

Neutral Citation No. 2024:PHHC:069494

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

115+202

CRM-M-10468-2019 (O&M)
Date of decision : 16.05.2024

Jagdish Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. P. S. Ahluwalia, Advocate
for the petitioners.

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

Mr. Sukhjit Singh, Advocate
for respondent No. 2/complainant.

MANISHA BATRA, J. (Oral)

1. CRM-18898-2024

Allowed as prayed for, subject to all just exceptions.

Documents are taken on record as Annexure R-1 to R-4.

2. CRM-M-10468-2019 (O&M)

The instant petition has been filed under Section 482 of Cr.P.C. by the petitioners, who are father-in-law and mother-in-law respectively of the daughter of respondent No. 2/complainant, seeking quashing of FIR No. 375 dated 05.12.2017, initially registered under Sections 406 and 120-B of IPC at Police Station Dakha, District Ludhiana, and offence under Section

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498-A of IPC having been added later on at the time of presentation of *challan*, along with the all the consequential proceedings having emanated therefrom.

3. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR had been registered against the petitioners on the basis of a written complaint filed by respondent No. 2/complainant Mukhtiar Singh alleging therein that his daughter Satinderpal Kaur (victim) was married with Amandeep Singh, who is son of the present petitioners, on 25.12.2011 according to Sikh rites and rituals. Huge amount of money was spent in the marriage and several gold ornaments and other articles like LCD TV, Air Conditioner, Bed etc. were also given, which were handed over to petitioner No. 1, whereas one gold set weighing 21.530 grams and one gold chain weighing 16.630 grams were handed over to petitioner No. 2. Apart from this, gold ornaments and *shagun* etc. were given to the daughter of the petitioners and other relatives of the in-laws family. The victim was residing in England prior to her marriage, whereas her husband Amandeep Singh had been residing in Canada. Both of them had returned back to their respective abodes on 02.01.2012. Before leaving for England, the victim had gone to visit her parents on 01.01.2012 and disclosed that the members of her in-laws family were taunting her while conversing that her parents had not spent money in the marriage as per their status and that her husband was also demanding money from her. She had left for England by saying that she would make arrangement for money and send it to her husband. She had even transferred money in the bank account of her husband. Subsequently on 31.08.2012, she had come back

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from England to India as Canadian Visa was issued to her and she had to go there. She stayed in her in-laws' house and had gone to Canada on 29.09.2012. During the period of her stay at her in-laws house, the petitioners mentally tortured her by making conversation that it takes lakhs of rupees to go to Canada and asking her to bring an amount of Rs 20-25 Lakhs from her parents for this purpose. She apprised the complainant that she asked the petitioners for giving her jewelry, which had been handed over to them but they kept on avoiding the same. The complainant was subsequently told by the victim that the entire jewelry and cash, which had been handed over to her husband by her at the time of marriage, was handed over to his parents, who are the present petitioners.

4. As per the further allegations in the FIR, the victim had given birth to a female child on 09.07.2013 and on that occasion, petitioner No. 2 had gone to Canada who along with her son harassed her by taunting that they were expecting a male child. The complainant quoted several other instances showing the factum of matrimonial discord having taken place between the victim and her husband and alleged that her husband had left for USA and came back in June, 2017. He was not returning her jewellery. While alleging that the jewellery of the victim had been criminally misappropriated by the petitioners and their son, the complainant prayed for taking action against them. Initially, a case under Sections 406 and 120-B of IPC was registered. Investigation proceedings were initiated. The petitioners joined the investigation. Petitioner No. 1 had presented *stridhan*, belonging to the victim, to the Investigating Officer, which was taken into possession and a memo of recovery was prepared. At the time of presentation of

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challan, offence under Section 498-A of IPC was added in the challan report. The petitioners have been chargesheeted for commission of offences punishable under Sections 406, 498-A read with 120-B of IPC and are facing trial.

5. The present petition has been filed by the petitioners on the ground and it has been argued by their counsel that they have been falsely implicated in this case. The offence under Section 498-A of IPC was added only at the time of presentation of challan in the Court without giving any explanation to show as to why and under what circumstances, the provisions of Section 498-A of IPC was invoked by the Investigating Agency, though they were not at all attracted in the matter. The victim had left India just after 07 days of her marriage with the son of the petitioners. She had come back in the first week of September, 2012 and left India on 29.09.2012 but during this period also, she had stayed with them for a very short time and, therefore, the question of petitioners' subjecting her to cruelty and harassment on account of demand of dowry did not arise.

6. Learned counsel for the petitioners further argued that the allegations qua entrusting any *stridhan*, belonging to the victim, were also false and whatever articles, belonging to the victim were lying in her matrimonial home, had been returned by petitioner No. 1 during investigation to the Investigating Officer and even otherwise, these articles were neither entrusted to them nor was there any allegation of the same being criminally misappropriated by either of the petitioners.

7. One more argument raised by learned counsel for the petitioners is that since the offences, which have been alleged against their

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son, have been committed outside the jurisdiction of India, therefore, it was incumbent upon the Investigating Agency to enquire into or get the same tried only after obtaining previous sanction from the Central Government in view of Section 188 of Cr.P.C, and since no such sanction has been obtained, therefore, the proceedings are liable to be quashed. It is also argued that both, the victim and her husband, had been residing abroad and the instances of matrimonial discord, as alleged in the FIR, had taken place within the jurisdiction of Canada and, therefore, larger part of the offences, if any was committed against the victim in Canada, hence, the lodging of FIR in India at Ludhiana was bad in the eyes of law and the abuse of process of law. With these broad submissions, it is argued by learned counsel for the petitioners that the petition deserves to be allowed and the impugned FIR deserves to be quashed qua the petitioners.

8. *Per contra*, learned State counsel, assisted by learned counsel for respondent No. 2/complainant, has argued that the investigation in this case has since been completed. *Challan* has been presented in the Court and even charges have been framed against the accused. Preliminary inquiry was conducted in the matter and thereafter on finding the allegations as levelled against the accused persons to be true, they were nominated as accused in this case. There are serious allegations against the petitioners. It is further argued that since the petitioners had committed the subject offences against the victim when she stayed with them in India, therefore, the case do not fall within the scope of Section 188 of Cr.P.C. and there was no necessity of any sanction. 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.

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

10. 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 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:-

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“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;

(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

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instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

11. 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 law. Reliance can further be placed upon ***State of Andhra 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.

12. 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

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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.

13. 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 father-in-law and mother-in-law respectively of the victim, had subjected her to harassment on account of unlawful demand of dowry and had criminally misappropriated her *stridhan* in connivance with their son. In view of the backdrop of the allegations in the FIR and the contentions as raised by the parties, in my considered opinion, the first and 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

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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 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.

14. 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

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account of failure by her or any person related to her to meet such demand.

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

1. A woman must be married.

2. She must be subjected to cruelty.

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.

16. On considering the allegations as levelled in the FIR lodged by the respondent No.2, I am of the considered opinion that the same cannot be considered to be even *prima facie* sufficient to enable this Court to arrive at a conclusion that the petitioners have committed any offence punishable under Section 498-A of IPC. It is not in dispute that the marriage of the son of the petitioners and the daughter of the complainant took place on 25.12.2011 and both of them had left for England and Canada respectively,

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wherein they had already been residing and working as on 02.01.2012. Meaning thereby that the victim stayed in India for a period of only 07 days after her marriage on 25.12.2011. It can reasonably be presumed that during this short period of time, both of them must have visited their relatives and houses of each other hence even it cannot be stated that she remained in her matrimonial house only for those 07 days. Then, it is also not in dispute that she came to India on 31.08.2012/01.09.2012 and went back on 29.09.2012 and obviously she would not have stayed with her parents-in-law during this entire period. The allegations, which have been levelled against the petitioners, are that during the period of initial stay of the victim with them, they had taunted her by saying that expenditure of amount of Rs. 40-50 Lakhs was required to be incurred for going to Canada and that her parents had not given them sufficient dowry as per their status.

17. The further allegations, which have been levelled against them, are that when the victim came to India on 01.09.2012 and stayed till 29.09.2012, then also they had tortured her by saying that lakhs of rupees were required to be spent for going to Canada and suggested her to bring an amount of Rs. 20-25 Lakhs from her parents. It is important to mention here at the cost of repetition that the FIR in this case was lodged on 05.12.2017 i.e. about 06 years of the marriage of the victim with the son of the petitioners and till that date, no complaint whatsoever had been filed by her in India as against the petitioners or their son making allegations that she was being tortured on account of demand of dowry. Even specific dates when such demands had been raised have not been mentioned in the FIR. The allegations as levelled against the petitioners with regard to torturing the

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victim and raising demand of dowry are also omnibus. No specific role has been attributed to the petitioners to show that the victim was forced to go to her parents and bring the amount of money allegedly demanded by them at any point of time. The allegations qua harassment having been made after a gap of 06 years of the marriage of the victim are even otherwise attract the bar of limitation as provided under Section 486 of Cr.P.C., as per which, cognizance of an offence, which is punishable upto 03 years, cannot be taken beyond a period of 03 years.

18. It is also noteworthy to mention that the offence under Section 498-A of IPC was added only at the time of preparation and presentation of *challan* and it is apparent that the petitioners were not even joined into investigation qua commission of that offence. More so, the allegations so levelled do not disclose that any act on their part was likely to drive the victim to commit suicide, which is one of the essential ingredients with regard to commission of offence under Section 498-A of IPC. These allegations also do not suggest that the cruelty allegedly inflicted upon the victim was of the nature of any willful act, which was likely to drive the victim to commit suicide or to cause any grave injury or danger to her life, limb either mental or physical. In ***B. S. Joshi vs. State of Haryana : 2003 (2) RCR (Criminal) 888***, Hon'ble Apex Court had observed that if the FIR in a case under Section 498-A of IPC does not disclose specific allegations against the accused, more so against his family members, especially in a matter arising out of a matrimonial bickering, it would be clear abuse of process of law and judicial system to send the mentioned accused in FIR to undergo trial and in such cases, the Court would be justified in quashing the

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proceedings. As such, it is held that the proceedings initiated against the petitioners under Section 498-A of IPC including charge framed against them under this section are liable to be quashed.

19. So far as the allegation 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 it is alleged in the FIR that the gold ornaments, which were *stridhan* of the victim, were in possession of the petitioners and they refused to return the same but it was nowhere stated as to by which particular accused and what form of *stridhan* was taken and how the same had been misappropriated. As already discussed, during the course of investigation, the petitioners had handed over the articles/*stridhan*, belonging to the victim, to the Investigating Officer and a list of the same had also been prepared. Since there was no allegation of entrustment of any specific kind of property by the victim to the present petitioners and general allegations were levelled against them and since the articles, which were kept in the matrimonial house of the victim, already stand returned, therefore, the question of criminal misappropriation of any property, belonging to the victim, by the

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petitioners is not made out. The allegations that the husband of the victim had given gold articles and *stridhan* of the victim to his parents do not attract the definition of breach of trust within the meaning of Section 405 of IPC as against the petitioners. Therefore, the prosecution of the petitioners for commission of offence punishable under Section 406 of IPC is not proper and is liable to be quashed. Technically also, these allegations do not attract the definition of breach of trust within the meaning of Section 405 of IPC.

20. So far as the plea taken by the petitioners that no offence had been alleged to have been committed within the jurisdiction of India, therefore, the offences as alleged against them could not be enquired into or tried in India is concerned, the same cannot be accepted in view of the fact that the allegations, which have been levelled against the petitioners themselves, are alleged to have been committed within the jurisdiction of Ludhiana and, therefore, the same could be enquired into and tried within that jurisdiction, though it is a different matter altogether that the veracity of these allegations is established or not.

21. Further, it is apparent that the victim did not come to India to lodge the FIR and it is her father, who got the FIR registered just 02 months after the date when the husband of the victim had filed a petition for divorce before the Supreme Court of British Columbia. It is clear that the victim persuaded her father to file the litigation and is pursuing proxy litigation to wreck vengeance. A decree of divorce has already been passed by the Supreme Court of British Columbia dissolving the marriage between the parties on 02.01.2019 (Annexure P-6) and all the claims between the victim

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and her husband are shown to have been settled between them. A perusal of Annexure P-5, which is a certified copy of the final order passed by the aforesaid Court, reveals that no claim was made by the victim that any gold ornaments or anything belonging to her had been retained by his husband or his family members and she was entitled to receive those articles or something else in lieu thereof. The terms of property division are also shown to have been settled in this decree of divorce, which also do not make any mention about this fact. Meaning thereby, no such property, belonging to the victim, was retained by either of the petitioners or by the husband of the victim, which they were liable to hand over back to her. The very fact that the victim stayed in India for less than a week just after her marriage and then in the second instance for about 29 days in September, 2012 and further that she obtained divorce from the Court at British Columbia is sufficient to hold that the criminal proceedings should be quashed. Reliance in this regard can be placed upon *Partap Singh and another vs. State of Punjab and another* 2010 (14) RCR (Criminal) 465 and *Bahadur Singh and others vs. State of Punjab and another* : 2010 (3) RCR (Criminal) 252.

22. 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.

23. 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 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. 375 dated 05.12.2017, initially registered under Sections 406 and 120-B of IPC at Police Station Dakha, District Ludhiana and the consequential proceedings arising therefrom, are ordered to be quashed qua the present petitioners only and the petition stands allowed.

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

16.05.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>