

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
CRM-M-12999-2024(O&M)

Date of pronouncement: 29.04.2024

Kanwaljeet Singh

.....Petitioner(s)

Vs.

State of Punjab & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Argued by:- Mr.Aditya Dassaur, Advocate
for the petitioner.

Mr. Kunwarbir Singh, AAG Punjab.

Ms. Manju Goyal, Advocate
for respondent No.2.

Nidhi Gupta, J.

Present petition under Section 482 Cr.P.C. is filed seeking quashing **on merits** of FIR No.3 dated 09.01.2018 registered under Sections 323 and 498-A IPC at Women Police Station Mohali, District SAS Nagar, Punjab (Annexure P2); and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner inter alia submits that the petitioner was married to respondent No.2/complainant on 24.11.1996 as per Sikh rites and ceremonies. Two daughters were born out of this wedlock, who are currently in the care and custody of the complainant. Due to marital discord, the complainant left company of the petitioner in May, 2016 of her own free will and volition. The complainant also took both the children along with her. Thereafter, the complainant filed several cases

against the petitioner including a petition under Section 125 Cr.P.C., DV Act etc.

3. Learned counsel states that initially on 23.05.2016, the petitioner had given a complaint against respondent No.2 to the SHO, Police Station Sector 66, Mohali. In the meantime, on 3.4.2017, when the petitioner returned home from work, he found that his house had been broken into by the complainant. The petitioner dialled 100 to call the police and register the complaint. However, as no action was taken by the police, on 02.06.2017 the petitioner was compelled to file a complaint under Section 156(3) Cr.P.C. (Annexure P1) against the complainant with the allegation that on 03.04.2017, respondent No.2 along with two other persons have broken the locks of house No.1018 of Sector 79, Mohali, in the absence of the petitioner; and destroyed and stole various documents lying in the house along with other valuables. Learned counsel informs that the learned trial Court treated the complaint under Section 156(3) Cr.P.C. as a private complaint and thereafter, learned trial Court framed charges and proceeded to record evidence. However, order under Section 204 Cr.P.C. is yet to be passed.

4. Learned counsel contends that it is only thereafter, that the complainant lodged the present complaint on 10.04.2017, levelling vague and general allegations against the petitioner; in pursuance to which an inquiry was conducted and subsequently, present FIR No.3 dated 09.01.2018 was registered under Sections 323 and 498-A IPC at Women Police Station Mohali, District SAS Nagar, Punjab (Annexure P2).

5. Learned counsel for the petitioner very persuasively argues that even though nothing has been said in the body of the FIR regarding beatings yet, one of the offences in the present FIR is under section 323 IPC. It is only in the investigation section of the FIR (at page 27 of the paper book) that the DSP (City 2) Mohali upon conducting inquiry in his report had stated that the petitioner used to fight and quarrel with the complainant and after shifting to this house, the petitioner harassed the complainant and the children “...by giving beatings to them he forced them to leave this house. Paramjeet Kaur alongwith her children went to her parents’ house at Bathinda and in their absence Kanwaljeet Singh broke the locks of house, entered into the house, misappropriated Paramjeet Kaur’s goods/applicances and took possession over the house...”. Learned counsel reiterates that these are not even the allegations made in the FIR.

6. It is submitted that thereafter, report under Section 173 Cr.P.C. was submitted on 09.05.2018 (Annexure P3); and even perusal of the challan does not reveal any offence under Sections 323 and 498-A IPC; and the report was silent as to the investigation conducted by the police, its nature, and its conclusion. Learned counsel submits that the allegations made in the FIR are vague and general in nature. Present FIR has been lodged only with the intention to wreak vengeance upon the petitioner. Present FIR is merely a counter-blast to the complaint lodged by the petitioner against the complainant. It is accordingly, prayed that the present FIR be quashed.

7. In support of his contentions, learned counsel relies upon Division Bench judgment of Hon’ble Supreme Court in “**Mahmood Ali**

& Others Vs. State of UP & Others” Law Finder Doc ID # 2283625, to submit that a bare perusal of the FIR has to disclose the commission of offences as charged. It is contended that the present FIR shows that the ingredients necessary to constitute an offence under Sections 323 and 498-A IPC are not made out against the petitioner.

8. Learned State Counsel files status report by way of affidavit of Harsimrat Singh, PPS, Deputy Superintendent of Police, Detective, District SAS Nagar, dated 25.04.2024, which is taken on record.

9. Learned State Counsel opposes the prayer made on behalf of the petitioner and refers to Para 3 of the status report, wherein it has been stated as under:-

“3. That it is respectfully submitted that the enquiry of the said complaint was conducted by Deputy Superintendent of Police, City- 2, SAS Nagar, who after conducting thorough and detailed enquiry, found that respondent no.2 was doing job at Punjab National Bank, Kurali. She obtained loan from her employer Bank to construct her house. The petitioner used to stop her from constructing the said house and he never helped her financially for the same. The household items were also purchased by respondent no. 2 for the said house. The petitioner used to get into scuffle with respondent no.2 and after shifting in their new house, he used to harass and give beatings to the respondent no.2 and her children and pressurize them to leave the house. Ultimately, respondent no.2 went to her parental house at Bathinda alongwith her children and subsequently, petitioner entered in the house after breaking the locks of the house and misappropriated the items belonging to respondent no.2. The petitioner also took the possession of the said house.”

10. Learned counsel for the petitioner rebuts the above said contention made by learned State Counsel in reference to the status report and submits that the contents of Para 3 of the status report do not form part of the challan. It is further submitted that there is no specific date given as to when the petitioner allegedly entered the complainant's house.

11. Learned counsel for the complainant submits that the FIR does not record and reveal the entire complaint submitted by the complainant. It is stated that in fact, the complaint submitted by respondent No.2 ran into 17 pages. It is further submitted that the trial is at its fag end and prosecution evidence has been finished; and now the matter is posted for defence evidence and arguments. The statement under Section 313 Cr.P.C. was recorded as far back as on 26.07.2022. Moreover, the petitioner has deliberately delayed the process of trial as he has taken 43 opportunities to lead evidence. It is submitted that accordingly, now, whatever the petitioner has to say he can say before the learned trial Court.

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

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

14. FIR No.3 dated 09.01.2018 was registered under Sections 323 and 498-A IPC at Women Police Station Mohali, District SAS Nagar, Punjab (Annexure P2) at the instance of respondent No.2, and reads as under:-

“To, The Senior Superintendent of Police, Mohali. Respected Sir, Reg. harassment to my children and me by my husband Mr. Kanwaljeet Singh r/o 1018, Sector-79, Mohali. With humble request I invite your kind attention to my earlier complaints (copies enclosed) vide which I have mentioned my difficulties and atrocities of my husband being met by me and my children. Adding to this today I again received telephonic call by ASI Satnam Singh Police Station Sohana that a complaint has been lodged by my husband Mr. Kanwaljeet Singh that I have stolen Rs. 10,000/- from my house which is in alleged possession of Mr. Kanwaljeet Singh which I have not been allowed to entry since May 2016 despite of my ownership of the house. Sir I request your attention towards the court cases which are pending and today on 08.04.2017 were heard in honoured Lok Adalat for which next date is fixed for 02.05.17 and 17.04.17 wherein the second date 17.04.17 is set for order. Sir his complaint against me is false, misleading and wasting time of civil/police authorities as we are residing at Bathinda and were regularly attending my duties at Circle Office Punjab National Bank Bathinda. I request you to get the complaint investigated by some senior officials as the report submitted earlier by Sohana Police is totally false, biased and away from the facts...”.

15. On a bare reading of the above FIR it is patent that said present complaint of respondent No.2 is in addendum to and in addition to the previous complaints filed by the complainant against the petitioner. Copies of previous complaints were duly attached by the complainant along with present FIR. Accordingly, present FIR has to be read in addition to and addendum to the previous complaints filed by the complainant. Argument on behalf of the petitioner that the FIR does not disclose any offence

against the petitioner, is therefore misplaced. Moreover, it is an established principle of law that the FIR is not an encyclopaedia.

16. Moreover, it is no longer *res integra* that this Court cannot take upon itself to conduct an enquiry regarding the truth or otherwise of the allegations made in the FIR. The said power vests first in the investigating agency, and thereafter in the trial court. This Court is clear of the view that the truth or otherwise of the allegations made by the complainant can only be determined by the learned trial Court after examining the evidence brought on record by the parties in respect of their allegations. The present FIR cannot be read in isolation. It has to be read in context of the entire history of the dispute between the parties and in addition to the previous complaints filed by respondent No.2.

17. In this regard, reference may be made to a 3-Judge Bench of the Hon'ble Supreme Court in case titled as **"M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Others"** Law Finder Doc ID # 1830709, relevant part of which is reproduced hereinbelow:-

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

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;*
- ii) Courts would not thwart any investigation into the cognizable offences;*
- iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;*

iv) The power of quashing should be exercised sparingly with circumspection, in the rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C., 1973 is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C., 1973

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the

investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

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

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

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

(Emphasis supplied)

18. 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.”*

(Emphasis supplied)

19. The truth or not of these allegations can only be established after proper enquiry/investigation/trial. In the present case, it is necessary to get to the truth of the matter, which can only be done upon appreciation of evidence led by the parties. As such, it is my considered view that in the present case to quash the FIR at this stage would be not just contrary to the established precepts of law, but also unjust.

20. It is also relevant that the trial is at its fag end as, out of 11 prosecution witnesses, 8 stand examined and matter is at the stage of defence evidence and arguments. Admittedly, statement under Section 313 Cr.P.C. was recorded as far back as on 26.07.2022.

21. In similar circumstances where trial was at its fag end a Co-ordinate Bench of this Court declined to quash the FIR in **“Sikandar Masih @ Shera & Ors. Vs. State of Punjab & Ors.” decided on 09.02.2023 Law Finder Doc ID 2213918**, holding that *“...Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material*

mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not”.

22. The petitioner can derive no benefit from the relied upon judgment in **Mahmood Ali (supra)** as in the said case “*...FIR in question came to be lodged after period of 14 years from alleged illegal acts of appellants. In FIR no specific date or time of alleged offences disclosed...*”. Moreover, it has been held by the Hon’ble Supreme Court in Para 15 of the said judgment itself that “*It is needless to clarify that the observations made in this judgment are relevant only for the purpose of the FIR in question and the consequential criminal proceedings*”. I am in complete agreement with the view expressed by the Hon’ble Apex Court in as much as that each case has to be decided in the facts and circumstances unique to the said case.

23. In view of the discussion above, I find no merit in the present petition and the same is accordingly, **dismissed**.

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

29.04.2024

Sunena

Whether speaking/reasoned

Whether reportable

(Nidhi Gupta)

Judge

Yes/No

Yes/No