

Neutral Citation No. 2024:PHHC:067788

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

**CRM-M-6241-2020 (O&M)
Reserved on : 08.04.2024
Pronounced on : 15.05.2024**

AmanpreetKaur and another **...Petitioners**
Versus
State of Punjab and another **...Respondents**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. VaibhavSehgal, Advocate
for the petitioners.

Mr. A. S. Samra, AAG, Punjab.

Mr. Vijay Lath, Advocate
for respondent No. 2.

MANISHA BATRA, J.

1. The petitioners, who are sister-in-law and mother-in-law, respectively, of respondent No. 2/complainant, have filed this petition under section 482 of CrPC, for quashing of FIR No. 34 dated 30.12.2019 under Section 406, 498-A, IPC registered at P.S. N.R.I., Ludhiana, District Ludhiana along with all the consequential proceedings having emanated therefrom.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of a written complaint sent by respondent No. 2 through post at Police Station NRI, District Ludhiana alleging therein that in the year 2016, she had shifted

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to Canada along with her family members after obtaining permanent residency and since then they had been residing there. Her matrimonial alliance was got settled by her parents with accused Gurpreet Singh Aujla in July, 2017. She alleged that accused no. 4 to 13, namely Surjit Singh, Harwinder Singh Jassar, Gurpreet Singh Jassar, AntarpreetKaur, SandeepKaur, KulwinderKaurGrewal, Yadwinder Singh Grewal, Rajvir Singh Nagra, Mandeep Singh @ Gurpreet Singh and Harjinder Singh Naga, respectively, who were relatives of her husband and were also residing in Canada at that time, had given the customary Shagun to complainant/respondent no. 2 at Canada, whereas her relatives residing in India had given Shagun to her husband by visiting her house in September, 2017. The marriage was settled for 26.2.2018 and it was to take place in India. Before her marriage, whenever she used to have conversation with her husband, mother-in-law and sister in law, they used to express their greed and to convey to her that her marriage with accused Gurpreet Singh Aujla should be solemnized with great pomp and show and huge dowry should be given at the time of marriage. Respondent no. 2 expressed her concerns about this fact to her parents but they pacified her.

3. As per the further allegations, at the time of her marriage on 26.02.2018 in India, huge amount of money was spent by her parents and gold ornaments, wrist watches, costly clothing and *shagun* etc. were given to her husband, his family members as well as his relatives, as per their demands. She alleged that her mother and other relatives had also given gold as well as silver ornaments, costly clothing, make up kit etc. to her at the time of her marriage. She stayed with her husband, mother in law and sister

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in law at their house at Ludhiana for some days after the marriage and shortly thereafter, they started taunting her on account of bringing insufficient dowry and for not giving a car and furniture to her husband. The complainant tried to prevail good sense upon them by saying that no furniture was required as she was going to stay in Canada along with her husband but her in laws remained stuck to their demands and even did not consider the request made by the complainant that her parents were unable to spend any other amount of money since they had already spent a lot. Her father was compelled to part with a sum of Rs. 3 Lakhs for purchasing furniture by the accused. However, after receiving that amount, instead of purchasing the same, they misappropriated that amount. On 15.04.2018, her parents had gone back to Canada and thereafter, the behaviour of her in laws had even worsened towards her and they kept on pressurizing her to ask her parents to give money for purchase of a car. Then her uncle had given a sum of Rs. 5 Lakhs to her husband, mother in law and sister in law but even that was not purchased.

4. The complainant further alleged that she went back to Canada on 06.05.2018. Her husband came to Canada in November, 2018. He connived with his family members and other accused persons as named in complaint and kept on harassing her. He used to hurl abuses to her. He came back to India in March, 2019 and told her that he would come back to Canada only if her parents would purchase a house for him. He came to Canada on 03.07.2019 along with his mother and reiterated the demands previously raised by him. On refusal on the part of the complainant to the demands so made by her husband, she was given merciless beatings by him

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and his mother and, therefore, she prayed for taking action against the culprits. After registration of FIR, investigation proceedings had been initiated. The petitioners, who are sister in law and mother in law respectively of the complainant, joined the proceedings. They were extended benefit of bail. After completion of necessary investigation and usual formalities, *challan* was presented against the accused and charges have been framed on 30.04.2022 under Sections 406 and 498-A of IPC.

5. The present petition has been filed by the petitioners on the ground and it has been argued by their counsel that the impugned FIR and subsequent proceedings having emanated therefrom are liable to be quashed as they have been falsely implicated in this case. They have nothing to do with the matrimonial life of respondent no. 2 and her husband Gurpreet Singh Aujla. No offence has been committed within the territorial jurisdiction of India as per allegations in the FIR itself, because as alleged therein, respondent no.2 had been harassed by the petitioners at Canada. Respondent no.2 had stayed in India after her marriage for a period of three months only and thereafter went back to Canada in May, 2018 and had never come again. The ingredients for commission of offences punishable under sections 406 and 498-A of IPC have not been made out against them. A decree of divorce has been passed between respondent no. 2 and her husband Gurpreet Singh Aujla by the Supreme Court of British Columbia as on 31.03.2020. The FIR of this case was lodged by respondent no.2 by specially coming from Canada to India when she came to know that her husband was contemplating initiation of proceedings of divorce as against her. It is further submitted that the proceedings on the basis of the impugned

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FIR have been initiated to abuse the process of law and to wreck vengeance against the petitioners who are close relatives of husband of the complainant. In fact, it was a case of matrimonial discord between respondent no. 2 and her husband. With these broad submissions, it is argued that the petition deserves to be allowed and impugned FIR deserves to be quashed.

6. *Per contra*, status report has been filed by respondent no.1-State, as per which, the FIR was registered on the basis of a complaint filed by respondent no.2 before ADGP, NRI, Punjab. Preliminary inquiry was conducted in the matter and thereafter on finding the allegations as levelled against the petitioners and Gurpreet Singh Aujla to be true, they were nominated as accused in this case. There were specific allegations in the FIR qua respondent no. 2 being harassed and mistreated at Ludhiana and then at Canada and, therefore, Ludhiana Police had jurisdiction to register FIR and investigate the matter.

7. It is argued by learned State Counsel, assisted by learned counsel for respondent no.2/complainant, that there are specific and serious allegations against the petitioners. After conducting thorough investigation in the matter, *challan* was presented against them. Charges have been framed. While submitting that no case has been made out to quash the impugned FIR, it is argued that the present petition is liable to be dismissed.

8. I have heard learned counsel for the parties at considerable and have also gone through the record carefully.

9. At the outset, it will be profitable to look into the scope and ambit of the Court's power under Section 482 Cr.P.C. as spelt out in several

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judicial pronouncements of Hon'ble Supreme Court as well as different High Courts. The well settled proposition of law is that in exercise of inherent powers under Section 482 Cr.P.C., the High Court is not expected to analyze all the facts, which are to be placed before the High Court. The power conferred under this section is very specific and to secure the ends of justice or to prevent the abuse of process of Court or to make any such orders as may be necessary to give effect to any order under the Code, such power can be exercised to prevent abuse of process of Court. The Hon'ble Supreme Court has drawn up some guidelines in some categories of cases by way of illustration to circumscribe the exercise of inherent power under Section 482 of Cr.P.C. to prevent abuse of process of any Court or to secure the ends of the justice or to give effect to an order of the Court. A celebrated pronouncement on this point is the case cited as ***State of Haryana Vs. BhajanLal : 1992 SUPP (1) SCC 335***, wherein Hon'ble Supreme Court has discussed different categories of cases wherein the power under Section 482 Cr.P.C. could be exercised either to prevent abuse of process of law or otherwise to secure the ends of justice, while observing that it might not be possible to lay down any precise, clearly defined, sufficiently channelized, inflexible guidelines or rigid formulae and to give an exhaustive list or myriad kind of cases where such powers should be exercised. The following principles have been culled out:-

“102 (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;

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- (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.”

10. Reference can further be made to ***Gian Singh vs. State of Punjab, (2012) 10 SCC 303***, wherein Hon'ble Supreme Court has observed that the power of the High Court in quashing a criminal complaint or an FIR, in exercise of its inherent jurisdiction, is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accordance with the guidelines engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. Reliance can further be placed upon ***State of Andhr Pradesh vs. Gourishetty Mahesh and others, 2010 Criminal Law Journal 3844***, wherein the Apex Court has propounded that while exercising jurisdiction under Section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained as that is the function of the trial Court.

11. It is also well settled proposition of law that the exercise of powers under Section 482 Cr.P.C. to quash proceedings is an exception and not a rule. In ***Dr. Monica Kumar and another vs. State of U.P. and others, (2008) 8 SCC 781***, the Apex Court has propounded that the inherent jurisdiction under Section 482 Cr.P.C., though wide, is to be exercised sparingly, carefully and with caution, only when such exercise is justified by the test specifically laid down in the section itself and appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of this power. The inherent powers do not confer an arbitrary jurisdiction upon the High Court to act according to whims and caprice.

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12. Having noticed the scope of interference by this Court in petitions relating to quashing of FIR/chargesheet, let us refer to the facts of the present case, as per which, the petitioners, who are sister-in-law and mother-in-law respectively of respondent No. 2/complainant, had subjected her to harassment on account of unlawful demand of dowry and had criminally misappropriated her *istridhan*. In view of the backdrop of the allegations in the FIR and the contentions as raised by the parties, in my considered opinion, the foremost question that requires determination in this case is as to whether the allegations as levelled against the petitioners are such which can be considered to be specific in nature or they are general and omnibus in nature. However, before delving into the details of the contents of the allegations made, it is relevant to mention here that both the petitioners have been booked and challaned for commission of offences punishable under Sections 498-A and 406 of IPC. Section 498-A of IPC was incorporated with the aim to prevent cruelty committed upon woman by her husband and in-laws, by facilitating rapid state intervention. It, however, cannot be ignored that there is increased tendency to the alarming extent in applying the provisions of Section 498-A of IPC. In the landmark judgment of Hon'ble Supreme Court in ***Arnesh Kumar v. State of Bihar and another, (2014) 8 SCC 273***, it was observed that there is a phenomenal increase in matrimonial disputes in recent years. Section 498-A of IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. However, the fact that Section 498-A of IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by

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the disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. There is increased tendency of implicating relatives of the husband in matrimonial disputes without analyzing the ramifications of a trial on the complainant as well as the accused. False implication by way of general, omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of process of law.

13. At this juncture, it would be proper to refer to the provisions of Section 498-A of IPC which read as under:-

"498-A. Husband or relative of husband or a woman subjecting her to cruelty. - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine."

The 'Explanation' appended thereto defines cruelty to mean : (i) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical of the woman; or (ii) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

14. Thus, the essential ingredients of the aforementioned provision are:

1. A woman must be married.
2. She must be subjected to cruelty.

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3. Cruelty must be of the nature of :

(i) any willful conduct as was likely to drive such woman:

a. to commit suicide;

b. cause grave injury or danger to her life, limb, either mental or physical;

(ii) harassment of such woman, (1) with a view to coerce her to meet unlawful demand for property or valuable security, (2) or on account of failure of such woman or by any of her relation to meet the unlawful demand,

(iii) woman was subjected to such cruelty by : (1) husband of that woman, or (2) any relative of the husband.

15. On considering the allegations as levelled in the FIR lodged by the respondent No.2, I do not find that any such allegation has been made or otherwise can be find out so as to enable this Court to arrive at an opinion that the petitioners have *prima facie* committed any offence punishable under Section 498-A of IPC. A cursory perusal of the contents of the FIR clearly reveals that only general allegations have been levelled against the petitioners. No specific and direct allegations have been levelled against them to describe the nature of the cruelty or the harassment alleged to have been made by the present petitioners or any such willful act or conduct which could have driven the respondent No.2 to commit suicide. As per allegations in the FIR, respondent No. 2/complainant used to reside in Canada being a permanent resident of that country. Accused Nos. 4 to 13, who are distant relatives of the petitioners, were also residing in Canada. The marriage of the complainant was solemnized with Gurpreet Singh Aujla on 26.02.2018. In the entire FIR, which runs into 15 pages, no specific

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allegation against the petitioners as to raising of any demand as against these petitioners has been levelled in the FIR on the basis of which it can be stated that the petitioners were subjecting her to cruelty to meet such demand or were committing any such willful act or conduct which was likely to drive the respondent No.2 to commit suicide, as the complainant has not given any specific date, month or time when the petitioners raised alleged demand of dowry from her. As per her own version, respondent No. 2/complainant lived with a very short span of time with the petitioners in India i.e. only for 68 days, before leaving for Canada on 06.05.2018, from where she had sent the present complaint, on the basis of which, the FIR in question had been registered against the petitioners and their other family members/relatives. Though she had alleged that during her stay at matrimonial house in India, her husband as well as the petitioners had raised demand for car and furniture, on which, her uncle had given them an amount of Rs. 3 Lakhs to them but the complainant had nowhere mentioned as to on which date, month or time this amount of money was given and particularly to which accused. She had also not mentioned specific date and event when she was extended beatings by the accused persons. The allegation levelled by respondent No. 2 that on being harassed by the accused, she had talked with her father, who had sent her uncle to her in-laws' house and then the present petitioners and her husband told that they wanted money to purchase a new car and then a sum of Rs. 5 Lakhs had been given to accused Nos. 1 to 3 in her presence is also quite vague in nature as neither any particular date or month when the said demand had been raised nor the fact as to which particular petitioner/accused the aforementioned amount was handed over

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had been mentioned in the FIR. All this goes to show that respondent No. 2/complainant, who is a citizen of Canada, had lived permanently in Canada after getting married with Gurpreet Singh Aujla, except for a period of 68 days, which she lived with her in-laws in India. Therefore, the allegations as levelled against the petitioners are not only general, vague and omnibus but also highly improbable.

16. It is apparent that while residing in Canada, she had lodged this FIR by sending a complaint through post against the petitioners only for the purpose of misusing the process of criminal justice system as a tool of vengeance. Upon consideration of the relevant circumstances and in the absence of any specific role being attributed to the petitioners, in my opinion, it would be unjust, if the petitioners are forced to go through the tribulations of a trial for commission of offence punishable under Section 498-A of IPC. General and omnibus allegations cannot manifest in a situation wherein relatives of the husband of the complainant are forced to trial. It is well settled proposition of law that if the allegations do not disclose that any dowry was demanded by the petitioners or any act on their part was likely to drive the complainant to commit suicide, which are requisite ingredients with regard to commission of offence punishable under Section 498-A of IPC, they cannot be tried for commission of offence punishable under Section 498-A of IPC. Reference in this regard can be made to ***Kahkashan Kausar @ Sonam and others v. State of Bihar and others, 2022 Live Law (SC) 141***, wherein similar observations were made by Hon'ble Supreme Court. Taking all these points into consideration, it is held

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that the proceedings initiated against the petitioners under the aforementioned section are liable to be quashed.

17. So far as the allegations that the petitioners committed offence punishable under Section 406 of IPC is concerned, this section provides punishment for commission of offence of criminal breach of trust as defined under Section 405 of IPC. This offence may be held to have been committed when a person who had been entrusted in any manner with the property or has otherwise dominion over it, dishonestly misappropriates it and converts it to his own use, or dishonestly uses it or disposes it of, in violation of any direction of law prescribing the mode in which the trust is to be discharged, or of any lawful contract, expressed or implied, made by him touching any discharge, or willfully suffers any other person to do so. In this case, though respondent No. 2 alleged that her entire gold ornaments and *istridhan* was in the possession of the accused persons and they had refused to return the same but it was nowhere stated as to by which particular accused and what form of her *istridhan* was taken and qua the exact date, month and year of such handing over. It is nowhere stated that the petitioners had taken her *istridhan* into their possession and converted the same to their own use or criminally misappropriated them. Hence, on the face of the record, no *prima facie* case as against the petitioners for having dishonestly misappropriated the *istridhan* of the complainant-respondent No.2 is made out. It is rather manifestly clear from the allegations in the FIR itself that there was no allegation of entrustment of any specific kind of property by the complainant to the present petitioners and only general allegations have been levelled against them. Since the allegations in the FIR itself do not make out as to

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what particular kind of *istridhan* belonging to respondent No.2 had been entrusted to which particular petitioners or the co-accused, therefore, not only the allegation qua entrustment of property or its misappropriation by the petitioners which is the pre-requisite of offence under Section 406 of IPC is lacking but also that which particular petitioner or the co-accused misappropriated the same has also not been shown. The only allegation which has been levelled in the FIR to bring the instant case within the purview of Section 406 is that the petitioners and the co-accused had taken all the gold articles and *istridhan* given to her by her parents and other relatives. Technically, these allegations do not attract the definition of breach of trust within the meaning of Section 405 of IPC. So far as entrustment of other properties or having dominion over those properties is concerned, no such allegation is attributed to the petitioners. It is well settled proposition of law that any gift made to bridegroom or his parents, whether in accordance with any custom or otherwise, does not constitute an offence under Section 406 of IPC. Reliance in this regard can be placed upon ***Bhaskar Lal Sharma and another vs. Monica : 2009(3) RCR (Criminal) 866***. Therefore, in my considered opinion, prosecution of the petitioners for commission of offence punishable under Section 406 of IPC is also not proper.

18. The complainant has also alleged that from the very beginning, the accused persons including petitioners had been expressing their greed for dowry. Even if it is believed that the accused persons had expressed their desire that the dowry must be commensurate with their status and the complainant felt that they were greedy persons, she was always at liberty to

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not to perform marriage with the son of petitioner No. 1 or get a case registered against them under the Dowry Prohibition Act. However, the complainant is not shown to have taken any such action. Further, it has been alleged by the complainant that her husband and mother-in-law on reaching Canada on 03.07.2019, had again raised demand for arranging a house and on non-fulfillment of this demand, she was harassed mentally as well as physically by giving severe beatings by her husband and mother-in-law. However, it is apparently and evidently clear that these allegations belong to the incident which happened in Canada and the Courts in India would have no jurisdiction to proceed against the petitioner as Section 104 of IPC puts a bar on the scope of applicability of territorial jurisdiction to the Courts of India to a case, cause of action, which has taken place outside India.

19. As such, it emerges that the allegations as levelled in the FIR, even on given face value and taken to be correct in their entirety do not make out any offence as against the petitioners. ***In Onkar Nath Mishra and others v. State (NCT of Delhi) and another, 2008 (1) RCR (Criminal) 336*** and ***Devendra and others v. State of U.P. and another, 2009 (7) Scale 613***, it was observed by Hon'ble Supreme Court that when the allegations made in the FIR or the evidence collected during investigation, do not satisfy the ingredients of offences, the superior courts would not encourage harassment of a person in a criminal Court for nothing.

20. Given the totality of the facts and circumstances, I am of the considered opinion that the allegations as levelled by the complainant against the petitioners, as they are, are wholly insufficient and *prima facie*, do not make out a case against them. As such, permitting the criminal

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process to go on against the petitioners in such a situation, would, therefore, result in clear injustice and hence, it is a fit case for this Court to exercise its inherent powers under Section 482 of Cr.P.C. and to quash the FIR and consequential proceedings as against the petitioners and it would be unjust to force them to face the ordeal of the trial for commission of the aforementioned offences. Accordingly FIR No. 34 dated 30.12.2019 under Section 406, 498-A, IPC registered at P.S. N.R.I., Ludhiana, District Ludhiana and the consequential proceedings arising therefrom, are ordered to be quashed qua the present petitioners only and the petition stands allowed.

21. Miscellaneous application(s), if any, also stand disposed of.

15.05.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes