



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

CRM-M-4189-2024 (O&M)

Date of decision: 24.07.2024

Saurabh Upadhyay

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. A.S. Nirmaan, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

None for respondent No.2.

HARPREET SINGH BRAR, J.

1. Present petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of FIR bearing No.255 dated 04.09.2022 registered under Sections 323, 376, 377, 342, 504 and 506 of IPC at Police Station- City Kharar, SAS Nagar (Annexure P-2).

2. The facts, in brief, are that respondent no.2-prosecutrix moved a complaint before the concerned police, wherein, it was alleged that she was engaged to be married to the petitioner on 23.04.2022 and she was working in Delhi at that time. After their engagement ceremony, the petitioner called her to Chandigarh on the pretext of showing her his new flat but forced her to make physical relations with him on 14/15.05.2022. Thereafter, the petitioner kept maintaining physical relations with her on multiple occasions, i.e., on 28.05.2022, 11.06.2022, 09.07.2022. Then the petitioner told her that their marriage would only be solemnized if she would bring Rs.20 lacs cash from her parents as dowry. It was further alleged that she was forced into having unnatural sex, kept in captivity and beaten by the petitioner. On the basis of the



aforesaid complaint, the FIR (supra) came to be registered against the petitioner. Aggrieved, he has approached this Court by way of the present petition.

3. Learned counsel for the petitioner *inter alia* contends that the main bone of contention against the petitioner is that the complainant-respondent no.2, who is engaged to the petitioner, does not want to proceed with their marriage as she is in a relationship with another person and their conversation proving the same has been appended as Annexure P-6. He further submits that it was respondent no.2 who willingly came to Chandigarh and herself booked the flight tickets. The petitioner even used to send money to respondent no.2 as shown by the transactions appended as Annexure P-4. Respondent no.2 further insisted on the petitioner to accompany her to Indore for college admission of her brother on 18.06.2022 as apparent from the air tickets (Annexure P-5). This clearly demolishes the concocted version of the complainant as she has alleged that she was raped by the petitioner in May 2022 but still chose to travel along with him in June 2022. It is further contended that the story of the complainant seems far-fetched and concocted as she has alleged that she was raped by the petitioner on different dates but failed to mention the reason she kept on returning to Chandigarh despite such serious allegations. He further contends that the allegation regarding the forced captivity of the complainant by the petitioner is completely falsified by the fact that she had herself booked to and fro train tickets from Delhi to Chandigarh on 09.07.2022 and 12.07.2022 respectively and the same have been attached as Annexure P-8. He submits that the Hon'ble Supreme Court has quashed proceedings in similar cases and places relies upon ***Vishnu Kumar Shukla vs. State of U.P., 2023 SCC OnLine***

SC 1582; Mahmood Ali vs. State of U.P., 2023 SCC Online SC 950; Pramod



Suryabhan Pawar vs. State of Maharashtra, AIR 2019 SC 4010.

4. After giving due consideration to the arguments raised by the learned counsel for the petitioner and perusing the material on record, this Court is of the opinion that the pleas taken by him are disputed questions of fact and are not to be delved into by this Court, at this stage. The present case is still at summoning stage before the learned trial Court. It is settled law that disputed questions of fact can only be adjudicated after the parties have duly adduced their evidence. The High Court, in exercise of its inherent powers under Section 482 Cr.P.C is obliged to make a just and equitable choice and cannot go beyond its ambit to evaluate the truthfulness of the allegations or the veracity of the defence, however, convincing it might seem. Any such attempt would be impermissible in law as it would amount to giving finality to the accusations even before the prosecution is allowed to adduce evidence to substantiate the same.

5. Pertinently, a two Judge bench of the Hon'ble Supreme Court in **HMT Watches Limited vs M.A. Abida (2015) 11 SCC 776** has held that inherent powers under Section 482 of the Cr.P.C. cannot be extended to determining question of facts. It is only for the trial Court to determine the disputed questions of fact after examining the evidence on record and interference by this Court with regards to factual questions is impermissible in law.

6. Similarly, a two Judge bench of the Hon'ble Supreme Court in the **Rathish Babu Unnikrishnan Vs. State (Govt. of NCT) 2022 SCC Online SC 513**, speaking through Justice Hrishikesh Roy, observed as under:

“17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties



having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”

7. A three-Judge Bench of the Hon’ble Supreme in **Priyanka Jaiswal vs The State of Jharkhand and Others, 2024 All SCR(Crl.) 1064**, speaking through Justice Aravind Kumar, made the following observations: -

“13. We say so for reasons more than one. This Court in catena of Judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the court exercising extraordinary jurisdiction can neither undertake to conduct a mini trial nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of the probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside. This Court in the case of Akhil Sharda 2022 SCC Online SC 820 held to the following effect:

28. Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in exercise of powers under Section 482 Cr.P.C., 1973 it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482 Cr.P.C., 1973 As observed and held by this Court in a catena of decisions no mini trial can be conducted by the High Court in exercise of powers under Section 482 Cr.P.C., 1973 jurisdiction and at the stage of deciding the application under Section 482 Cr.P.C., 1973 the High Court cannot get into appreciation of evidence of the particular case being considered”

8. Since, the questions raised before this Court in the present petition are required to be adjudicated by the trial Court on the basis of the evidence



adduced by the parties. The probable defence as set up by the petitioner cannot be gone into at this stage.

9. In view of the aforesaid discussion, the present petition is hereby dismissed.

10. Pending miscellaneous applications, if any, are also disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

24.07.2024
Neha

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