

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

212

CRM-M-40922-2018

Date of Decision: 01.06.2023

Subhash Chander

.... Petitioner

Versus

State of Punjab and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Navkiran Singh, Advocate and
Ms. Harpreet Kaur, Advocate
for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

Mr. S.P. Singh, Advocate, for
Mr. B.S. Bhalla, Advocate
for respondent No.2.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. This is a petition under Section 482 Cr.P.C. for quashing of FIR No.05 dated 05.07.2017 under Sections 420, 406 and 498-A IPC, registered at Police Station NRI Moga, District Moga as well as the charge-sheet/challan dated 02.08.2018 and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner submits that the petitioner is father of Sumeet Kumar, who is resident of New Zealand and he got married with Priya Punni-respondent No.2/complainant on 24.11.2013 in New Zealand. They could not live together and started living separately in rented accommodation. The complaints were lodged in New Zealand before the New Zealand police station and after counseling, both of them started living

separately whereafter the complainant/respondent No.2 came to India and lodge the complaint on 03.08.2016 which was registered at present FIR under Sections 420, 406 and 498-A IPC against the husband. Later on, the petitioner and his wife were also sought to be impleaded as accused, however, the police has not found any case against his wife i.e. mother-in-law of the complainant but charge-sheet was filed against the petitioner on the basis of that FIR wherein it has been stated that she had handed over 3600 New Zealand dollars to the petitioner which the petitioner has not returned to her.

3. Learned counsel for the petitioner further submits that the money was sent by the complainant on behalf of the petitioner's son from New Zealand for their maintenance, however, the petitioner has always been ready to hand over the said amount to the complainant and immediate mediation proceedings, a draft was offered, which was refused. He further submits that the provisions of Sections 420, 406 and 498-A IPC are not made out and even from the bare perusal of the complaint.

4. Per contra, learned counsel appearing for respondent No.2/complainant submits that the amount was sent to the petitioner from New Zealand as a dowry amount.

5. I have considered the submissions made by learned counsel for the parties at length and has perused the paper book.

6. Principles have been laid down by the Hon'ble Apex Court in *State of Haryana and others Vs. Ch. Bhajan Lal and others, 1992 Supl(1) SCC 335*, as to when the FIR can be quashed, were reiterated in *Preeti Gupta and another Vs. State of Jharkhand and another, AIR 2010 SC 3363* and held as under:-

22. *In State of Haryana & Others v. Bhajan Lal & Others 1992*

Supp. (1) SCC 335, this court in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure (for short, Cr.P.C.) 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 of the Constitution of India or the inherent powers under section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this court made it clear that 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 to 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."*

The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin

the chances of amicable settlement altogether. The process of suffering is extremely long and painful.”

7. The concept of granting being dowry is at the time of marriage. Admittedly, the marriage has taken place at New Zealand and therefore, there is no occasion of sending the amount to India that too much later point of time after the marriage. In that scenario, the same cannot be said to be a dowry amount. As regards the amount being treated as being that of the complainant, the petitioner being treated as a trustee of that amount, if the petitioner is ready to hand over the said amount to the complainant and has not misused that said amount, it cannot be said that the offence under Section 406 is made out. The question regarding cheating the complainant is also not made out as there is no such submission in the entire complaint to reflect that the petitioner had any point of time misrepresented or cheated the complainant and accordingly, offence under Sections 420, 406 and 498-A are not made out against the petitioner.

8. In the circumstances, the allegations as made out in the FIR do not reflect there being a case coming within the four corners of three provisions of IPC i.e. 420, 406 and 498-A against the petitioner and therefore, keeping in view the principals as laid down by the Hon'ble Apex Court in the case of ***State of Haryana and others Vs. Ch. Bhajan Lal and others*** and ***Preeti Gupta and another Vs. State of Jharkhand and another*** (supra), this Court does not find any reason to continue the criminal proceedings based on the FIR No.05 dated 05.07.2017 against the petitioner.

9. In view of above, the present petition is allowed and consequently, FIR No.05 dated 05.07.2017 under Sections 420, 406 and 498-A IPC, registered at Police Station NRI Moga, District Moga as well as

the charge-sheet/challan dated 02.08.2018 and all subsequent proceedings arising therefrom, are hereby quashed, qua the petitioner.

Accordingly, the present petition is disposed of.

01.06.2023
D.Bansal

(SANJEEV PRAKASH SHARMA)
JUDGE

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