

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25756 of 2015
Reserved on: 11.12.2023
Pronounced on: 16.12.2023

Gurmail Singh and another
Versus
State of U.T. Chandigarh and others

...Petitioners
...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. R.S. Bains, Senior Advocate with
Mr. Saurabh Bedi, Advocate for the petitioners.

Mr. Rajiv Anand, APP for UT, Chandigarh
for respondents No.1 to 3.

Mr. Nishant Sehgal, Advocate for Mr. S.P.S. Sidhu,
Advocate for respondent No.4.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C.,
petitioner prays to quash FIR No.14 dated 14.01.2009 registered at Police
Station Sector 34, Chandigarh under Sections 467, 468, 471, 120-B IPC
(Section 420 IPC added later on) along with all the consequential
proceedings arising therefrom.

2. Initially, petition was filed by two petitioners, namely, Gurmail
Singh and Smt. Jagdish Kaur. Later on, vide order dated 17.08.2023,
petition qua petitioner No.2 – Jagdish Kaur has been dismissed as withdrawn
in view of the statement made by learned counsel for the petitioners. As
such, now this petition is being considered qua petitioner No.1 – Gurmail
Singh only.

3. FIR was lodged on the complaint of one Malkiat Singh, as per
which, the natural father of petitioner No.2 – Jagdish Kaur is Mohinder
Singh but said Jagdish Kaur in connivance with petitioner No.1 – Gurmail
Singh submitted her matriculation certificate showing herself to be daughter

of said petitioner – Gurmail Singh instead of her natural father – Mohinder Singh. Further allegation is that she changed her date of birth from 01.05.1975 to 01.05.1978 and got her passport issued, wherein also she showed the name of her father to be Gurmail Singh and her date of birth as 01.05.1978. Similar is the case with marriage certificate got issued by the petitioner – Jagdish Kaur. After necessary investigation, challan has already been filed.

4.1 It is contended by learned counsel that in fact Mohinder Singh s/o Masta Singh is the natural father of Jagdish Kaur. Said Mohinder Singh was married to Bhupinder Kaur and out of that wedlock, two daughters, namely, Gurmeet Kaur and Jagdish Kaur (petitioner No.2) were born. Mohinder Singh being drug addict, abandoned his wife Bhupinder Kaur. Said Bhupinder Kaur approached Gram Panchayat of Village Khuda Ali Sher, U.T., Chandigarh and before the Panchayat, Mohinder Singh refused to maintain his wife Bhupinder Kaur and two daughters. Panchayat decided that Mohinder Singh's younger brother Gurmail Singh i.e., petitioner No.1, should bear the responsibility of Bhupinder Kaur and her two daughters. Petitioner No.1 – Gurmail Singh agreed for that and treated Bhupinder Kaur's daughters i.e., Gurmeet Kaur and Jagdish Kaur as his own daughters.

4.2 As Mohinder Singh was later on untraceable, so, Gurmail Singh took Smt. Bhupinder Kaur as his wife. As per the customs prevalent in the Jat Sikh Community, Karewa marriage of Gurmail Singh and Bhupinder Kaur was performed and they started living as husband and wife. In all the records, name(s) of said Bhupinder Kaur was entered as wife of Gurmail Singh and her daughters were entered/ mentioned as daughters of Gurmail Singh. Learned senior counsel further contends that it is the petitioner – Gurmail Singh, who got the marriage of Jagdish Kaur solemnised as his own

daughter.

4.3 It is contended that at one stage, respondent No.4 – complainant – Malkiat Singh had even entered into compromise with the petitioners and so, quashing petition bearing CRM-M-20274 of 2009 was filed. But respondent No.4 backed out from the compromise.

4.4 Learned senior counsel contends further that no offence under Sections 420, 467, 468, 471 or 120-B IPC is made out. It is the settled preposition of law that special law prevails over the general law. Learned counsel also contends that at the most, offence punishable under the provisions of Passport Act, 1967 will be made out and that the general law i.e., Indian Penal Code has no application. Learned senior counsel further contends that there is absolutely no material to make out any offence against petitioner No.1 – Gurmail Singh.

4.5 Learned counsel contends that complainant – Malkiat Singh is not the aggrieved person and is merely an informant out of personal enmity and party faction in the village as Bhupinder Kaur wife of petitioner No.1 and mother of petitioner No.2 has been Sarpanch of the Village. There was no mens-rea on the part of the petitioners. Petitioner No.2 studied only up to matriculation and has neither used the matriculation certificate later nor applied for any job. Learned senior counsel lastly contends that present FIR is a sheer abuse of the process of law and so, the FIR and consequent proceedings deserve to be quashed.

5. Learned State Counsel opposed the petition by submitting that after investigation, challan has already been filed and that during investigation, complicity of the petitioners was found in the crime. Learned State Counsel has also drawn attention towards the disclosure statement (Annexure R.7) suffered by petitioner No.1 – Gurmail Singh, showing his

complicity in the crime and prayed for dismissal of the petition.

6. I have considered the submissions of both the sides and have appraised the record.

7. As the contents of the FIR and the report under Section 173 Cr.P.C would reveal, the main allegations are against petitioner No.2 – Jagdish Kaur qua whom this petition has already been dismissed as withdrawn. Allegations are to the effect that she procured passport by giving false information regarding the name of her father and the date of her birth. Similarly, she got her marriage registered by giving wrong particulars regarding her date of birth and her father's name and same is the position regarding her matriculation certificate.

8. The only evidence collected during investigation qua petitioner No.1 – Gurmail Singh as pointed out by learned State Counsel, is the disclosure statement of said Gurmail Singh, copy of which is Annexure R.7, as per which, he had put his name by keeping a slip upon the name of Mohinder Singh and then got the photocopy made of the matriculation certificate of petitioner – Jagdish Kaur and changed her date of birth from 01.05.1975 to 01.05.1978 and submitted that form in the Passport Office and got prepared the passport. Another disclosure made by said petitioner is that he was present in the Passport Office and in the Office of Registrar, Hindu Marriage, Rupnagar, when the necessary certificates were got issued by Smt. Jagdish Kaur and signed the same as a witness.

9. Apart from the disclosure statement as above, which admittedly was recorded during his police custody as per final report under Section 173 Cr.PC, no other evidence could be pointed out by learned State Counsel against petitioner – Gurmail Singh. It is admitted position of law that in the absence of any recovery of object or discovery of new fact, the disclosure

statement suffered by an accused in custody before the Police is inadmissible. It is not disputed that disclosure statement dated 17.01.2009 (Annexure R.7) was suffered by petitioner – Gurmail Singh while in custody.

10. Learned State Counsel has not been able to point out any document whatsoever, on which petitioner – Gurmail Singh put his signatures as a witness, wherein petitioner – Jagdish Kaur had represented her to be the daughter of Gurmail Singh and projected her date of birth to be 01.05.1978 instead of 01.05.1975.

11. Apart from above, even if it be assumed that petitioner Gurmail Singh was conniving with Smt. Jagdish Kaur, when she got issued her passport by mentioning her father's name as Gurmail Singh and date of birth as 01.05.1978, at the most offence under Section 12 of the Passport Act, 1967 will be made out. The relevant portion of which reads as under: -

“12. Offences and penalties. —

(1) Whoever—

(a) contravenes the provisions of section 3; or

(b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or

(c) to (e) xxxxxxxx (not relevant)

shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

(2) Whoever abets any offence punishable under sub-section (1) or sub-section (1A)] shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided in that sub-section for that offence.”

12. In present case, at the most, it can be that petitioner – Jagdish Kaur supplied incorrect information to the Passport Office for getting issued

the passport. It is not the allegation that she forged the passport or the marriage certificate. Learned State Counsel could not produce any document to show that petitioner – Gurmail Singh had signed any document before the Passport Office or before the Registrar, Hindu Marriage, Rupnagar, in which petitioner – Jagdish Kaur presented herself to be daughter of Gurmail Singh and projected her date of birth as 01.05.1978.

13. Still further, Section 15 of the Passport Act, 1967 reads s under:

“Section 15. Previous sanction of Central Government necessary

No prosecution shall be instituted against any person in respect of any offence under this Act without the previous sanction of the Central Government or such officer or authority as may be authorised by that Government by order in writing in this behalf.”

14. In this case, there is no such plea on the part of respondent State that any such sanction as required under Section 15 of the Passport Act to prosecute the petitioner Gurmail Singh, was obtained. There is no material to indicate that any complaint was made by the passport authorities; or by Registrar Marriages, who registered the marriage of petitioner Jagdish Kaur.

15. In all the aforesaid circumstances, question arises as to whether it would be justifiable to continue the proceedings against respondent Gurmail Singh?

16. It has been held by the Hon’ble Supreme Court in the case of ***Parbatbhai Aahir v. State of Gujarat (2017) 9 SCC 641*** that Section 482 Cr.P.C. is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary:-

- (i) To prevent an abuse of the process of any Court; or
- (ii) Otherwise to secure the ends of justice.

Same are the powers with the High Court, when it exercises the powers

under Article 226 of the Constitution.

17. In *State of Haryana vs. Ch. Bhajan Lal*, 1992 AIR 604, Hon'ble Supreme Court laid down guidelines as to in which cases, quashing of FIR can be allowed. It was held as under:

“8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given 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 guide- in myriad kinds of cases wherein such power should be exercised:

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) where a criminal proceeding is manifestly attended with malafide 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.”

18. In another case titled as **Vineet Kumar and others vs.**

State of Uttar Pradesh and others (2017) 13 SCC 369, it

was held by Hon’ble Supreme Court as under:-

"23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka vs. L. Muniswamy, (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated:

'7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

19. In ***Ramesh Chandra Gupta vs State of UP, CRIMINAL APPEAL NO (S). of 2022 (Arising out of SLP(Crl.) No(s). 39 of 2022)*** decided on 28.11.2022, Hon'ble Supreme Court observed that the criminal proceedings can be quashed when the complaint on the basis of which FIR was registered does not disclose any act of the accused or their participation in the commission of crime. It has been held as under:

“41. Inherent power given to the High Court under [Section 482](#) CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in [State of Haryana v. Bhajan Lal](#) 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment.”

20. Still further, recently ***Mohammad Wajid and Another v. State of U.P. and Ors. 2023 SCC OnLineSC 951***, it has been held by Hon'ble Supreme Court that in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the case record over and above the averments and, if need be, with due care and circumspection, try to read in between the lines. The Court, while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Indian Constitution, need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/ registration of the case as well as the materials collected in the course of an investigation.

21. In view of entire evaluation of the facts and legal position as above, this Court finds that as allegations set out in the FIR and the final report under section 173 CrPC do not constitute any offence against

petitioner Gurmail Singh. The case is squarely covered under parameter (c} laid down in Bhajan Lal’s Case for quashing the FIR qua petitioner Gurmail Singh. Therefore, the petitioner Gurmail should not be compelled to undergo the rigmarole and ordeal of trial and so, quashing of the proceedings would serve the solitary purpose of Section 482 Cr.P.C so as to prevent the abuse of process of the Court.

22. Consequently, the present petition is hereby allowed qua petitioner Gurmail Singh. As such, FIR No.14 dated 14.01.2009 registered at Police Station Sector 34, Chandigarh under Sections 467, 468, 471, 120-B IPC (Section 420 IPC added later on) along with all the consequential proceedings arising therefrom, are hereby quashed.

December 16, 2023
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(DEEPAK GUPTA)
JUDGE

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