

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of pronouncement: 15.04.2024

CRM-M-14864-2021 (O&M)

Shashi Bala Saini & Others

.....Petitioner(s)

Vs.

State of Haryana & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Argued by:- Mr. Harsh Aggarwal, Advocate
for the petitioner.

Mr. Aditya Pal Singla, AAG Haryana.

Mr. S.S. Momi, Advocate
for respondent No.2.

Nidhi Gupta, J.

The prayer in this petition is for quashing **on merits** of FIR No.92 dated 04.03.2020 (Annexure P7) registered under Sections 323, 354, 406 and 498-A IPC at Police Station Ladwa, District Kurukshetra; with all subsequent proceedings arising therefrom, qua the petitioners.

2. Learned counsel for the petitioners inter alia submits that petitioner No.1 is the mother-in-law, petitioner No.2 is the father-in-law and petitioner No.3 is the husband of the complainant/respondent No.2 herein. Petitioner No.3 was married to the complainant on 05.03.2018. As petitioner No.3 used to work in Bangalore, the complainant left for Bangalore about a month after the marriage, i.e., on 11.04.2018. It is stated that thereafter the complainant returned to the matrimonial

home only on 29.01.2019 for delivery of her child. It is submitted that accordingly, the petitioners no.1 and 2 have hardly resided with the complainant, yet, allegations have been made against them, and they have been falsely implicated in the present matter.

3. It is contended that the above indicates that an entirely false case has been registered against the petitioners/accused. It is submitted that the petitioners have never made any dowry demands upon the complainant or her family. On the contrary, the petitioners have kept her very well. It is argued that the only apprehension in the mind of the complainant is that petitioner No.3/husband was indulging in an extra-marital affair with some lady. Even in the FIR, the main allegation pertained to the said apprehension in the mind of the complainant. It is accordingly prayed, that the present FIR be quashed qua the petitioners. In support, learned counsel relies upon judgments of the Hon'ble Supreme Court in **"Abhishek Vs. State of Madhya Pradesh"** Law Finder Doc ID # 2302074; **"Mirza Iqbal @ Golu & Another Vs. State of Uttar Pradesh & Another"** Law Finder Doc ID # 1924104; **"Rashmi Chopra Vs. State of Uttar Pradesh & Another"** Law finder doc ID # 1443863; **"Harmanpreet Singh Ahluwalia & Others Vs. State of Punjab & Others"** 2009 CriLJ 3462 Law Finder Doc ID # 190773; and **"Ruchi Agarwal Vs. Amit Kumar Agrawal"** Law Finder Doc ID # 78949.

4. Per contra, learned counsel for the complainant vehemently opposes the submissions made on behalf of the petitioners and submits that a perusal of the statement dated 25.11.2019 (Annexure P6)

made by the complainant on the basis of which FIR was registered, as also perusal of the FIR (Annexure P7) would reveal that categorical allegations of dowry demand, torture, and harassment have been made by the complainant against all the accused, including the petitioners. It is submitted that very specific allegations have been made by the complainant; and the complainant in her statement under Section 164 Cr.P.C. has reiterated the allegations made by her in the FIR. It was in view of this fact, that after proper and thorough investigation Challan dated 01.06.2020 (Annexure R2/1) was presented. It is contended that in fact, the present petition is not maintainable. It is stated that even the challan has not been challenged by the petitioners. Now the matter is pending before the learned trial Court for framing of charge on 26.04.2024. Learned counsel further submits that the complainant is a well-qualified young lady and even now she is willing to live with the petitioners in the interest of minor child. However, even though the matter has been referred to Mediation by a Co-ordinate Bench of this Court, the efforts at mediation remained unsuccessful as the husband/ petitioner no.3 is adamant on separating from the complainant. In support of his contentions, learned counsel for the complainant relies upon judgments of the Hon'ble Supreme Court in **Munshiram Vs. State of Rajasthan & Another**" Law Finder Doc ID # 1001589; **K. Neelaveni Vs. State Rep. By Insp. of Police & Ors.**" Law finder doc ID # 208951; and **Dineshbhai Chandubhai Patel Vs. State of Gujarat & Others**" Law Finder Doc ID # 958379.

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. Brief facts of the case and sequence of events in chronological order as discernible from the record are as follows: –

03.07.2017: Roka ceremony of petitioner No.3 and complainant was conducted.

22.10.2017: Engagement Ceremony held.

05.03.2018: Marriage of petitioner no.3 and complainant was solemnized.

19.03.2018: Gaurav Saini/petitioner no.3 went alone to Bangalore.

11.4.2018: As petitioner no.3 worked in Bangalore, the complainant left for Bangalore on 11.4.2018.

29.01.2019: As per the petitioners, the complainant returned to the matrimonial home only on 29.01.2019 for her delivery.

02.02.2019: On 2.2.2019, the complainant went to her parental home for her delivery, and since then she has been living in her parental home.

01.04.2019: A Son, namely Garvit, was born on 01.04.2019.

06.01.2020: Divorce petition filed by Gaurav Saini/petitioner No.3 (husband).

04.03.2020: Present FIR No. 92 was registered U/s. 323, 354, 406, 498-A IPC at P.S. Ladwa. There are four accused in the FIR, 3 of whom are the present petitioners, and the 4th accused is Kajal Saini, who is the sister-in-law/nanad of the complainant. A separate petition bearing CRM-M-41531 of 2020 titled as 'Kajal Saini vs State of Haryana and anr.' has been filed on behalf of the said sister-in-law who is also seeking the same relief, i.e., quashing on merits of the present FIR qua herself.

13.3.2020: Statement of the complainant was recorded under section 164 CRPC, in which she has reiterated the version in the FIR against all the accused persons with regard to allegations of demand of dowry, harassment and outraging of modesty.

01.06.2020: After investigation, and after recording statements of the witnesses under section 161, CRPC, challan/ final report was filed against all the accused u/s. 323, 406, 354, 498-A IPC.

26.04.2024: Court has been informed that the matter is now pending before the learned trial court for framing of charge, for which the next date of hearing is 26.04.2024.

8. The main contention on part of the petitioners is that vague and general allegations have been made in the FIR. However, this argument is contrary to the record. Perusal of the FIR (Annexure P7) shows that it has been specifically alleged therein that:

- i. The father of the complainant retired from the Bank on 30.11.2016 and had given sufficient dowry beyond his capacity;
- ii. Rs. 5 Lacs were given at the time of engagement, along with Rs. 7.5 Lacs for car;
- iii. Rs. 8 Lacs for gold ornaments;
- iv. Rs. 10 Lacs for other articles.
- v. Rs. 10 Lacs for refreshment/food;
- vi. Rs. 2 Lacs at the time of birth of son.

9. It has further been alleged in the FIR that all the jewelry and other dowry articles are in the possession of the mother-in-law, father-in-law and co-accused sister-in-law. There are specific allegations against sister-in-law and mother-in-law with regard to demand of dowry and that

they used to instigate petitioner no.3 against the complainant for small things; that the petitioners ill-treated the complainant; that the petitioner No.3 was having a female friend even prior to the marriage, and this fact was in the knowledge of all the other accused, who did not disclose this fact to the complainant or her family before the marriage; further, there are allegations against the father-in-law for outraging the modesty of the complainant which constitutes offence under Section 354 IPC. It has been specifically alleged by the complainant that petitioner No.2/father-in-law was keeping a bad eye on the complainant; on 19.03.2018, when petitioner No.3 went to Bangalore, after 2 days, upon finding the complainant alone at home, petitioner No.2 entered her room with bad intention and caught hold of the complainant from behind and thereafter, committed misdeeds with her, and when the complainant disclosed this to petitioner No.1/mother-in-law, she did not agree with her and threatened her; and similar such allegations are leveled in the FIR. It has also been alleged that after the delivery of the child, the complainant and her child were not taken care of, and there are instances specifically mentioned with regard to humiliation and harassment.

10. From the above enumeration, it is evident that allegations leveled in the FIR are specific against each of the petitioners and *disclose* the commission of offence under IPC.

11. A 3-Judge Bench of the Hon'ble Supreme Court in landmark decision in case titled as **"M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Others"** Law Finder Doc ID # 1830709, has laid

down the basic principles of law to be borne in mind when called upon to quash FIR in cases such as the present one. In the said judgment, the Hon'ble Supreme Court has held:-

"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)

12. The above legal position has been reiterated by the 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.”*

13. The truth or not of these allegations can only be established after proper enquiry/investigation/trial. However, it is my

opinion that the FIR prima facie discloses commission of alleged offences by the petitioners. Moreover, the petition is not maintainable as in this present case, the Investigating Officer after investigation, submitted the final report after recording the evidence, which is part of the challan filed on 01.06.2020. As such, to quash the investigation/FIR at this nascent stage would be contrary to the established precepts of law.

14. In this regard, reference may be made to judgment of Hon'ble Supreme Court relied upon by counsel for the complainant in case of **Munshiram Vs. State of Rajasthan & Another**" Law Finder Doc ID # **1001589**, wherein it has been held that the High Court erred in quashing the FIR at the threshold without allowing the investigation agency to proceed and the same is not in consonance with the settled jurisprudence under Section 482 Cr.P.C. Relevant extract of the said judgment is reproduced as under: –

"Indian Penal Code, 1860 Section 306 Criminal Procedure Code, 1973 Section 482 Section 482 has to be utilized cautiously while quashing the FIR - Only where it would amount to abuse of process - Where court abridged the investigation which needed to ascertain certain factual assertions made in the FIR concerning the existence or non-existence of any prior mental condition of the deceased prior to the commission of suicide - Enquiry was pending and there are aspects which may require investigation - High Court erred in quashing the FIR at the threshold itself without allowing the investigation to proceed - Reasons provided under the impugned judgment concerning certain factual assertions made by the Respondents as to the condition of the deceased and reasons for committing suicide because acceptance of the said would not be in consonance

with the settled jurisprudence under section 482 of CrPC, 1973 as laid down by various judgments of Supreme Court.

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13. In light of the fact that the enquiry was pending and there are aspects which may require investigation, we are of the considered opinion that the High Court erred in quashing the FIR at the threshold itself without allowing the investigation to proceed. We cannot agree with the reasons provided under the impugned judgment concerning certain factual assertions made by the Respondents as to the condition of the deceased and reasons for committing suicide because acceptance of the said would not be in consonance with the settled jurisprudence under section 482 of CrPC, 1973 as laid down by various judgments of this Court”.

15. Support may also be drawn from judgment of Hon’ble Supreme Court in **“K. Neelaveni Vs. State Rep. By Insp. of Police & Ors.”**

Law finder doc ID # 208951, wherein it has been held as under:-

“A. Criminal Procedure Code, Section 482 – Indian Penal Code, Sections 494 and 406 – Bigamy – Husband undergoing second marriage and child born to from second marriage – FIR lodged by first wife under Sections 406, 494 Indian Penal Code – Charge sheet submitted by Police – High Court quashed the charge sheet on the ground that there was no allegation that essential religions of marriage were performed – Order of High Court set aside – Held:

(1) Essential ceremonies of marriage were gone out or not is a matter of trial.

(2) Ingredients constituting the offences under Sections 494 and 406 were made out.

(3) Truthfulness or otherwise of the allegation that it is not fit to be gone into at this stage as it was always matter of trial.

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10. It seems that accused persons approached the High Court for quashing of the charge sheet even before any order was passed by the Magistrate in terms of Section 190 of the Code of Criminal Procedure. In our opinion, when a report is submitted to the Magistrate he is required to be prima facie satisfied that the facts disclosed therein constitute an offence. It is trite that the Magistrate is not bound by the conclusion of the investigating agency in the police report i.e. in the charge sheet and it is open to him after exercise of judicial discretion to take the view that facts disclosed in the report do not constitute any offence for taking cognizance. Quashing of Sections 406 and 494 of Indian Penal Code from the charge sheet even before the exercise of discretion by the Magistrate under Section 190 of the Code of Criminal Procedure is undesirable. In our opinion, in the facts and circumstances of the case, quashing of the charge sheet under Sections 406 and 494 of the Indian Penal Code at this stage in exercise of the power under Section 482 of the Code of Criminal Procedure was absolutely uncalled for”.

(Emphasis supplied)

16. Reliance may also be placed upon another judgment of Hon’ble Supreme Court in **“Dineshbhai Chandubhai Patel Vs. State of Gujarat & Others”** Law Finder Doc ID # 958379, wherein it has been held as under:-

“Constitution of India, 1950 Article 134 Indian Penal Code, 1860 Sections 114, 120B, 420, 465, 468, 471 Order quashing FIR – Challenge – In order to examine whether FIR discloses

cognizable offence or not, High Court not to act like investigating agency – Question required to be examined keeping in view content of FIR – Once Court found FIR discloses commission of cognizable offence court to stay its hand and allow investigation – High Court went into minute details in relation to every aspect of case and exceeded its inherent power to quash FIR in part – Quashing set aside.”

17. It may be pointed out that the facts of the present case are distinctly different from that of the co-accused Kajal Saini, who is sister-in-law of the complainant, and who has filed a separate petition bearing CRM-M-41531 of 2020 titled as ‘Kajal Saini versus State of Haryana and another’ seeking the same relief i.e. quashing of the present FIR qua herself. Perusal of the FIR shows that unlike the petitioners, only vague, general, and unsubstantiated, allegations have been made by the complainant against the said co-accused. More importantly, in the said case, it was admitted fact on record that the said sister-in-law was studying in Chandigarh since 2013–2015, and thereafter was pursuing five-year MBBS course at PGIMS, Rohtak since 2015. Therefore, at the time of marriage of the complainant on 5.3.2018, the said sister-in-law was not even residing in the matrimonial home.

18. A three-Judge Bench judgment of the Hon’ble Supreme Court in **“Abhishek Vs. State of Madhya Pradesh” 2023 SCC OnLine SC 1083 Law Finder Doc ID # 2302074**, has observed that:

*“15. Earlier, in **Neelu Chopra and another v. Bharti [(2009) 10 SCC 184]**, this Court observed that the mere mention of statutory provisions and the language thereof, for lodging a complaint, is not the 'be all and*

end all' of the matter, as what is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in the commission of that offence. These observations were made in the context of a matrimonial dispute involving Section 498A IPC.”

19. Accordingly, in view of the facts, and the legal position as noticed hereinabove, I find no merit in the present petition. The allegations made by the complainant in the FIR prima facie disclose the commission of an offence by the petitioners. Therefore, to quash further enquiry into the allegations without allowing the investigation to reach its logical conclusion will be against the established principles of law. Present petition is accordingly, **dismissed**.
20. Pending application(s) if any also stand(s) disposed of.

15.04.2024
Sunena

(Nidhi Gupta)
Judge

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