

CRM-M-13893-2016

-1-

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

201

CRM-M-13893-2016

Date of Decision: 28.04.2023

Sweety

...Petitioner

**Versus**

State of Punjab and Others

...Respondents

**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Sandeep S. Majithia, Advocate for the petitioner

Mr. Shiva Khurmi, AAG, Punjab

\*\*\*

**JAGMOHAN BANSAL, J. (ORAL)**

1. The petitioner through instant petition under Section 482 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking quashing of Complaint No.157 dated 17.09.2008 titled as '*Harpreet Kaur Versus Gurbinder Singh and Others*' (Annexure P-5), summoning order dated 03.03.2010 (Annexure P-6) whereby Judicial Magistrate 1<sup>st</sup> Class, Amritsar, had summoned the petitioner along with other co-accused to face trial under Sections 406, 498-A, 506 & 120-B IPC and order dated 05.12.2013 (Annexure P-11) whereby Judicial Magistrate 1<sup>st</sup> Class, Amritsar had declared the petitioner as Proclaimed Offender.

2. Mr. Sandeep S. Majithia, Advocate appeared and filed his Power of Attorney on behalf of the petitioner with no objection from previous counsel. The same is taken on record. Registry is directed to tag at an appropriate place.

3. The brief facts of the case are that marriage of respondent No.2 was solemnized on 07.03.2007 with Gurbinder Singh i.e. elder

brother of the petitioner. The marriage was solemnized according to Sikh rites and ceremonies and no issue was born from this wedlock. The petitioner, at that point of time, was unmarried and she got married on 11.04.2008. She went to Australia on 16.07.2008 and settled in her matrimonial home.

4. The respondent No.2 on account of matrimonial discord lodged FIR No.109 dated 08.07.2008 under Section 498-A, 406, 323 & 34 IPC and 3/4 of Dowry Prohibition Act, 1961 against her husband and in-laws. The police during the course of investigation found the petitioner innocent. The police after completing investigation presented its report under Section 173 Cr.P.C. The Trial Court framed charges under Sections 498-A, 406, 323 & 34 of IPC against the persons named in the challan. The petitioner was not named in the challan, thus, charges were not framed against the petitioner. The Trial Court vide judgment dated 12.03.2015 (Annexure P-14) acquitted all the accused.

5. The respondent No.2 on the one hand lodged FIR and on the other hand filed impugned criminal complaint dated 17.09.2008 (Annexure P-5) against her husband and other family members including the petitioner. The Judicial Magistrate 1<sup>st</sup> Class, Amritsar vide impugned order dated 03.03.2010 (Annexure P-6) ordered to summon the petitioner as well as others to face trial under Sections 498-A, 406, 506 & 120-B of IPC. The petitioner was out of country, thus, could not face the trial, however, other family members faced trial in the complaint case and they came to be acquitted vide judgment dated 12.03.2015 (Annexure P-

15) passed by Additional Chief Judicial Magistrate, Amritsar. Real sister of petitioner and her husband preferred CRM-M-12363-2010 before this Court seeking quashing of complaint and summoning order. This Court vide judgment dated 12.08.2013 (Annexure P-7) quashed impugned complaint and summoning order qua petitioners therein.

6. The respondent No.2 entered into compromise dated 18.03.2016 with her husband. On the basis of compromise, petition under Section 13-B of Hindu Marriage Act, 1955 (for short 'HMA') came to be filed. Additional District Judge, Amritsar vide judgment and decree dated 18.03.2016 ordered to dissolve marriage between respondent No.2 and brother of the petitioner.

7. Learned counsel for the petitioner *inter alia* contends that in view of compromise arrived between respondent No.2 and her husband coupled with decree of divorce, order dated 12.08.2013 passed by this Court in the case of co-accused i.e. real sister of the petitioner, acquittal of co-accused by Trial Court in FIR as well as impugned complaint case, the present petition deserves to be allowed. The respondent No.2 has solemnized marriage with another boy and she is blessed with a child. As she has settled her all grievances with the family members of the petitioner, she is not coming forward before this Court.

8. Despite repeated notices and opportunities, there is no representation on behalf of respondent No.2 and matter is pending before this Court since 2016. This Court is left with no other option except to

adjudicate the present petition with the able assistance of learned State counsel.

9. Learned State counsel does not dispute the factual position and confirms that challan in FIR case was not presented against the petitioner and co-accused in FIR as well as complaint case stand acquitted.

10. I have heard the arguments of learned counsel for the petitioner and learned State counsel and perused the record with their able assistance.

11. The conceded position emerging from the record and arguments of both sides is that respondent No.2 has amicably resolved her grievances with brother of the petitioner and her marriage with brother of petitioner stands dissolved. The co-accused stand acquitted in FIR as well as complaint case. A Co-ordinate Bench of this Court in the case of sister of the petitioner who was also one of co-accused has quashed impugned complaint as well summoning order.

12. The petitioner through instant petition is seeking quashing of impugned complaint on the ground of acquittal of co-accused who are family members of the petitioner and the compromise effected between petitioner and respondent No.2.

13. 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 Hon'ble 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 Hon'ble 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.”*

14. 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."*

15. In the case in hand, there are allegations of harassment on account of demand of dowry against the petitioner and her family members. Complaint and summoning order stands quashed qua her real sister and her husband by this Court vide order dated 12.08.2013 passed in CRM-M-12363-2010 and the brother of the petitioner and other family members stand acquitted vide judgment dated 12.03.2015 passed by Trial Court in FIR as well as impugned complaint case.

16. In view of above noted peculiar facts and circumstances of the case and applying the principles laid down by Hon'ble Supreme Court in *Bhajan Lal (supra)* and judgment of Karnataka High Court 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. Impugned Complaint No.157 dated 17.09.2008

CRM-M-13893-2016

-13-

titled as ‘*Harpreet Kaur Versus Gurbinder Singh and Others*’ (Annexure P-5) and all consequential proceedings arising therefrom are hereby quashed qua the petitioner.

(JAGMOHAN BANSAL)  
JUDGE

28.04.2023  
*Mohit Kumar*

|                                  |               |
|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |