

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

332

CRR-2595-2009

Date of decision: 02.03.2023

Rupinder Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Angrej Singh, Advocate for
Mr. J.S. Brar, Advocate for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

Mr. Sanjeev Manrai, Sr. Advocate with
Mr. Rohit Bhardwaj, Advocate for respondents No.2 and 3.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner/complainant is impugning the order dated 07.01.2009 passed by learned Additional Sessions Judge, Ferozepur vide which the order dated 12.02.2008 passed by learned Sub Divisional Judicial Magistrate, Abohar wherein charges framed under Section 420/120-B of the IPC against respondents No.2 and 3 was set aside.

Learned counsel for the petitioner submits that the learned Additional Sessions Judge, Ferozepur gravely erred in ignoring the allegations levelled in the FIR No.21 dated 05.03.2009 under Sections 420/120-B of the IPC registered at Police Station Sadar Abohar, by only considering certain isolated incidents and further failing to appreciate that the marriage of the petitioner/complainant was solemnized in India at Abohar, where all the dowry articles were handed over to the accused who had thereafter cheated the petitioner by misappropriating her *istri dhan*. Further, the Revisional Court also fell

into error by observing that in a complaint filed by the petitioner under Section 264, the accused had been acquitted on 18.09.2006 and the marriage between the parties also dissolved on 28.03.2007 by a Court in Canada. He further contended that while passing the impugned order, the Revisional Court had to just restrict itself to the allegations in the FIR and not place reliance upon some Court proceedings which took place in Canada. In support of his submissions, learned counsel has placed reliance upon *State of Orissa Vs. Debendra Nath Padhi : 2005(1) RCR (Criminal) 297*.

Learned senior counsel appearing for respondents No.2 and 3 has vehemently opposed the submissions made by the counsel opposite by contending that the FIR in question is nothing but an abuse of the process of law just to wreak vengeance upon them. Learned senior counsel submits that the false implication of respondents No.2 and 3 is evident from the fact that Gurpreet Singh, son and brother of respondents No.2 and 3 respectively was acquitted by a Court of competent jurisdiction at Canada qua all the allegations levelled against him including harassment of the petitioner. Since, the petitioner and Gurpreet Singh had been divorced in Canada and had now been leading a happy life, therefore, the Revisional Court had rightly discharged the private respondents. It was vehemently contended that even otherwise no prima facie case was made out for framing charges against the private respondents and hence the instant petition deserved to be dismissed.

I have heard learned counsel and perused the relevant material on record.

Learned counsel for the petitioner has failed to satisfy this Court as to how the instant petition under Section 401 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') is maintainable since the petitioner has already approached the Sessions Court in a revision under Section 397 of the Cr.P.C. The only remedy for a party aggrieved by an order of Sessions Court passed in exercise of its revisional jurisdiction under Section 397 of the Cr.P.C. is to approach this Court by invoking the inherent powers of this Court under Section 482 of the Cr.P.C.

Further, coming to the merits of the case, a perusal of the impugned order reveals that the Revisional Court discharged the private respondents on the ground of lack of territorial jurisdiction and also on account of the fact that the marriage between the petitioner and her former husband Gurpreet Singh stood dissolved by a decree passed by a Court of Law at Canada. Furthermore, Gurpreet Singh, former husband of the petitioner, was acquitted of the charge of cruelty by a Court of competent jurisdiction at Canada.

The submissions made by the learned counsel for the petitioner that the Revisional Court erred in taking into consideration the judgments passed by the Courts at Canada at the stage of framing of charges and furthermore since there were allegations of offences having been committed in India, the Trial Court further erred in holding that it lacked territorial jurisdiction, are not completely devoid of merit in view of the provisions of Section 227 of the Cr.P.C.

It would be apposite to reproduce Section 227 of the Cr.P.C. which deals with discharge, and the same reads as under:-

“227. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

A perusal of the above provisions makes it abundantly clear that for the purpose of discharging an accused, the Court has to consider the record of the case and the documents submitted along with it. The present case is a warrant case triable by Magistrate, instituted on a police report. Thus, when the expression “record of the case” appearing in Section 227 of the Cr.P.C. is read with Section 239, it would imply only the police report and the documents sent along with it under Section 173 of the Cr.P.C.

Further, there is neither any provision in the Cr.P.C. which gives a right to the accused to produce any material in support of his case at the stage of framing charges nor is there any provision which empowers the Court to consider any such material at that stage. Thus, the Revisional Court clearly erred in discharging the private respondents on the basis of the documents relied upon by them and by holding that the case was nothing but an abuse of process of Court.

Having said so, since the impugned order pertains to the year 2009, this Court does not deem it appropriate to remand the matter back for fresh consideration, and moreso when the entire record is available before this Court, this Court by invoking its inherent jurisdiction under Section 482 of the Cr.P.C. proceeds to adjudicate upon the rightness or otherwise of the charges framed by the Trial

Court against the private respondents.

The Trial Court vide order dated 12.02.2008 framed charges under Section 420 and 120-B of the IPC against the private respondents. The ingredients to constitute an offence under Section 420 of the IPC are as follows:-

- (i) The accused must commit the offence of cheating under Section 415; and
- (ii) The person cheated must be dishonestly induced to :
 - (a) deliver property to any person; or
 - (b) make, alter or destroy valuable security or anything signed or sealed capable of being converted into a valuable security.

In the present case, a meticulous perusal of the contents of the complaint moved by the petitioner before the Senior Superintendent of Police, Ferozepur (Ex.P-1) on the basis of which the FIR was registered, reveals that the ingredients to attract the mischief of Section 420 or 120-B of the IPC are not made out. The petitioner in the aforesaid complaint (Ex.P-1) alleged that her parents spent more than ₹20 lakhs on her marriage and also “gave too much dowry articles for her use”. The petitioner further alleged that her father handed over the dowry articles to all the accused separately, on an assurance that they would be handed over to her. In the entire complaint, the petitioner has nowhere alleged that the private respondents had dishonestly induced or deceived the petitioner or her parents in any manner to deliver/hand over the dowry articles to them. Rather, as per her own allegations, the

father of the complainant himself handed over various dowry articles to the accused persons including the private respondents. Still further, the petitioner in the entire complaint has nowhere alleged that the dowry articles were given by her parents on a demand made by the private respondents.

Learned counsel for the petitioner has failed to bring to the notice of this Court any material from which it can be even remotely inferred that there had been any fraudulent or dishonest inducement by the private respondents so as to attract the mischief of an offence under Section 420 of the IPC.

Even coming to the allegations of the petitioner that her marriage was solemnized with Gurpreet Singh with the sole intention to send him to Canada, an offence under Section 420 or 120-B of the IPC would not be attracted as the said fact may amount to cheating under Section 415 of the IPC but in the absence of any dishonest inducement to delivery any property to the private respondents, they could not have been charged for an offence under Section 420 of the IPC.

As a sequel to the above discussion, this Court is of the considered opinion that there was no sufficient ground to proceed against the private respondents and they ought to have been discharged by the Trial Court.

Accordingly, the instant petition being devoid of any merit is dismissed.

02.03.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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