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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16489-2023
Date of decision: 21.08.2024

ARVIND SAINI

V/S

...PETITIONER

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Swarn Sandhir, Advocate
for the petitioner (Legal Aid Counsel).

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Aman Kumar, Advocate for
Mr. Jaiveer S. Chandail, Advocate for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing of FIR No.151 dated 07.09.2015 registered under Sections 323, 406, 498-A, 506 IPC at Police Station Radaur, Yamuna Nagar along with all the subsequent proceedings arising therefrom.
2. Brief facts of the case as alleged are that marriage of petitioner and respondent No.2 was solemnized on 16.05.2010. Out of the wedlock, one male child was born. However, after the marriage, in-laws of the complainant started demanding dowry and matrimonial dispute ensued between the couple and respondent No.2 got registered the FIR (supra).
3. Learned counsel for the petitioner *inter alia* contends that petitioner has been falsely implicated in the present case and date of incident which is mentioned in the FIR (supra) with regard to turning respondent No.2 out of her matrimonial home is totally false. Reliance in this regard has been



placed upon photographs (Annexure P-2). Learned counsel further submits that there is no medical record available on record with regard to giving beatings to respondent No.2 and omnibus allegations have been levelled against the petitioner.

4. *Per contra*, learned State counsel assisted by learned counsel for respondent No.2 opposes the prayer of the petitioner on the ground that the probable defence of the petitioner cannot be looked into at this stage and the photographs (Annexure P-2) do not show the face of woman in the picture and all the witnesses have been examined. The case is fixed for arguments and the petitioner has been declared as proclaimed offender.

5. Having heard learned counsel for the parties and after perusing the record of the case, this Court finds no merit in the present petition as the disputed question of facts can be determined only on the basis of the evidence led by the parties. The probable defence set up by the petitioner in the present petition cannot be appreciated at this stage.

6. It is settled law that disputed questions of fact can only be adjudicated after the parties have duly adduced their evidence. The High Court, in exercise of its inherent powers under Section 482 Cr.P.C is obliged to make a just and equitable choice and cannot go beyond its ambit to evaluate the truthfulness of the allegations or the veracity of the defence, however, convincing it might seem. Any such attempt would be impermissible in law as it would amount to giving finality to the accusations even before the prosecution is allowed to adduce evidence to substantiate the same.

7. A two Judge Bench of the Hon'ble Supreme Court recently examined this issue in ***Rathish Babu Unnikrishnan Vs. State (Govt. of NCT of Delhi)*** and another 2022 SCC Online SC 513 and speaking through Justice



Hrishikesh Roy, made the following observations: -

“17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum, i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”

8. A two Judge Bench of the Hon’ble Supreme Court in ***HMT Watches Ltd Vs. M.A. Abida (2015) 11 SCC 776*** has held as under: -

“10..... Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties.”

9. In ***Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458***, decided by the Hon’ble Supreme Court, following observations were made: -



“17. As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact.”

10. In view of the above discussion, this Court cannot examine the probable defence of the petitioner set up in the present petition and scuttle the proceedings before the trial Court even before the respondent No.2 had led any evidence. The disputed questions of fact and the probable defence of the petitioner can only be seen by the trial Court on the basis of evidence adduced by the parties.

11. Accordingly, present petition stands dismissed being bereft of any merit.

August 21, 2024
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(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No