

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-3160-2016(O&M)

Date of order: 02.04.2024

Suraj Bhan Dahiya & Another

.....Petitioner(s)

Vs.

The State of Haryana & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Randeep S. Rai, Senior Advocate with
Ms. Rubina Virmani, Advocate
Mr. Farhad Kohli, Advocate
for the petitioners.

Mr. Surinder Kumar Dagar, DAG Haryana.

Mr. U.K. Agnihotri, Advocate with
Ms. Anshul Agnihotri, 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.73 dated 25.05.2015 registered under Sections 323, 406 and 498-A IPC (Sections 376 and 511 IPC deleted later on) at Police Station Raipur Rani, District Ambala(Annexure P1); and challan under Sections 323, 406 and 498-A IPC (Annexure P7); and subsequent proceedings arising therefrom.

2. The petitioners before this Court are the parents-in-law of the complainant/respondent No.2 herein. Petitioner no.1 is the 76-year-old father-in-law, and petitioner no.2 is the 68-year-old mother-in-law of Complainant. There were total 5 accused named in the complaint filed by

respondent No.2, the same being the present two petitioners, the husband of the complainant, and the sister-in-law/nanad and brother-in-law/nandoi of the complainant. However, upon investigation, the sister-in-law and brother-in-law of the complainant were exonerated, and FIR was registered only against 3 accused, the same being the present two petitioners, and their son/husband of the complainant. Petitioners are the residents of Gurugram.

3. Learned Senior Counsel appearing on behalf of the petitioners inter alia submits that the complainant was married to the son of the petitioners on 15.07.2013. No child was born out of this wedlock. Soon after the wedding on 08.08.2013, the complainant left for USA along with her husband. This fact has been admitted by the complainant in the FIR. It is submitted that thus, the complainant spent only 10 days with the petitioners.

4. It is stated that thereafter, the complainant visited India with her husband on 24.12.2013, whereupon she stayed in the petitioners' home in Gurugram for only two days. Learned Senior Counsel submits that although it has been stated in the FIR that she stayed with the petitioners for "a few days", however, it is clarified that the complainant spent only two days with the petitioners in December, 2013 in their home in Gurugram. It is submitted that thereafter, on 26.12.2013, the complainant left along with her parents and has not returned thereafter.

5. Ld. Senior Counsel submits that an allegation has been made in the FIR that during these two days, the petitioner no.1 had tried to

commit rape upon the complainant. It is vehemently contended that the said allegation is preposterous. It is stated that it is for this reason that after investigation, charge under Sections 376 and 511 IPC against petitioner no.1 have been dropped. This fact has been admitted in the reply filed on behalf of the respondent-State by way of affidavit of Ramesh Kumar HPS, Assistant Commissioner of Police Naraingarh, at page 92 of the paper book wherein it has been mentioned in para 3 of the "Reply on merits" that *"...However during the investigation allegations under section 376 and 511 of IPC were not proved, and then offence under section 376 and 511 of IPC are subsequently deleted"*. It is submitted that despite this, respondent No.2 in her reply dated 15.03.2017 has reiterated the allegations of rape against petitioner No.1/father-in-law. It is argued that this shows the utterly malicious intent of the complainant to implicate the petitioners in one manner or the other, no matter how false the allegations.

6. Learned Senior Counsel further submits that the present FIR has been filed on 25.05.2015 almost two years after the complainant left the matrimonial home on 26.12.2013. The complainant has stayed with her husband only for 4 months. It is contended that the complainant is even now residing in USA and has filed a petition under Section 13 of the Hindu Marriage Act, 1955 on 14.03.2023, seeking divorce from son of the petitioners. The said petition has been filed by the complainant through her Special Power of Attorney i.e. her father, as the complainant herself is residing in America.

7. Ld. Senior Counsel submits that although the complainant is residing in America, the petitioners are being continually

harassed here due to the pendency of the present FIR. It is submitted that thus, the present proceeding is a gross violation of the rights of the petitioners as also a misuse and abuse of the process of law, especially keeping in mind the old age of the petitioners. It stated that even otherwise the allegations made in the FIR are utterly false and fabricated. In support, learned Senior Counsel relies upon judgment of Hon'ble Supreme Court in **"Mamta Shailesh Chandra Vs. State of Uttarakhand & Others" 2024 SCC OnLine SC 136; Priyanka Mishra & Others Vs. State of Madhya Pradesh & Another" 2023 SCC OnLine SC 978; and "Mirza Iqbal @ Golu & Another Vs. State of Uttar Pradesh & Another" 2021 SCC OnLine SC 1251.**

8. Per contra, learned counsel for respondent No.2/complainant vehemently opposes prayer made on behalf of the petitioners and submits that very clear and categoric allegations have been made by the complainant against the accused in the present FIR. The complainant has clearly alleged that the before marriage, husband of the complainant had got admission in USA, for which the petitioners had demanded Rs.40 lakh from the complainant and her family. On refusal by the complainant, husband of the complainant had given beatings to her on the instigation of the petitioners and other accused. It has further been alleged that petitioner No.2/mother-in-law tortured the complainant for bringing less dowry; and it has also been alleged that petitioner No.1/father-in-law had got signatures of the complainant on blank papers on pretext of applying for visa and opening bank accounts. Ld. counsel submits that accordingly, very serious allegations have been made in the FIR against the petitioners. It is submitted that the complainant has also

stated in the FIR that her parents had given Rs.19 lakh for her personal use and this amount had been misappropriated by petitioner No.1. It has further been alleged that the petitioners had collected Rs.20 lakh from father of the complainant. On a Court query to learned counsel for the complainant as to the mode of payment of the said amount of Rs.20 lakh, learned counsel admits that the said amount was paid in cash to the petitioners. The complainant has also alleged that in December, 2013, when she had come back to India with her husband and had stayed in her in-laws house for “a few days”, petitioner No.1/father-in-law had tried to commit rape upon her.

9. Learned counsel further submits that truth of the allegations made against the petitioners is borne out from the fact that recoveries have been duly effected against the petitioners as is evident from recovery memos (Annexures P4 and P5). When confronted with the same that the said recoveries are largely of clothes, except for a few ornaments, learned counsel is unable to deny the same.

10. In support, learned counsel relies upon judgment of Hon’ble Supreme Court in **“Minakshi Bala Vs. Sudhir Kumar” Law Finder Doc ID # 42643; “Bhaskar Lal Sharma & Another Vs. Monica & Others” Law Finder Doc ID # 525567; and “State of Uttar Pradesh & Another Vs. Akhil Sharda & Others” Law finder Doc ID # 2011220.**

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

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

13. Brief facts/sequence of events of the case in chronological order as discernible from the record are as under:-

15.07.2013: Marriage was solemnized between the Complainant and the son of the petitioners namely, Prateek Dahiya at S.A.S. Nagar. The son of the petitioners is a permanent resident of USA.

16.07.2013: Complainant and Prateek Dahiya visited Gurgaon.

20.07.2013: Reception held for complainant and Prateek Dahiya.

27.07.2013-04.08.2013: Complainant stayed with her parents at Chandigarh.

08.08.2013 (Pg 32/FIR): Complainant left for USA, along with Prateek Dahiya. Thus, the complainant only spent 10 days with her in-laws.

22.10.2013 (Pg 33-34/FIR): It has been alleged that Prateek Dahiya, Ruchi Kohar and Deepak Kohar packed Complainant's luggage and dropped her at the airport. Upon this, the complainant's father agreed to pay Rs.20,00,000/- which amount was allegedly collected by the petitioners in cash.

24.12.2013 (Pg 34/FIR): It has also been alleged that complainant visited India with her husband Prateek Dahiya, and stayed for a "few days" with her in-laws and Prateek Dahiya, in Gurgaon. "On second day", petitioner no.1 tried to rape the complainant.

26.12.2013: The complainant left Gurgaon, along with her parents. Complainant only spent 4.5 months with her husband viz., Prateek Dahiya in USA. Complainant has not been in contact with the petitioners since then.

1st week of November, 2014: Complainant's parents allegedly convened a meeting of relatives at Ruchi Kohar's residence in Hisar, Haryana (pg 34/FIR).

January, 2015: The complainant's parents, other family members allegedly convened a meeting at Gurgaon at the residence of Ishwar Singh Dahiya to persuade the petitioners not to harass her for dowry and that complainant should not be beaten up by Ruchi Kohar and Prateek Dahiya. (page 34-35/FIR).

January, 2015: Complainant and Prateek Dahiya separated.

25.05.2015 (P-1/Pg 28) FIR No.73 registered at P.S Raipur Rani, Ambala u/s 323, 406, 498A, 376, 511 IPC:
 Complaint: 21.05.2015 (Pg 29)
 Complainant: Manisha Lamba (Aged 41 years) (Pg 28)
 Named (Pg 29):
 1. Prateek Dahiya (Resident of USA) (Husband)
 2. Suraj Bhan viz., Petitioner No.1 (Father-in-law)
 3. Darshan viz., Petitioner No.2 (Mother-in-law)
 4. Ruchi Kohar (US Green Card Holders) (Sister-in-law)
 5. Deepak Kohar (US Green Card Holders) (Brother-in-law)

10.06.2015 (P6/Pg 49): Police notice addressed to accused. In pursuance to the same, the petitioners joined investigation on 15.06.2015 at ACP Naraingarh's office. (Pg 50).

19.07.2015 (Pg 41/AB order): Soon after registration of the FIR, the complainant left for USA. This is indicative of the fact that the complainant had visited India only with the intent to get the FIR registered.

21.06.2015 (P4/Pg43): List of recovered articles/ Goods handed over by petitioner no.2 to complainant's parents on superdari.

23.06.2015 (P2/pg38): VOD 23.6.2015 the Ld. ASJ-I, Panchkula Order confirmed interim anticipatory bail granted to petitioner no.2 vide order dated 16.06.2015.

26.06.2015 (P5/pg 45): List of recovered articles/ Goods handed over by petitioner no.1 to the police. List of receipts for Rs.4,29,000/- deposited in complainant's accounts, handed over by petitioner no.1 (pg 48).

15.07.2015 (P3/Pg 41): VOD 15.7.2015 the Ld. ASJ-I, Panchkula confirmed interim anticipatory bail of petitioner no.1 granted vide order dated 25.06.2015. In the said order it was also noted that the allegations of offence punishable under Section 376 r/w 511 IPC were prima facie doubtful, since the alleged occurrence took place in the first week of December 2013, "*whereas she has filed a complaint on 25.05.2015*" (Pg 41).

23.11.2015 (P7/Pg 51): Challan u/s 323, 406, 498-A IPC was presented on 07.12.2015 against the present petitioners namely: 1. Suraj Bhan Dahiya viz., Petitioner no.1 (Aged 77 years); 2. Darshan (Aged 69 years).

The paper further reveals that the Investigation starts from Pg 61; Investigation qua Prateek Dahiya is pending (Pg 62-63); Co-accused Deepak

Kohar and Ruchi Kohar were found innocent (Pg 63); Offence under Section 376, 511 IPC deleted by ACP (pg 63).

27.01.2016: Present petition was filed before this Court.

01.02.2016: VOD 1.2.2016 Notice of motion +notice regarding stay were issued in the present case.

09.02.2017: Matter was referred to the Mediation and Conciliation Centre of this Court. Further proceedings before the Id. Trial Court stayed. The next date of hearing before the learned trial court is 20.4.2024.

25.05.2017: Mediation failed.

16.01.2019: Matter was again referred to the Mediation and Conciliation Centre of this Court, and again no amicable resolution could be reached.

05.04.2016 (pg 92): Reply was filed by the respondent no.1-State to the present petition through ACP Rural Naraingarh, Ambala, wherein it is admitted that offence under Sections 376, 511 IPC stands deleted (pg 93); Deepak Kohar and Ruchi Kohar found innocent (pg 94); and it has further been stated that "*At the time of registration of the case complainant was residing in India*" (pg 95). As has already been noticed here in above, the said fact is incorrect as the complainant had left for America on 19.7.2015 within three weeks after registration of FIR on 25.5.2015.

15.03.2017 (pg 97): Reply filed by complainant to the present petition wherein she has reiterated the allegation of rape. (pg 99).

14.03.2023: The complainant has filed petition No.HMA/100/2023 before Id. Principal Judge, Family Court, Dera Bassi, Dist. SAS Nagar under Section 13(1)(i)(ia)(ib) of the Hindu Marriage Act, 1955, for dissolution of marriage on Grounds of Cruelty and desertion. The said petition has been filed through SPA holder viz Ranvir Singh Lamba (complainant's father). At internal page 7 of the said petition, it has been stated that in July 2015, Prateek Dahiya refused to let the complainant stay with him in USA. Needless to say, the said assertion is highly improbable as the complainant is stating that she wanted to stay with her husband Prateek Dahiya, post registration of the FIR. This petition is stated to be at the stage of evidence in which the next date of hearing is 08.05.2024.

13. This Court has gone over each allegation made in the FIR in great detail. It has firstly been alleged in the FIR that before marriage, husband of the complainant had got admission in USA and petitioners had

asked the complainant to bring Rs.40 lakh from her parents. Regarding this

allegation, Court has posed a query to learned counsel for the complainant that the said demand was admittedly made before marriage of the complainant and therefore, why did the complainant continue the alliance with the petitioners, if such a demand was made. Learned counsel has no reply to the same.

14. As regards the allegation that upon refusal to pay the said amount of Rs.40 lakh, the complainant was beaten by the petitioners, this Court questioned counsel for the complainant as to whether any MLR was conducted. Learned counsel for the complainant admits that this was not so.

15. At page31 of the paper book it has then been alleged that the complainant's father paid ₹20 lakhs to the petitioners. On a direct Court query, counsel for the complainant has admitted that there is no proof of the said payment having been made as the said amount was paid in cash.

16. The next allegation is that dowry articles and gifts given to the complainant by her parents were misappropriated by the petitioners/accused. However, as already noted above, all dowry articles have been duly recovered as evident from recovery memos (Annexures P4 and P5). A bare perusal of the said recovery memos reveals that most of the items are clothing, and only some ornaments. In any event, it has to be understood that there is a difference between 'customary gifts' given at the time of marriage ceremonies, childbearing ceremonies et cetera. The same cannot be equated with 'dowry articles' which are usually given upon a

demand raised by the in-laws. In the present case, prima facie no such demand has been made out on part of the petitioners.

17. The next allegation is that an amount of ₹19 lakhs was paid by the parents of the complainant. It has been admitted by the complainant in the FIR itself at page 32 of the paper book, that of the said amount of ₹19 lakhs, ₹14 lakhs was deposited in the bank account of the complainant herself, and ₹5 lakhs was paid in cash which is alleged to have been misappropriated by petitioner no.1. This Court finds it extremely odd that all payments alleged to have been made to the petitioners were made in cash, and there is no proof of the same.

18. Another allegation made in the FIR is that the petitioner no.1 had taken the signatures of the complainant on blank papers on pretext of applying for visa and opening bank accounts. Admittedly, the complainant is very highly qualified being B.Tech. MBA. Complainant works with a company in Los Angeles, USA. As such, it is highly improbable that the complainant could be misled in this manner.

19. At page 34 of the paper book, it has been alleged in the FIR that when the complainant had come in December, 2013 to India, she was given a glass of milk and a chapatti; and she noticed some kind of powder residue on the glass rim. When asked whether the said residue was got tested by the complainant in any Laboratory, learned counsel for the complainant has admitted that this was not so.

20. In respect of the allegation of rape made against petitioner no.1, he has already been found innocent upon investigation, and offences under section 376 and 511 IPC have accordingly been deleted.

21. From the above discussion it is crystal clear that there is nothing whatsoever on record to substantiate the said allegations. No specific details such as date, time, or place where such demands were made by the accused have been mentioned. To constitute an offence under section 406 IPC, it is necessary that there be a 'demand for dowry', followed by 'entrustment of dowry articles' to the accused, and then there has to be 'misappropriation of the dowry articles' by the accused. In the present case, none of the above three ingredients have been satisfied. Besides the fact that all of the allegations made in the FIR against the petitioners do not disclose commission of any offence, it is also admitted fact on record that the complainant stayed with her husband for only 4^{1/2} months; and with the petitioners for barely two weeks. Clearly, to my mind, the allegations made by the complainant against the petitioners in the FIR, are vague, incoherent and a desperate attempt to implicate the petitioner somehow or the other. As such, prima facie no offence is made out against the petitioners.

22. In the facts and circumstances of the present case, it would be apposite to refer to a three-Judge Bench judgment of the Hon'ble Supreme Court in **"Abhishek Vs. State of Madhya Pradesh" 2023 SCC OnLine SC 1083**, relevant part of which is reproduced hereinbelow:-

"13. Instances of a husband's family members filing a petition to quash criminal proceedings launched against them by his

wife in the midst of matrimonial disputes are neither a rarity nor of recent origin. Precedents aplenty abound on this score. We may now take note of some decisions of particular relevance. Recently, in **Kahkashan Kausar alias Sonam v. State of Bihar [(2022) 6 SCC 599]**, this Court had occasion to deal with a similar situation where the High Court had refused to quash a FIR registered for various offences, including Section 498A IPC. Noting that the foremost issue that required determination was whether allegations made against the in-laws were general omnibus allegations which would be liable to be quashed, this Court referred to earlier decisions wherein concern was expressed over the misuse of Section 498A IPC and the increased tendency to implicate relatives of the husband in matrimonial disputes. This Court observed that false implications by way of general omnibus allegations made in the course of matrimonial disputes, if left unchecked, would result in misuse of the process of law. On the facts of that case, it was found that no specific allegations were made against the in-laws by the wife and it was held that allowing their prosecution in the absence of clear allegations against the in-laws would result in an abuse of the process of law. It was also noted that a criminal trial, leading to an eventual acquittal, would inflict severe scars upon the accused and such an exercise ought to be discouraged.

14. In **Preeti Gupta v. State of Jharkhand [(2010) 7 SCC 667]**, this Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was observed that the Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases, as allegations of harassment by husband's close relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have to be scrutinized with great care and circumspection.

15. Earlier, in **Neelu Chopra v. Bharti [(2009) 10 SCC 184]**, this Court observed that the mere mention of statutory provisions and the language thereof, for lodging a complaint, is not the 'be all and end all' of the matter, as what is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in the commission of that

offence. These observations were made in the context of a matrimonial dispute involving Section 498A IPC.

*16. Of more recent origin is the decision of this Court in **Mahmood Ali v. State of U.P. (Criminal Appeal No. 2341 of 2023**, decided on 08.08.2023) on the legal principles applicable apropos Section 482 Cr. P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr. P.C. or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.”*

23. Reference may also be made to **“Krishna Lal Chawla & Ors. Vs. State of UP & Anr.” Law Finder Doc ID # 1816686**. In this landmark judgement, the Hon’ble Supreme Court has held in para 21 that there are inherent powers to prevent the abuse of process so that the Courts shall not suffer a litigant utilising the institution of justice for unjust means.

Relevant extract of which is as under:-

“21. It is a settled canon of law that this Court has inherent powers to prevent the abuse of its own processes, that this Court shall not suffer a litigant utilising the institution of justice for unjust means. Thus, it would be only proper for this Court to deny any relief to a litigant who attempts to pollute the stream of justice by coming to it with his unclean hands. Similarly, a litigant pursuing frivolous and vexatious proceedings cannot claim unlimited right upon court time and public money to achieve his ends.”

24. In the facts and circumstances of the present case, reference may also be made to another judgment of the Hon'ble Supreme Court in case of **"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".

25. 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."

26. 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”.

27. I would like to also refer to a three-Judge Bench judgment of the Hon’ble Supreme Court in **“State of Madhya Pradesh Vs. Laxmi Narayan & Others”** Law Finder Doc ID # 1385786, wherein it has been held as under:-

“29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases”.

28. I find the present case to be one such compelling case where I find the possibility of conviction of the petitioners to be remote and bleak, and I find that great oppression and prejudice and extreme injustice would be caused to the aged petitioners if the present proceedings are allowed to continue.

29. Accordingly, the present petition is **allowed**; FIR No.73 dated 25.05.2015 registered under Sections 323, 406 and 498-A IPC

(Sections 376 and 511 IPC deleted later on) at Police Station Raipur Rani, District Ambala (Annexure P1); and challan under Sections 323, 406 and 498-A IPC (Annexure P7); and subsequent proceedings arising therefrom, are quashed qua the petitioners.

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

02.04.2024			(Nidhi Gupta)
Sunena			Judge
Whether speaking/reasoned		Yes/No	
Whether reportable		Yes/No	