

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.25161 of 2015
Date of decision: 06.12.2023
Reserved on: 30.11.2023

Gurbej Singh

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. R.K. Arya, Advocate,
for the petitioner.

Mr. Kunwarbir Singh, AAG, Punjab,
for the respondent-State.

None for respondent No.2.

MANISHA BATRA, J.

1. The present petition has been filed by the petitioner seeking quashing of FIR No.07 dated 29.01.2015 registered under Section 354A of IPC at Police Station Tibbar, District Gurdaspur and subsequent proceedings emanating therefrom.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR had been registered against the petitioner on the basis of statement recorded by the complainant "P" (name withheld) alleging therein that on 05.07.2013, her father had performed her engagement with the petitioner accused. The petitioner

was serving in Border Security Forces. It was settled that their marriage will be performed after one year. She alleged that whenever the petitioner came on leave, he called her on telephone and made vulgar talks with her and had also sent messages to her. After one year, when her father contacted the parents of the petitioner for fixing for some date for solemnizing of marriage, both parents of the petitioner bluntly refused to perform his marriage with her. The complainant while alleging that she had been cheated at the hands of the petitioner and her life was ruined, prayed for taking action against the culprits. Initially, a case under Sections 420 and 354A read with Section 120-B of IPC was registered. Investigation proceedings were initiated. During investigation, charges under Section 420 and 120-B of IPC were deleted. The petitioner was arrested and subsequently he was released on bail. After completion of investigation and usual formalities, challan was presented in the Court and the petitioner was charge-sheeted for commission of offence punishable under Section 354A of IPC vide order dated 10.09.2015 by the Court of learned Additional Chief Judicial Magistrate, Gurdaspur. It will not be out of place to mention here that the respondent No.2-complainant has since been expired. The case is presently at the stage of producing evidence by the prosecution.

3. Learned counsel for the petitioner has argued that the allegations in the FIR even if accepted at their face value do not make any prima facie case for commission of offence punishable under Section 354A of IPC against the petitioner. The parents of the petitioner were

also involved by the complainant in the FIR but they were found to be innocent. Even the allegations of committing offence of cheating by the petitioner were found to be false and the offence under Section 420 of IPC was deleted during the investigation itself. The FIR, in question, had been lodged with a revengeful intent merely to harass the petitioner. He was facing the agony thereof for the last more than eight years. There were no chances of the case culminating into conviction of the petitioner. Hence, it has been urged that the petition deserves to be allowed.

4. Learned State counsel argued that there were specific allegations against the petitioner which did not justify invoking of inherent powers under Section 482 of Cr.P.C. by this Court and, therefore, it was urged that the petition did not deserve to be allowed.

5. I have heard learned counsel for both the sides at considerable length besides scrutinizing the material placed on record. At the outset, it would be profitable to look into the scope and ambit of the power of the High Court under Section 482 of Cr.P.C. which has been spelt out by Hon'ble Supreme Court in a catena of judgments. Reference can firstly be made to **State of Haryana v. Bhajan Lal**, 1992 Supp (1) SCC 335 which is a celebrated pronouncement and in which the Apex Court had drawn up some guidelines in certain category of cases by way of illustration to circumscribe the exercise of inherent power under Section 482 of Cr.P.C. to prevent abuse of process of any Court or to secure the ends of justice. Some of the same that are relevant for the purpose are reproduced as hereunder:-

“102 (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) to (6) XXX XXX XXX

(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.

6. Reference can also be made to **Devendra and others v. State of UP and another**, 2009 (7) Scale 613, wherein it was held that the High Court would ordinarily exercise its jurisdiction under Section 482 of Cr.P.C. if the allegations made in the FIR, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the FIR or the evidence collected during

investigation do not satisfy the ingredient of an offence, the superior Courts should not encourage harassment of a person in a Criminal Court for nothing, and to **Chunduru Siva Ram Krishna and another v. Peddi Ravindra Babu and another**, 2009 (4) Scale 685, wherein it was held that the test to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint filed prima facie established the offence. It is also for the Court to take into consideration any special feature that may appear in a particular case while considering whether it is expedient in the interest of justice to permit the prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose.

7. Having perused the relevant facts and contentions raised by the petitioner and the respondents, in the considered opinion of this Court, the foremost issue which requires determination in the instant case is whether the allegations made against the petitioner are liable to be quashed.

8. While keeping the above discussed position of law in mind, let us consider as to whether the FIR lodged against the petitioner for commission of offence punishable under Section 354A of IPC and the proceedings emanating therefrom, are liable to be quashed or not. Before delving into that point, it will be proper to refer to the ingredients required to be established for commission of offence punishable under Section 354A of IPC. For attracting this section, it is required to be proved that the accused committed any of the following acts:-

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) a demand or request for sexual favours; or
- (iii) showing pornography against the will of a woman; or
- (iv) making sexually coloured remarks, shall be guilty off the offence of sexual harassment.

9. In the instant case, though it is alleged by the complainant in the FIR that the petitioner had been making calls to her on her telephone and used to make vulgar conversation, however, in the complaint, there is no mention as to what was that conversation. It is not the allegation that he had been trying to make physical contact or advances involving explicit sexual overtures, was demanding any sexual favour or had been showing pornography to the victim. The allegations of making vulgar conversation without explaining the contents of such conversation cannot be stated to make out any case falling within the meaning of Section 354A of IPC in the absence of the contents of such like conversation. The allegations in the FIR, however, do not show the factum of commission of the offence punishable under Section 354A of IPC. As such, no definite case has certainly been made out as against the petitioner. The allegations in the FIR are quite vague. It was simply alleged by the complainant that the petitioner used to have vulgar conversation with her on phone. On which particular date, month and year, he had made such conversation and what were the contents of that conversation had, however, not been disclosed in the FIR. From these allegations, the ingredients required for commission of offence punishable under Section

354A i.e. making any physical contact or advances involving sexual overtures, seeking sexual favours showing pornography or making sexually coloured remarks, have not at all been attracted as against the petitioner. The allegations levelled in the FIR on their face value do not make out any case for commission of offence under Section 354A of IPC. In such circumstances, in the considered opinion of this Court, the allegations as levelled against the petitioner, as they are, are wholly insufficient and prima facie do not make out a case for commission of offence punishable under Section 354A of IPC against him. Further, these allegations are so far fetched and improbable that no prudent person can conclude that there are sufficient grounds to proceed against them. Permitting the criminal process to go on against the petitioner, in such a situation, would, therefore, result in clear and patent injustice. Finding it to be a fit case for this Court to exercise its inherent powers under Section 482 of Cr.P.C. to quash the FIR and consequential proceedings, the petition is allowed. The FIR No.07 dated 29.01.2015 registered under Sections 354A of IPC at Police Station Tibbar, District Gurdaspur and subsequent proceedings emanating therefrom are accordingly stand quashed.

(MANISHA BATRA)
JUDGE

06.12.2023

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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No