

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Date of order: 05.03.2024

CRM-M-24062-2017(O&M)

Brinder Singh Hans & Others

.....Petitioner(s)

Vs.

State of Punjab & Another

.....Respondent(s)

CRM-M-17550-2017(O&M)

Manpreet Kaur

.....Petitioner(s)

Vs.

State of Punjab & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Jagdish Manchanda, Advocate
for the petitioners (in CRM-M-24062-2017).

Mr. K.B.S. Mann, Advocate
for the petitioner (in CRM-M-17550-2017).

Ms. Jagriti Kalia, AAG Punjab.

Mr. Yousuf, Advocate
for respondent No.2.

Nidhi Gupta, J.

CRM-38201-2017 IN CRM-M-24062-2017

This is an application under Section 482 Cr.P.C. for exemption from filing certified copies of Annexures P6 to P9 and for placing on record true typed copies of the same.

After going through the contents of the application, which is supported by affidavit of the applicant/petitioner No.1, the same is allowed, subject to all just exceptions, and true typed copies of Annexures P6 to P9 are taken on record.

MAIN CASE

CRM-M-24062-2017

Prayer in the present petition under Section 482 Cr.P.C. is for quashing on merits of FIR No.6 dated 17.10.2016 under Sections 498-A, 406 and 120-B IPC registered at Police Station NRI Sangrur, District Sangrur (Annexure P1) and subsequent proceedings arising therefrom. Petitioner No.1 herein is the husband, Petitioner No.2 is the father-in-law and petitioner No.3 is the mother-in-law of respondent No.2/complainant.

CRM-M-17550-2017

Prayer in the present petition under Section 482 Cr.P.C. is for quashing on merits of FIR No.6 dated 17.10.2016 under Sections 498-A, 406 and 120-B IPC registered at Police Station NRI Sangrur, District Sangrur (Annexure P1). Sole petitioner herein is the sister-in-law of the respondent no.2/complainant.

2. As facts of the above said cases are identical and also the FIR is same, both the petitions are being disposed of by this common order.

3. In **CRM-M-24062-2017**, learned counsel for the petitioners submits that marriage of petitioner No.1 was solemnized with

the complainant/respondent No.2, on 14.04.2013. Petitioner No.2 is the father-in-law and petitioner No.3 is the mother-in-law of respondent No.2/complainant. All the petitioners are residents of Canada. It is submitted that the allegations made in the FIR are absolutely false and fabricated. It is stated that the complainant hardly resided with the petitioners and therefore there is no truth to the allegations of demand of dowry and harassment, made against the petitioners. Learned counsel states that immediately upon reaching Canada Respondent no.2 made a complaint of assault to Canadian Police on 17.10.2015. As the allegations were found to be false, respondent no.2 withdrew the said complaint on 29.01.2016 vide order Annexure P-4. It is further submitted that a petition for grant of divorce was filed by petitioner no.1 on 12.12.2016 (Annexure P-3), where upon the parties have already been granted divorce in Canada.

4. Per contra, learned counsel for the complainant opposes the prayer made on behalf of the petitioners and submits that the complainant has been harassed and tortured by the petitioners. It is contended that the petitioners had made incessant demands of dowry from the complainant and her family, that the complainant was beaten and tortured by the petitioners, and it is only when the complainant was left with no resort that she was constrained to file the present FIR.

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

6. I have heard learned counsel, as also perused the case file in great detail.

7. Brief facts of the case as borne out from the record are that marriage of petitioner No.1 was solemnized with the complainant/respondent No.2, on 14.04.2013. All the petitioners herein being residents of Canada, had come from abroad for the marriage and returned to Canada after one month. Thereafter, petitioner no.1/husband of the complainant visited India in February 2014 to spend time with respondent no.2 and remained till April 2014. Petitioner No.1 also used to send money to respondent No.2 from Canada as is evident from copies of the monetary transfers made through Western Union (Annexure P-2 (Colly)). Thereafter, petitioner No.1-husband signed the sponsorship agreement for the complainant on 13.08.2015. The respondent no.2 reached Canada in August 2015. It is to be noted that during the period from 2013 onwards, no complaint whatsoever was made by respondent no.2 in India prior to that.

8. Thereafter, within two months of reaching Canada, the Respondent no.2 made a complaint of assault to Canadian Police on 17.10.2015, which is stated to have been withdrawn by the respondent no.2 on 29.01.2016 (Annexure P-4). Thereafter, divorce petition was filed before the Superior Court of Justice, Ontario, Canada on 12.12.2016 (Annexure P-3). Admittedly, the Superior Court of Justice Ontario, Canada has granted divorce to the parties vide decree dated 26.04.2017 (Annexure P-6).

9. The Superior Court of Justice Ontario, Canada has also passed various other orders against the complainant which might be noticed. Vide order dated 04.05.2017 (Annexure P-7) interim Spousal

support was denied to respondent no.2. It has been noticed in the said order that the time of cohabitation between the petitioner no.1 and respondent no.2 was less than seven months; that before coming to Canada, the respondent No.2/complainant had sent several angry, demanding emails such as *"I want my visa this week otherwise I will kill you..... I want to make my carrier in Canada and I am your wife, not a maid..... I have my own dreams that I wants to fulfil..... I marry with you, just because of my parents nothing else, but I don't like your too much attitude and ego....."* which suggested that the marriage was doomed before it started. In fact, in the said order the Superior Court has observed that *"The evidence supports that she was most anxious to come to Canada and pursue a career here."* Finally on the basis of evidence before it, the Superior Court has concluded that despite being qualified, respondent No.2 *"had not established a career in India and she sought immigration to Canada for her own career."* From the above observations it appears that the complainant had married petitioner no.1 merely to use him as a passport to Canada.

10. Thereafter, vide order dated 14.06.2017 (Annexure P-8), the Superior Court of Justice Ontario, Canada has ordered respondent no.2 to pay a cost of \$6400 inclusive of HSTS fees and other disbursements as it was found that the complainant/respondent No.2 was not cooperative which resulted in wasteful costs incurred during proceedings.

11. In the meantime, while still residing in Canada, respondent no.2 lodged the present FIR on 17.10.2016 by alleging that her mother had spent Rs. 40 lacs on the marriage. It has been alleged that

every type of goods like ornaments, cash et cetera were given to the petitioners in the marriage. That the complainant/respondent No.2 stayed in India with her parents for two years after marriage, after which she came to Canada; that immediately after reaching Canada, the accused started harassing her, as also started mentally torturing her; the accused started demanding more dowry from her; that she requested the accused that her parents have no more capacity to give more dowry; that they are already under debt taken for the marriage; but the accused did not listen to her and the accused in connivance with each other started giving beatings to her; that she tolerated thinking that everything will be alright one day; that accused did not make her ID proof in Canada, despite the fact that she requested many times; that the accused started threatening her parents, and that they told her that her only work is to make food in the kitchen; that in January 2016, again, the accused had beaten her a lot because of which she had to call the Canadian police, and so petitioner No.1 was called to the police station; that she felt her life was in danger at her in-laws house and for protecting her life, she left her in-laws house with the help of police et cetera et cetera, as mentioned at Page no. 24 of the paper book in FIR (Annexure P-1) were the allegations levelled by respondent no.2 at Canada regarding events which were largely alleged to have transpired in Canada.

12. Without commenting on the findings recorded by the Superior Court of Justice Ontario, Canada in the aforementioned orders at Annexures P-7 to P-9, it is my view, that the present case is squarely covered by judgment of the Hon'ble Supreme Court in "**Harmanpreet Singh**

Ahluwalia & Others Vs. State of Punjab & Others” Law Finder Doc ID # 190773, wherein it has been held as under:-

“A. Criminal Procedure Code, Section 482 – Indian Penal Code, Section 420 and 406 Criminal Procedure Code Section 178 – Territorial jurisdiction – Parties married at Jalandhar thereafter living in Canada – Demand of dowry made in Canada – FIR lodged at Jalandhar – FIR quashed, inter alia, on the ground that larger part of offence was committed in Canada”.

13. In the said case too, major part of the alleged offences had been committed in Canada and the parties therein had been granted divorce in Canada. Thus, in almost identical circumstances, the Hon’ble Supreme Court had quashed the FIR. In fact, in the above-mentioned case of **Harmanpreet Singh Ahluwalia (supra)** the police after investigation had filed a cancellation report. However, cancellation of the FIR was not accepted, and charge sheet had been filed against the accused therein. Despite that, the Hon’ble Supreme Court, had quashed the FIR. The present case stands on a similar, if not on a better footing.

14. Reference may also be made to judgment of this Court in **“Satwant Singh & Others Vs. State of Punjab & Another” 2008 (4) RCR Criminal 429/Law Finder Doc ID # 144907**, wherein, in similar circumstances, the FIR was quashed by holding that: –

“Criminal Procedure Code, Sections 181 and 177 - Indian Penal Code, Sections 498A and 406 - Territorial jurisdiction - Marriage solemnized in India - Parties thereafter living in Canada - Both citizens of Canada - Petition for divorce and custody of the child filed in a Family Court at Canada - Wife sending complaint to

police that she was harassed by parents of husband by making demand and misappropriation of dowry given at time of marriage - A case under sections 498A and 406 Indian Penal Code registered at Hoshiarpur - FIR quashed - Held :-

This is a classic case of misuse of process of the Court where process of the law has been used as a tool to harass the petitioners to vindicate her grudge on account of the proceedings taken out at Canada - In view of the fact that the Court at Garshankar/Hoshiarpur have no jurisdiction to entertain and try the case. 2004(3) RCR (Criminal) 988 : 2004(3) Apex Criminal 455 (SC) relied."

15. Connected **CRM-M No.17550 of 2017** has been filed by sister-in-law/Nanad (of respondent No.2) namely Smt. Manpreet Kaur. Admittedly, Smt. Manpreet Kaur is the married sister-in-law of the complainant/respondent No.2 who was married 16 years prior to the marriage of the complainant with Brinder Singh. Admittedly, Smt. Manpreet Kaur is residing in India, at her matrimonial house situated in Village Deharka, District Ludhiana and has never visited abroad to her parent's house and has nothing to do with the marital affairs of respondent no. 2 and Brinder Singh. Initially respondent no. 2 had moved a complaint while residing in Canada and had only levelled allegations of demand of dowry and harassment against co-accused i.e. Brinder Singh-husband, Manjeet Kaur mother-in-law, Harchand Singh father-in-law and Kirandeep Kaur sister-in-law who are residing in Canada and there were no allegations qua Smt. Manpreet Kaur/the present petitioner. It is only in the present FIR that allegations have surfaced against the present petitioner Smt.

Manpreet Kaur as well to the effect that she used to instigate the co-accused through phone.

16. In the reply dated 03.05.2018 filed on behalf of the respondent State by way of affidavit of Ranjit Singh Dhillon, PPS Assistant Inspector General of Police, NRI Wing, Patiala, it has been admitted that the petitioner Manpreet Kaur joined investigation on 08.02.2017 and recovery of one gold set and one gold kada given to her and her husband by the complainant's family at time of marriage has been made.

17. In the case of **"Bahadur Singh & Others Vs. State of Punjab & Another"** Law Finder Doc ID # 210334, this Court in similar circumstances held as follows: –

"Criminal Procedure Code, Section 177 – Indian Penal Code, Sections 498A and 406 – Territorial jurisdiction – Husband and wife living in Canada after marriage – Allegation by wife that father, brother, and brother's wife of husband used to make demand through phone calls and husband used to beat her at Canada – Complaint under Sections 406, 498A of Indian Penal Code filed in India – Complaint quashed – Held:

Larger part of offence has taken place in Canada - Marriage has already been dissolved at Canada – Thus impugned FIR is nothing but an abuse of process of criminal law".

18. Perusal of the FIR reveals that vague, general, unsubstantiated, omnibus allegations have been made against the petitioner(s). In the facts and circumstances of the case as noticed here in above, it is my clear view that the present FIRs have been filed by

respondent no. 2 with the sole malicious motive to harass and embroil the entire family of the husband in vexatious litigation.

19. The Hon'ble Supreme Court in "**Kahkashan Kausar @ Sonam & Others Vs. State of Bihar & Others**" Law Finder Doc ID # **1941423** has categorically held that *"general and omnibus allegations cannot manifest in a situation where relatives of complainant's husband are forced to undergo trial - FIR liable to be quashed"*. Para 12 of **Kahkashan Kausar** (supra) reads as under:-

"12. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his relatives."

20. The above view has been reiterated by the Hon'ble Supreme Court in "**Geeta Mehrotra & Another Vs. State of UP & Another**" Law Finder Doc ID # **397283**; "**Preeti Gupta & Another Vs. State of Jharkhand & Another**" Law Finder Doc ID # **214039**; and "**K. Subba Rao & Others Vs. The State of Telangana & Others**" 2018 (14) SCC 452, Law Finder Doc ID # **1141380**.

21. Reliance may also be placed upon judgment of the Hon'ble Supreme Court in '**Social Action Forum for Manav Adhikar & Anr.**

v. Union of India, Ministry of Law And Justice & Ors., (2018) 10 SCC 443', wherein it was observed:-

*"3. Regarding the constitutionality of Section 498A IPC, in **Sushil Kumar Sharma v. Union of India and others (2005) 6 SCC 281: AIR 2005 Supreme Court 3100**, it was held by the Supreme Court:-*

"..... The object of the provisions is prevention of the dowry menace. But many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame-work."

22. In view of the undisputed factual and legal position as noted hereinabove, the present petitions are **allowed**. FIR No.6 dated 17.10.2016 under Sections 498-A, 406 and 120-B IPC registered at Police Station NRI Sangrur, District Sangrur (Annexure P1) and all subsequent proceedings arising therefrom, are quashed qua the petitioner(s), in both the above-mentioned petitions.

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

05.03.2024

Sunena

Whether speaking/reasoned
Whether reportable

(Nidhi Gupta)
Judge

Yes/No
Yes/No