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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-16761-2023 (O&M)
Date of decision: 24.07.2024

Neer

...Petitioner

Vs.

State of Haryana and another

...Respondents

CORAM: HON'BLE MR JUSTICE HARPREET SINGH BRAR

Present: Mr. Shokeen Singh Verma, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J.

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking quashing of FIR No.447 dated 07.08.2022 under Sections 354-D, 376, 328, 34, 506 of the Indian Penal Code, 1860 (for short 'IPC') and Section 25 of Arms Act, 1959, registered at Police Station City Bhiwani, District Bhiwani (*challan was filed under Sections 506 & 498-A of IPC*) and all the subsequent proceedings arising therefrom.

2. Brief facts of the case are that FIR (*supra*) was registered at

2024:PHHC:093391



the instance of respondent No.2 on the allegations that for the last 7-8 months, the petitioner was used to visit her house and he treated her as his sister. Thereafter, he sat an evil eye on her and was used to give wrong gestures. On 01/02.05.2022, in the night at about 02.00 o'clock, doorbell of their house rang. She opened the door, where the petitioner was standing and by showing the weapon, which he was holding in his hand, forcibly took her in a car, in which Vishesh Kumar, Vikas Dahiya and one another boy were sitting. *En route*, she felt thirsty and drank water, in which the petitioner mixed some intoxicant and due to which, she felt dizziness. The accused persons took her to a temple in Chandigarh and the petitioner threatened that if she would not marry her, he would kill her family. Due to fear, she had to perform marriage with the petitioner and they took her signatures on some blank papers. The petitioner kept wrong relationship with her against her will for two months. After being escaped from the clutches of the accused, she went to her house. She prayed for taking legal action against the accused persons.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner and respondent No.2 were in consensual relationship with each other and they performed marriage on 02.05.2022, which was opposed by family members of respondent No.2. They approached this Court by filing CRWP-4141-2022 seeking protection to their lives and liberty and the same was disposed of vide order dated 04.05.2022



(Annexure P-5). Thereafter, the petitioner and respondent No.2 were cohabiting as husband and wife and no offence under Section 498-A of IPC is made out, as not even a single word regarding demand of dowry has been mentioned in the FIR (supra), which was registered by respondent No.2 under the pressure of her family members, when she was at her parental home.

4. *Per contra*, learned State counsel submits that there are specific allegations against the petitioner. During the investigation, it has been found that the petitioner is involved in the offence of demand of dowry, Sections 354-D, 376, 328, 34, 506 of IPC and Section 25 of Arms Act were deleted and final report under Section 173 Cr.P.C. was filed under Sections 498-A & 506 of IPC.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, this Court finds no force in the arguments raised by learned counsel for the petitioner. The probable defence set up by the petitioner in the present petition cannot be appreciated in a petition under Section 482 Cr.P.C., as it is a matter of evidence. 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 obligated 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.

6. 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, the following was observed:-

"17. The consequences of scuttling the criminal process at a pretrial 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 unmerited 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."

7. A two Judge Bench of the Hon'ble Supreme Court in ***HMT Watches Ltd Vs. M.A. Abida, (2015) 11 SCC 776***, speaking through Justice Dipak Misra, 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."

8. Further, a two Judge Bench of the Hon'ble Supreme Court in ***Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited, (2016) 10 SCC 458***, speaking through Justice Adarsh Kumar Goel, made the following observations:-

"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."

9. Keeping in view the aforementioned facts and circumstances of the case at hand, present petition is dismissed being devoid of merit.

10. All the pending application(s), if any, shall be disposed of.

11. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and learned trial Court shall proceed without being prejudiced by observations of this Court.

[HARPREET SINGH BRAR]
JUDGE

24.07.2024
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No