

**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH****219****CRM-M-3557-2020(O&M)****Date of order: 21.11.2024****Munish Makkar****.....Petitioner(s)****Vs.****State of Haryana & Another****.....Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:-**

Mr. Gaurav, Advocate for
Mr. Rajbir Singh, Advocate
for the petitioner.

Ms. Deep Shikha Chauhan, AAG Haryana.

Ms. Tammana Bahl, Advocate
Mr. Gagan Oberoi, Advocate
for respondent No.2.

Nidhi Gupta, J.

Present petition under Section 482 Cr.P.C. is filed seeking quashing **on merits** of FIR No.5 dated 03.01.2019 registered under Sections 323, 498-A and 506 IPC at Police Station Women Gurgaon (Annexure P2); AND report under Section 173 Cr.P.C. (Annexure P3); AND all the subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner/husband inter alia submits that the present FIR is liable to be quashed in view of the fact that the complaint (Annexure P1) on the basis of which the present FIR was registered, does not disclose any offence under Section 498-A IPC. It is submitted that from a reading of the said complaint, even no offence under Section 406 IPC is made out. It is further submitted that in any event the

said complaint is a verbatim copy of another complaint made by the present complainant/respondent No.2 on the basis of which a case under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “the DV Act”) has already been registered against the petitioner. It is accordingly prayed that the present FIR be quashed.

3. Per contra, learned counsel for respondent No.2 opposes the prayer made on behalf of the petitioner and submits that the assertions of the petitioner are factually incorrect. It is contended that the FIR discloses cognizable offences against the petitioner. Such an FIR cannot be quashed.

4. It is further submitted that the petitioner is residing in Canada since 2018 where he is running a construction business. It is alleged that the petitioner is doing very well in his construction business and travels everywhere in business class; whereas the respondent No.2 is single-handedly bringing up the two children born out of their wedlock. The petitioner is even making no payment of maintenance. He is in arrears of maintenance of Rs.14 lakh. The respondent No.2 resides in rented accommodation with the two school-going children. It is accordingly prayed that the present petition be dismissed.

5. No other argument is made on behalf of the parties.

6. I have heard learned counsel for the parties and perused the case file in great detail.

7. Perusal of record of the case shows that the petitioner was married to respondent No.2 on 01.12.2009. Two children were born out of their wedlock on 30.12.2010 and 28.05.2012. Admittedly, both the children are in the care and custody of respondent No.2. It has also been admitted by learned counsel for the petitioner at Bar that the petitioner is residing and working in Canada. It has also been very candidly admitted by him that the petitioner is not paying maintenance to the respondent No.2 and/or minor children. It has also not been denied by learned counsel for the petitioner that the petitioner is presently in arrears of maintenance of Rs.14 lakh.

8. On merits, it has been contended on behalf of the petitioner that in the present complaint dated 15.02.2018 (Annexure P1), there is no allegation to constitute an offence under Section 406 or 498-A IPC. It may be pointed out that even in Para 17 of the petition (page 8 of the paper book), it has been mentioned that *"...In the entire complaint Respondent No.2 did not utter a word regarding the cruelty at the hands of the Petitioner or his other family members or demand of dowry of misappropriation of dowry articles. Copy of complaint of Respondent No.2 regarding domestic violence dated 15.02.2018 filed before the Women Cell Gurugram is attached herewith as Annexure P-1..."*.

9. However, the said contention of the petitioner is borne out to be patently and factually incorrect, as a bare reading of the above said complaint shows that it has been alleged therein as follows: -

“...Whenever he is drunk, he pushes me, abuses me and repeatedly asks me to leave the house with the kids. This has been happening very often and my children, aged 7 and 5.5 years, are witness to the same because he does not refrain even in front of the children, thus, having a very deep impact on their tender minds. on Friday, 9 Feb 2018, he came home in an inebriated state at around 10:30 pm and started abusing me. He opened all the doors for the neighbours to listen and started screaming at me to get out of the house. I kept resisting, then he went out around 1:00 am and returned home at around 4:45 am and again fought and screamed at me, on which my elder son woke up. When he tried to pick me and throw me out of the house again, my son who was seeing all this, started crying and told him to leave me. So he left the house at 5:30 am and came back during the day around 11 am. On Saturday, when I was giving tuition, he called me and threatened me again and again to transfer an amount to him otherwise he would come and create a scene in front of the students and push them out. So I did the same. The next afternoon, on Sunday, he again fought and argued with me, and during the tussle, I tried to defend myself, but he pushed me out of the house. So, I went to my parent's place with my kids...”

(emphasis supplied)

10. From a cursory reading of the above said allegations, it is clear that the respondent No.2 has made clear and categorical allegations to the effect that when the petitioner is drunk, he pushes and abuses the complainant and repeatedly asks her to leave the house. It has been alleged that this happens very often and that the petitioner does not refrain from doing this even in front of his minor children which has a very adverse

impact on their tender minds. On 09.02.2018, the petitioner is alleged to have again created a scene and tried to throw the complainant from the house upon which the minor son started crying and asked the petitioner to leave the complainant. To my mind, if the above allegations do not make out an offence under Section 498-A IPC, I don't know what does.

11. As regards the contention of the petitioner that there is no whisper regarding any demand by the petitioner, the same is also incorrect as it has been categorically stated in the above said complaint that on *"...On Saturday, when I was giving tuition, he called me and threatened me again and again to transfer an amount to him otherwise he would come and create a scene in front of the students and push them out..."* As such in order to maintain peace the complainant transferred the demanded amount to the petitioner. To my mind, these allegations are very serious and clearly constitute a cognizable offence.

12. It may also be pointed out that as per the report under Section 173 Cr.P.C. (Annexure P3), it is reported as follows: -

"...During investigation, complainant produced wedding photographs, wedding card and dowry list, which were taken into police custody through memo and section 406 IPC was added in case. Notice u/s 411A Cr. P.C. Dated 11.02.2019 was given to accused Munish Makkar on dated 22.02.2019, but accused Munish did not join investigation till dated 22.02.2019. Thereafter, further investigation was conducted by ASI Kunwarpal. During investigation notice u/s 411A Cr.P.C. was given to accused Munish Makkar on dated 22. 04.2019. Afterwards, Hon'ble Court Gurugram granted anticipatory bail

to accused Munish Makkar on dated 25.04.2019 and accused Munish was joined with investigation on dated 27. 04.2019 Accused Munish Makkar has not got recovered dowry goods and articles...”.

13. The above investigation further buttress the case of the respondents. Moreover, it is established position in law that an FIR is not required to be an encyclopedia.

14. It is also relevant that the minor children are presently studying in school, and their fees and other expenses are about Rs.80,000/- per month which are being entirely and single-handedly borne by the complainant. The complainant takes tuitions to earn her livelihood.

15. Besides this, even the legal position in such like cases is very clear. As demonstrated above above, a bare perusal of the FIR has revealed serious allegations against the petitioner. Such an FIR cannot be summarily quashed. In this regard, it would be apposite to refer to a 3-Judge Bench judgment of the Hon’ble Supreme Court in case titled as **“M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Others”** Law Finder Doc ID # 1830709, relevant part of which is reproduced hereinbelow:-

“10. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;*
- ii) Courts would not thwart any investigation into the cognizable offences;*

- iii) *However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;*
- iv) *The power of quashing should be exercised sparingly with circumspection, in the rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C., 1973 is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);*
- v) *While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*
- vi) *Criminal proceedings ought not to be scuttled at the initial stage;*
- vii) *Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;*
- viii) *Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C., 1973*
- ix) *The functions of the judiciary and the police are complementary, not overlapping;*
- x) *Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*
- xi) *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C., 1973 is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., 1973 only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

(Emphasis supplied)

16. Reliance may also be placed upon judgment of Hon'ble Supreme Court in **"Satvinder Kaur Vs. State (Govt. of NCT of Delhi)" Law Finder doc ID # 32588**, wherein it has been held as under:-

"D. Criminal Procedure Code, 1973, Section 482 - Quashing of FIR - Law enunciated by Supreme Court summed up :-

- (i) If an offence is disclosed, Court will not normally interfere with investigation into the case and will permit investigation into the offence - If FIR, prima facie, disclosed commission of an offence, court does not normally stop the investigation, for to do so would be to trench upon the lawful power of Police to investigate into cognizable offences. 1982(1) SCC 561.*
- (ii) For purpose of exercising power under Section 482 Criminal Procedure Code, 1973 to quash FIR or a complaint, the High Court would have to proceed entirely on basis of allegations made in the complaint or the documents accompanying the same - It has no jurisdiction to examine the correctness or otherwise of the allegations. 1985(2) SCC 370.*
- (iii) Power of quashing the criminal proceedings should be exercised very sparingly with circumspection and that too in the rarest of rare cases.*
- (iv) Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.*
- (v) First information report is only an initiation to move the machinery and to investigate into a cognizable offence and, therefore, while exercising the power and*

deciding whether the investigation itself should be quashed, utmost care should be taken by the court and at that stage it is not possible for the Court to sift the materials or to weigh the materials and then come to the conclusion one way or the other. 1991(1) RCR (Criminal) 831.

- (vi) High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 or under Articles 226 and 227 of the Constitution of India and allow the law to take its own course.*
- (vii) Such power should be sparingly and cautiously exercised only when the court is of the opinion that otherwise there will be gross miscarriage of justice.*
- (viii) Social stability and order is required to be regulated by proceeding against the offender as it is an offence against the society as a whole.”*

17. In view of the factual and legal position, as noticed above, I find no merit in the present petition, and the same is accordingly, **dismissed.**

18 Pending application(s) if any shall also stand(s) disposed of.

21.11.2024
Sunena

(Nidhi Gupta)
Judge

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