



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

CRM-M-11190-2019(O&M)

Reserved on: 25.11.2024

Pronounced on: 28.11.2024

Siddhartha Sharma

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Nisha Rani, Advocate
And Mr. Vikram Seth, Advocate (through VC)
for the petitioner.

Mr. G.S. Bhandari, Advocate
for respondent No.2.

Mr. Vikas Bharadwaj, AAG Haryana

HARPREET SINGH BRAR, J. (ORAL)**CRM-35939-2022**

The present application has been moved under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking to place on record the documents available as Annexures P-10 to Annexure P-13.

For the reasons mentioned in the application, the same is allowed and the documents available at Annexures P-10 to P-13 are taken on record.

CRM-M-11190-2019

1. The present petition has been preferred under Section 482 Cr.P.C. seeking quashing of the FIR No. 27 dated 12.02.2019 registered under Sections 323, 34, 406, 498-A, 506, 509 IPC at Police Station Women, Gurgaon and all subsequent proceedings arising out of the same.

**FACTUAL BACKGROUND**

2. Briefly, the facts, as alleged by the prosecution, are that the marriage between the petitioner and respondent No.2 was solemnised on 12.11.2015 under the Special Marriage Act, 1954. Thereafter, the marriage was solemnised in accordance with Hindu rites and rituals on 11.03.2016. Both the events were held in Assam. The petitioner and his family started harassing respondent No.2, expressing their dismay at the inadequacy of the dowry brought by her. The parents of respondent No.2 booked their flight tickets to Europe, where the couple went for honeymoon, on the insistence of the petitioner. Respondent No.2 was asked to handover all her jewellery to her parents-in-law before leaving for Europe. On the third day of their honeymoon, respondent No.2 found out that her mother needs to undergo surgery for breast cancer and requested the petitioner to return. Agitated by the same, the petitioner started abusing, slapping and kicking her. Respondent No.2 booked her ticket and returned to India on the same night. However, the petitioner continued to stay in Europe for the next ten days after which he returned to Australia, where he is a permanent resident. The petitioner expressed his intention to divorce respondent No.2 and they separated between April to June 2016. During this separation period as well, the father of respondent No.2 fulfilled some of the petitioner's financial demands.

3. The petitioner portrayed himself to be a changed man and made attempts to reconcile. Convinced by the same, respondent No.2 decided to join his company in Melbourne, Australia and the tickets were arranged by her parents. The petitioner also filed a partner visa application for her in Australia while asking her to pay half of process amount. Subsequently, respondent No.2 got pregnant which caused the petitioner to resume his offensive behaviour. The



petitioner also got the visa of respondent No.2 cancelled. In August, 2016, respondent suffered a miscarriage and underwent treatment in Abu Dhabi, UAE. The relevant health authorities confirmed that the miscarriage occurred due to mental stress and mental agony. The petitioner also showed up at her university in Qatar and misbehaved with her. Respondent No.2 registered a police complaint on 04.09.2016 with Qatar Police (Police Station Rayyan) but he had left the country by the time the complaint was forwarded to the office of the Public Prosecutor. Notably, the petitioner filed a complaint against respondent No.2 with the Ministry of External Affairs in Doha, Qatar, which was subsequently dismissed. Further, in September, 2017, the petitioner came to Gurugram and threatened respondent No.2 to get Rs. 10,00,000/- as well as her medical records from her parents. The *stridhan* of respondent No.2 continues to be in possession of the petitioner and his family, who refused to return the same.

CONTENTIONS

4. Learned counsel for the petitioner *inter alia* contends that the petitioner is a citizen of Australia, an OCI card holder. Respondent No.2 is an Indian citizen born in Saudi Arabia and has lived in multiple regions of the Gulf. Currently, she is working in Doha, Qatar. Neither of the parties is a permanent resident of India. In fact, the parents of the petitioner reside in Guwahati while the parents of respondent No.2 reside in Doha. Since no party resided in Gurugram during the subsistence of their marriage, no cause of action arises there. The divorce matter between the parties is also pending before a Court in Gurugram and in the said proceedings, it was admitted that respondent No.2 is residing in Doha and not Gurugram. Moreover, the criminal prosecution was set in motion without obtaining the sanction as stipulated by



Section 188 Cr.P.C. No complaint was moved by respondent No.2 till the petitioner filed for divorce, which makes it clear that the FIR(supra) is merely a counterblast. The allegations made in FIR(supra) predate its registration by 17 months and are vague and omnibus in nature. Further, the entire incident has occurred outside India, therefore criminal prosecution here is not warranted. Learned counsel places reliance on the judgment rendered by the Hon'ble Supreme Court in ***Fatima Bibi Ahmed Patel vs. State of Gujarat and another (2008) 6 SCC 789, Harmanpreet Singh Ahluwalia vs. State of Punjab and others (2009) 7 SCC 712*** and this Court in ***Kulvir Singh Kaliram vs. State of Punjab CRM-M No. 13019 of 2013*** decided on 06.04.2015. Additionally, the learned counsel for the petitioner had vehemently argued that an FIR cannot be registered without the sanction under Section 188 Cr.P.C. as the petitioner is an Australian citizen and the following order was passed on 11.04.2019 by this Court-

“Reply by way of an affidavit of Ms. Usha, HPS, Assistant Commissioner of Police, CAW East, Gurugram filed on behalf of respondent No.1-State in court today, is taken on record. Copy supplied to the counsel opposite.

As per office report, notice issued to respondent No.2 remained unserved with the report that the premises was found locked and the guard on duty of the society, informed that the house is vacant for the last 7-8 months.

Counsel for the petitioner has argued that at no point of time, respondent No.2 had ever resided in Gurgaon. The FIR was registered on 12.02.2019, whereas, as per the report of the processing agency, respondent No.2-complainant never remained at Gurgaon for the last 7-8 months. He has further referred to Section 188 of Cr.P.C. to contend that even before registration of FIR against the petitioner, it was mandatory for the police to seek previous sanction of the Central Government as the petitioner is a citizen of Australia.

Adjourned to 08.05.2019.

Meanwhile, no coercive method be adopted against the petitioner till the next date of hearing.

The petitioner shall make another attempt to serve respondent No.2 through dasti process as well.



Be shown in the urgent list.”

5. *Per contra* learned counsel for respondent No.2 submits that respondent No.2 is in fact a permanent resident of Gurugram. All the summons and notices were served on respondent No.2 at her Gurugram address, which she has received and answered. Moreover, respondent No.2 has been pursuing divorce proceedings for about two and a half years before Gurugram Court. Respondent No.2 had filed a complaint in Qatar at Al Rayyan Police Station on 04.09.2016 but the petitioner had left the country during its pendency. Moreover, respondent No.2 reported the incidents of domestic violence to the Melbourne police but an official complaint could not be registered as she was on tourist visa, therefore, lacked residency status. The Hon’ble Supreme Court in ***Sartaj Khan vs. State of Uttarakhand 2022(2) R.C.R.(Criminal)565*** has held that when the entirety of the offence has not been committed outside India, the sanction under Section 188 Cr.P.C. is not necessary. Moreover, the Hon’ble Supreme Court in ***Nerella Chiranjeevi Arun Kumar vs. The State of Andhra Pradesh and another SLP(Crl.) No. 3978/2021 vide order dated 02.08.2021*** has held that the sanction of the Central Government under Section 188 Cr.P.C. is not required at the stage of cognizance.

6. Further, the Hon’ble Supreme Court in ***Savita vs. State of Rajasthan (2005) 12 SCC 338*** has held that an FIR must not be quashed at a premature stage when the investigating agency has not had the chance to ascertain if enough material exists to file a chargesheet. In ***Ashfaq Ahmed Quereshi and another vs. Namrata Chopra 2014(1) R.C.R.(Criminal) 528***, the Hon’ble Supreme Court has reiterated that the when disputed questions of facts are involved, there is no occasion for the High Court to quash an FIR. Learned counsel also places reliance on the judgment rendered by the Hon’ble Supreme



Court in *M/s Neeharika Infrastructure Pvt.Ltd. vs. State of Maharashtra and others 2021 AIR SC 1918* wherein it was noted that the high Court must not proscribe the police from taking any coercive steps during the pendency of a quashing petition under Section 482 Cr.P.C.

OBSERVATIONS AND ANALYSIS

7. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, the following question arises for the consideration of this Court-

“Can criminal proceedings be set into motion, in a case where the offence has been committed abroad, without obtaining prior sanction from the Central Government as stipulated by Section 188 Cr.P.C.?”

8. A study of Section 188 Cr.P.C. is warranted to appropriately adjudicate upon the abovementioned issue. The said provision reads as follows:

Section 188. Offence committed outside India.

When an offence is committed outside India—

- (a) by a citizen of India, whether on the high seas or elsewhere; or*
- (b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:*

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

A study of the above reveals that if the alleged offence is committed abroad by an Indian citizen, criminal prosecution against him cannot be initiated in India without obtaining sanction by the central government. However, obtaining the said sanction is not a condition precedent to register an FIR. In fact, the Court is well equipped to take cognizance of the alleged incident and if it is found that the offender needs to be tried, such sanction can



be sought. Succinctly, the sanction as required under Section 188 Cr.P.C. can be obtained before the trial commences. A three Judge bench of the Hon'ble Supreme Court in *Thota Venkateshwaralu vs. State of A.P. and another (2011) 9 SCC 527*, speaking through Justice Altamas Kabir, made the following observations in this respect:

"10. The language of Section 188 Criminal Procedure Code is quite clear that when an offence is committed outside India by a citizen of India, he may be dealt with in respect of such offences as if they had been committed in India. The proviso, however, indicates that such offences could be inquired into or tried only after having obtained the previous sanction of the Central Government. As mentioned hereinbefore, in Ajay Aggarwal's case (supra), it was held that sanction under Section 188 Criminal Procedure Code is not a condition precedent for taking cognizance of an offence and, if need be, it could be obtained before the trial begins. Even in his concurring judgment, R.M. Sahai, J., observed as follows :-

"29. Language of the section is plain and simple. -It operates where an offence is committed by a citizen of India outside the country. Requirements are, therefore, one commission of an offence; second by an Indian citizen; and third that it should have been committed outside the country."

Although the decision in Ajay Aggarwal's case (supra) was rendered in the background of a conspiracy alleged to have been hatched by the accused, the ratio of the decision is confined to what has been observed hereinabove in the interpretation of Section 188 Criminal Procedure Code The proviso to Section 188, which has been extracted hereinbefore, is a fetter on the powers of the investigating authority to inquire into or try any offence mentioned in the earlier part of the Section, except with the previous sanction of the Central Government. The fetters, however, are imposed only when the stage of trial is reached, which clearly indicates that no sanction in terms of Section 188 is required till commencement of the trial. It is only after the decision to try the offender in India was felt necessary that the previous sanction of the Central Government would be required before the trial could commence.

11. Accordingly, upto the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to Section 188 Criminal Procedure Code. However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government. The Magistrate is, therefore, free to proceed against the accused in respect of offences having been committed in India and to complete the trial and pass judgment therein, without being inhibited by the other alleged offences for which sanction would be required." (emphasis added)



9. Reverting to the facts of the matter at hand, it appears that the petitioner is an Australian citizen and holds an OCI card. A perusal of the FIR(supra) indicates that the respondent No.2 was harassed by the petitioner and his family in lieu of dowry, soon after the marriage when both parties were still in India. Moreover, in September, 2017, the petitioner allegedly met the respondent in Gurugram and told her to ask for Rs. 10,00,000/- as well as her medical records from her parents. He also threatened to ruin her life if she fails to do so. As such, specific and serious allegations, which have occurred on the Indian soil, have been leveled against the petitioner.

10. Pertinently, the Hon'ble Apex Court in ***Rupali Devi vs. State of U.P. and others (2019) 5 SCC 384*** has held that it is not necessary that complaint should be filed only at the location of the matrimonial home; even the Court in whose jurisdiction the wife resides, after leaving the matrimonial home, will be competent to entertain a complaint under Section 498-A of IPC. Further, in ***Ruhi vs. Anees Ahmed and others, 2020 (1) RCR (Criminal) 644***, it was reiterated that the Court, in whose jurisdiction the wife takes shelter, after leaving or being driven out from her matrimonial home on account of cruel treatment, would have the authority to entertain complaints alleging commission of offence punishable under Section 498-A of IPC. The respondent No.2 has been answering the summons and notices served to her on her Gurugram address. Moreover, she has also been participating in the divorce proceedings pending before the concerned Court in Gurugram since the last two years. Since, a significant part of the occurrence has taken place in India, the concerned investigating agency possesses the territorial jurisdiction to look into the matter.



11. Moreover, the disputed questions of facts are required to be adjudicated by the learned trial Court on the basis of the evidence adduced by the parties. The probable defence as set up by the petitioner cannot be gone into at this stage. A two Judge bench of the Hon'ble Supreme Court in ***HMT Watches Limited vs. M.A. Abida (2015) 11 SCC 776*** has held that inherent powers under Section 482 of the Cr.P.C. cannot be extended to determining question of facts. It is only for the trial Court to determine the disputed questions of fact after examining the evidence on record and interference by this Court with regards to factual questions is impermissible in law. Reliance in this regard can also be placed on the judgments rendered by the Hon'ble Supreme Court in ***Rathish Babu Unnikrishnan vs. State (Govt. of NCT) 2022 SCC Online SC 513*** and ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458***.

12. Further, the matter is still at the stage of investigation. Recently, in ***Neeharika Infrastructure Pvt. Ltd. (supra)***, the Hon'ble Supreme Court reiterated the guiding principles to quash proceedings under Section 482 of Cr.P.C and held as follow-

"80. In view of the above and for the reasons stated above, our final conclusions on the, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C , 1973 and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., 1973 while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C., 1973 and/or under Article 226 of the Constitution of India, our final conclusions are as under:

- 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 a cognizable offence;*
- ii) Courts would not thwart any investigation into the cognizable offences;*



- iii) *It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*
- iv) *The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).*
- 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 rather 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 and one ought not to tread over the other sphere;*
- 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. 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 more 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;*
- xv) *When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., 1973 only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The*



court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C., 1973 and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C., 1973 before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., 1973 while dismissing/disposing of the quashing petition under Section 482 Cr.P.C., 1973 and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C., 1973 and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

The Hon'ble Supreme Court in **Satvinder Kaur vs. State (Govt. of NCT of Delhi) 1999(8) SCC 728** has reiterated that the Court will not normally interfere with an investigation and permit it to be completed, as such interference would encroach upon the lawful power of the police to investigate into the alleged cognizable offences.



CONCLUSION

13. In view of the discussion above, the question framed above is answered in the following terms-

The sanction from Central Government, as stipulated under Section 188 Cr.P.C. is not a condition precedent for registration of an FIR. The same can be obtained at any point, before commencement of the trial.

14. In view of the discussion above, the present petition is dismissed at this stage. Pending miscellaneous application(s), if any, shall also stand disposed of. However, the petitioner is granted the liberty to approach this Court again in case the final report under Section 178 Cr.P.C. (*now Section 193 of the Bharatiya Nagarik Suraksha Sanhita, 2023*) is filed against him by the investigating agency.

15. Needless to say, nothing observed hereinabove shall be construed to be an expression of an opinion by this Court, lest it may prejudice the case. The investigating agency is directed to proceed with the matter on its own merits, strictly in accordance with law.

(HARPREET SINGH BRAR)
JUDGE

28.11.2024
Neha

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