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Section 482 Cr.P.C. is seeking quashing of FIR No.313 dated 17.06.2015 registered at Police Station Manimajra, Chandigarh, under Sections 304-B and 120-B of IPC.

2. The brief facts of the case are that complainant-Punit (brother of deceased) lodged a complaint alleging that marriage of his sister was performed with Balwinder Kataria on 29.04.2015. She was given beatings right after few days of her marriage. Her husband-Balwinder Kataria asked her to bring Rs. 3 lakhs as he had to go to Italy. Her mother-in-law and father-in-law used to taunt that they had offers of marriage of their son from well to do families and by marrying their son with her, they have ruined his life. The brother and sister of husband of the deceased used to demand car

and a gold set. Whensoever he used to go to meet the deceased, she used to weep. She has committed suicide on account of harassment caused by her husband and other family members.

3. The police after completing investigation filed its report under Section 173 Cr.P.C. Charges came to be framed against family members of the present petitioner under Sections 120-B, 304-B and 306 of IPC. A number of prosecution witnesses came to be examined. The Additional Sessions Judge, Chandigarh vide judgment dated 27.03.2017 acquitted all the four accused. The complainant preferred an appeal i.e. CRM-A-1227-MA-2017 before this Court which came up for consideration before a Division Bench of this Court. This Court vide order dated 08.11.2019 dismissed appeal of the complainant.

4. The petitioner could not be tried along with his family members because he was out of country and ultimately declared proclaimed offender.

5. Learned counsel for the petitioner *inter alia* contends that a Division Bench of this Court vide order dated 08.11.2019 has dismissed appeal of the complainant and the trial Court after conducting the lengthy trial has found all the family members of the petitioner innocent. The petitioner is rather victim. The deceased committed suicide because she got pregnant from another boy which is evident from the fact that the petitioner was not in India when she conceived. The co-accused have been acquitted, thus, there seems no reason to continue proceedings against the petitioner.

6. Mr. Toor, learned counsel for U.T.Chandigarh submits that as per record, the petitioner came to India on 13.01.2015 and his engagement with deceased took place on 27.02.2015. After tying nuptial knot, he left India on 03.03.2015. To solemnise marriage, he returned to India on

18.04.2015 and marriage was solemnised on 29.04.2015. Thereafter, he left for Italy on 28.05.2015. Ultrasound of the deceased was conducted on 05.06.2015 and she was found pregnant of 8+1 weeks. From the calculation of weeks of pregnancy, it comes out that the petitioner was not in India, on the day, when the deceased conceived.

7. Per contra, learned counsel for the complainant submits that the investigating agency has conducted faulty investigation. The Investigating Officer did not draw samples. Resultantly, it could not be ascertained that who was biological father of the child conceived by deceased. The findings recorded by the trial Court in the case of co-accused and by Division Bench of this Court are contrary to facts and cannot be relied upon while adjudicating present petition.

8. I have heard the arguments of learned counsel for the parties and perused the record.

9. The petitioner through instant petition is seeking quashing of impugned FIR on the ground of acquittal of four co-accused who are family members of the petitioner. Before advertng with facts of this case, it would be relevant to notice scope and power of high court while advertng with these issues.

A two judge bench of Supreme Court in **State of Haryana & others Vs Bhajan Lal & others 1992 Supp (1) SCC 335** after considering plethora of judgments has illustrated circumstances where High Court in exercise of its power under Article 226 of Constitution of India and Section 482 of Cr.P.C. can quash FIR. The Supreme Court has reminded the courts that power should be exercised in exceptional cases and with full circumspection. Relevant paragraphs and findings read as:

83. The Judicial Committee in its oft-quoted decision, namely, Emperor v. Khwaja Nazir Ahmad AIR 1945 PC 18 though strongly observed that the judiciary should not interfere with the police in matters which are within their province, has qualified the above statement of law by saying : (AIR p. 22)

“No doubt, if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation”

85. Gajendragadkar, J. speaking for the Court while considering the inherent powers of the High Court in quashing the first information report under Section 561-A of the old Code (corresponding to Section 482 of the new Code) in R.P. Kapur v. State of Punjab [(1960) 3 SCR 388, 396 : AIR 1960 SC 866 : 1960 Cri LJ 1239] at page 393 made the following observation:

“Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person.

93. The Supreme Court in State of Bihar v. J.A.C. Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272] examined the question whether, when the investigation was in progress, the High Court was justified in interfering with the investigation and prohibiting or precluding further investigation in exercise of its extraordinary jurisdiction under Article 226 of the

Constitution. On the facts of that case, this Court set aside the order of the High Court quashing the order of the Magistrate in postponing the consideration of the report submitted to him till the final report of completion of further investigation, directed by the State Government was submitted to him and held that the High Court in exercise of its extraordinary jurisdiction committed a grave error in giving the direction virtually amounting to mandamus to close the case before the investigation was complete.

95. The classic exposition of the law is found in State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : (1982) 3 SCR 121] . In this case, Chandrachud, C.J. in his concurring separate judgment has stated that “if the FIR 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”. Justice A.N. Sen who wrote the main judgment in that case with which Chandrachud, C.J. and Varadarajan, J. agreed has laid the legal proposition as follows : (SCC pp. 597-98 paras 65 and 66)

“... the legal position is well settled. The legal position appears to be that if an offence is disclosed, the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result

in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the court zealously guards them and protects them. An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the

offence.”

98. Speaker for the bench, Ranganath Misra, J. as he then was in Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] has expounded the law as follows : (SCC p. 695, para 7)

“The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage.”

102. 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

10. A single judge bench of Karnataka High Court while dealing with quashing of FIR on the ground of acquittal of co-accused in **Salman @ Shameer Vs State of Karnataka (W.P. No. 25286 of 2018 (GM-RES). D/d. 13.7.2018)** has held:

5. In another decision reported in 2002 (1) KCCR 1 in the case of Muneer Ahmed Qureshi, Muneer @ Gaun Muneer v. State of Karnataka by Kumaraswamy Layout Police, wherein this Court has held that:

"Entire case of the prosecution as against six accused is practically inseparable and individual one and especially when the Judgment of acquittal is passed, when P.W. 1 denies the entire incident or the role of the accused. This reasoning of acquittal would also definitely enure to the petitioner. Even if the petitioner is tried there cannot be any other material other than what is already produced and considered by Trial Court. In such circumstances it will be an exercise in futility to make the petitioner to undergo the ordeal of crime, and then to be acquitted.

Holding that the proceeding against the accused person who was absconding and subsequently against whom a split up charge sheet was filed was quashed."

6. In the above said backdrop and the dictum of the Hon'ble Apex Court and this court, the only point that requires for consideration of this court is -

"Whether the materials placed before the court against the accused person who has already acquitted and the material available against the petitioner herein, are one and the same and inseparable if juxtapose compared with each other".

7. If the allegations are indivisible and inseparable in nature, in such an eventuality, the judgment of acquittal can also be extended to the absconding accused persons or against whom, a separate split up charge sheet has been filed. Therefore, it is incumbent upon the court to examine the materials on record to find out whether the petitioner is entitled for such benefit in a given particular case. Therefore, it is just and necessary to ascertain the factual aspects of this case.

11. In the case in hand, there is allegation of harassment on the part of petitioner and his family members which drove the sister of the complainant to take extreme step of suicide. There are allegations of harassment on account of demand of dowry against the petitioner, his sister, husband of the sister (brother-in-law), father and mother. All the family members stand acquitted and judgment of acquittal has already been upheld by this court.

12. A Division Bench of this Court while dismissing appeal of the complainant against judgment of acquittal qua family members of the petitioner, has recorded categoric finding qua pregnancy of the deceased.

The relevant extracts of order dated 08.11.2019 read as:

“25. PW-2 Baby, mother of 'N' (deceased) admitted that her daughter was pregnant and was medically examined at Civil Hospital, Manimajra and also from Mirchias Diagnostic and Path Lab where ultrasound was conducted. Ultrasound report (Ex. D-9) reveals that 'N' (deceased) was having pregnancy of 8 + 1 weeks.

26. The ultrasound was conducted on 5.6.2015 and it pointed out the pregnancy of 8 + 1 weeks and Balwinder Kataria came from Italy to perform marriage on 18.4.2015 and the marriage was solemnized on 29.4.2015 and Balwinder Kataria again went back to Italy on 28.5.2015. Thus, 'N' (deceased) stayed with her husband for 28 days. If the date of ultrasound is taken into consideration, which was conducted on 5.6.2015 indicating 8 + 1 weeks pregnancy, 'N' became pregnant before marriage with Balwinder Kataria.

27. As argued by the learned counsel for the applicant that Balwinder Kataria had physical relations with 'N' (deceased) after engagement on 27.2.2015, on the asking of the counsel for the applicant, we have perused the coloured copy of the passport of Balwinder Kataria which shows that for the purpose of engagement, he came to India on 13.1.2015 and went back on 3.3.2015. Since the ultrasound was conducted on 5.6.2015 which pointed out pregnancy of 8 + 1 weeks even then the allegations against Balwinder Kataria that he had physical relations with 'N' deceased after engagement, cannot trap him.

28. To our mind, the present case does not fall in a category where 'N' (deceased) was subjected to cruelty and harassment by the husband and his family members i.e. respondents No. 2, 4 and 5. The

evidence of PW-1 Puneet (brother of the deceased) and PW-2 Baby (mother of the deceased) are not free from any doubt and worthy of acceptance. Since the evidence does not inspire any confidence of this Court, the judgment under challenge does not suffer from any infirmity as there is no evidence on record to show provocation for the distress to go to the extent of committing suicide nor there is an iota of evidence indicating the husband and his family members having abetted the commission of suicide.”

13. In the FIR, there are identical set of allegations against all the family members of the petitioner. Except petitioner, four family members have faced trial and they stand acquitted. Further, appeal of the complainant against acquittal stands dismissed. The State had neither filed appeal against acquittal of family members nor is opposing the prayer made in the present petition. It is complainant who filed appeal against judgment of acquittal and is contesting present petition. A Division Bench of this court while dismissing appeal of the complainant has recorded categorical finding that deceased was pregnant from another boy though she solemnised marriage with the petitioner. As per complainant there was faulty investigation and findings of Division Bench are not correct. The findings of Division Bench of this court are binding on this court. As per judicial propriety and principles of precedent, this court cannot form an opinion contrary to opinion of Division Bench.

Role attributed to petitioner is almost identical as to his family members. Thus, applying the principles laid down by Hon'ble Supreme Court in Bhajan Lal (**supra**) and judgment of Karnataka High in Salman (**supra**), this court is of the considered opinion that it would in the fitness of things and interest of justice if present petition is allowed and accordingly

allowed.

FIR No. 313 dated 17.06.2015 registered at Police Station Manimajra, Chandigarh, under Sections 304-B and 120-B of IPC and all consequential proceedings arising therefrom are hereby quashed qua the Petitioner.

(JAGMOHAN BANSAL)
JUDGE

20.04.2023
anju

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>