

2024:PHHC:078588

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-32030-2018****Date of decision:05.06.2024**

Raj Kumar and another

...Petitioners

V/s

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Rajbir Singh, Advocate for the petitioners.
Mr. Adhiraj Singh Thind, AAG Punjab.
Mr. R.M. Sharma, Advocate for respondent No.2.

SUMEET GOEL, J.

1. The present petition has been filed under Section 482 of Cr.P.C. of 1973 (hereinafter to be referred as "Cr.P.C., 1973") by the petitioners for quashing of FIR No.74 dated 23.05.2018 registered under Sections 498-A/406 of Indian Penal Code, 1860 at Police Station Lehra, District Sangrur (Annexure P-1), District Sangrur, Punjab.

2. The factual matrix of the case, as relevant for consideration of the issue(s) in hand, is as follows:

(i) The broad case set up in the FIR in question is that the marriage of the complainant-respondent No.2 (herein) was solemnized with Sunil Kumar (son of the petitioners herein) on 27.09.2006. Sufficient dowry was given at the time of the marriage and huge amount was spent in the marriage which includes Alto Car, gold ornaments, etc. However, the accused were never satisfied and immediately after her marriage, respondent No.2-

complainant was maltreated, harassed and taunted by her in-laws (petitioners herein) for bringing less dowry. Complainant was also subjected to physical cruelty, as well, and in the year 2007, she was thrown out of her matrimonial home. Thereafter, with the intervention of various respectable persons and panchayat, the matter was compromised and the complainant alongwith her husband started residing separately from the petitioners (in-laws) in a rented accommodation. On 09.09.2008, the complainant-respondent No.2 was blessed with a female child. However, the behavior of her in-laws (petitioners) and her husband did not change. On 06.02.2024, the petitioners (herein) came to the house of the complainant and started maltreating her and pushed her. As a result thereof, the complainant became unconscious and was admitted to a hospital at Hisar, where she prematurely gave birth to a male child. Thereafter, the complainant remains admitted in the hospital for 26/27 days and all the expenses were borne by her father. It was further alleged that husband of the complainant used to give beatings to the complainant quite often and her in-laws also used to quarrel with her for one reason or the other. Thereafter, various panchayats were convened and ultimately the complainant-respondent No.2 was sent to her parental house with the assurance that she would be taken back to her matrimonial home. However, the complainant was never taken back and had been residing with her parental house along with her two children. On these set of allegations, an application was given to SSP Sangrur, who marked the same to PS Women Sangrur and DSP (HQ) Sangrur. After detailed inquiry, the Police did not find any substance in the complaint and, thus, no action was taken which necessitated respondent No.2/complainant to file another complaint/application before DGP, Punjab, Chandigarh, who marked the

same to the quarter concerned. After conducting the preliminary inquiry and taking into account facts and circumstances of the case, the matter was sent to Family Welfare Committee-2, Sangrur, who after conducting a detailed inquiry, recommended initiation of action against the in-laws of the complainant (petitioners herein) alongwith the husband of the complainant for causing domestic violence. On the basis of the report of Family Welfare Committee-2, Sangrur; Senior Superintendent of Police, Sangrur recommended initiation of action against the petitioners (herein) alongwith the husband of respondent No.2 namely Sunil Kumar. Accordingly, the instant FIR was got registered. The challan (report under Section 173 of Cr.P.C. of 1973) was filed by the Police in which Section 201 IPC was added. Pursuant to above-said challan having been filed on 26.09.2018, the charges were framed against the petitioners as also their co-accused on 26.09.2018 itself. Thereafter, prosecution evidence was led wherein testimony of the complainant/respondent No.2 was recorded as PW-1. It is in this factual backdrop that the instant petition has been preferred seeking quashing of the FIR in question.

3. Learned counsel for the petitioner has argued that the petitioners have been falsely implicated in the impugned FIR genesis whereof actually is the matrimonial discord between respondent No.2-wife and the husband, who is son of the petitioners. It has been further argued that from the bare perusal of the FIR, there is no iota of evidence against the petitioners as respondent No.2-complainant along with her husband were residing separately from the petitioners. Moreover, the complainant/victim has already testified before the Court as a prosecution witness and her testimony is laced with inconsistencies and hence cannot be made as basis

for conviction of the present petitioners & the trial proceedings are illegal as the same have not been undertaken by following due procedure as prescribed by law. Thus, quashing of the FIR in question is sought for.

4. Learned counsel appearing for the State has submitted that the petitioners, alongwith their son, namely Sunil Kumar, have maltreated respondent No.2 for bringing less dowry. It is further submitted that petitioners used to interfere in the matrimonial life of respondent No.2. It has been further argued that the material collected during investigation and submitted alongwith challan clearly proves the guilt of the petitioner.

5. Learned counsel appearing for the complainant-respondent No.2 has argued that the allegations against the petitioners are serious in nature. Furthermore, the husband of the respondent No.2-complainant, at the instigation of the petitioners (herein), used to give beatings to the complainant. It is primarily argued that substantial prosecution evidence has already been led, including the testimony of the complainant-victim. Thus, dismissal of the instant petition is prayed for.

6. I have heard learned counsel for the parties and have perused the record.

7. It would be apposite to refer herein to a judgment passed by this Court titled as ***Supinder Singh alias Soni vs. State of Punjab and another*** =***Neutral Citation No.2024:PHHC:079327***, relevant whereof reads as under:

“Analysis (re law)

8. *This Court has delved, in extenso, regarding the nature as also the scope and ambit of powers of High Court under Section 482 of Cr.P.C. The inherent powers of the High Court; statutorily recognized by way of Section 482 of the 1973 Code; are powers which are unbridled, unfettered and plenary in nature. It is unfathomable to even make a venture to exhaustively*

define the nature and extent of these powers, however alluring this idea may be. The powers under Section 482 of the Cr.P.C., 1973 are required to be exercised with the salutary purpose of giving effect to any order passed under the Code, to prevent abuse of process of any Court or to otherwise secure the ends of justice. The only restraint required to be exercised by the High Court while exercising such powers is that of self-restraint.

8.1. *The Hon'ble Supreme Court has held; as is clear from the dicta of judgments in the cases of **Akhil Sharda** case (supra) and **Chilakamarthi Venkateshwarlu** case (supra); that the High Court, while exercising its jurisdiction under Section 482 of the Cr.P.C., 1973, is not required to evaluate the sufficiency or reliability of the evidence. Therefore, the indubitable unequivocal conclusion is that evaluation of the prosecution evidence is in the domain of the trial Court and a High Court ought not to ordinarily dilate upon the nature, reliability and sufficiency of prosecution evidence brought on record, during the course of trial, while adjudicating a quashing petition. Such a venture by the High Court would tantamount to be a mini trial which is an avertible course. It cannot be said; as a matter of absolute principle; that once substantial/important prosecution witness(s) have been examined, the High Court loses its powers under Section 482 of the Cr.P.C., 1973 to even consider a plea for quashing of an FIR (as also the proceedings emanating therefrom). The Hon'ble Allahabad High Court in the case of **Shueb Mahmood Kidwai** case (supra); while answering a reference made by a Single Judge; has held that the powers of the High Court under Section 482 of the Cr.P.C., 1973 to entertain a plea for quashing of an FIR (as also the proceedings emanating therefrom) is not ipso facto ousted on account of prosecution witnesses having been examined. In the considered opinion of this Court, the "maintainability of the petition" vis-a-vis. "desirability to entertain a petition" are two distinct concepts wherein these differ totocaelo. In other words, the difference is as stark as between chalk and the cheese. Therefore, the unequivocal conclusion is that the High Court has powers under Section 482 of the Cr.P.C., 1973 to entertain a plea for quashing of an FIR (as also the proceedings emanating therefrom) even when substantial/material prosecution witnesses have been examined, during course of trial, but it would be desirable to entertain such a petition at such stage only if there are accentuating/exceptional facts warranting such intervention. This Court must hasten to add a word of caution herein viz.; such a plea is required to be considered by the High Court with utmost circumspection and caution since it would essentially involve ratiocinating upon the relevance, sufficiency and nature of prosecution evidence which has come on record during the trial proceedings. Ergo, the High Court ordinarily ought not to interfere in such a situation.*

8.2. *More often than not, this Court is called upon to deal with petition(s) filed under Section 482 of Cr.P.C., 1973 for quashing of an FIR wherein notice of petition had earlier been issued but no order for staying proceedings was granted and while the petition remained pending adjudication, the trial Court proceedings have continued in the interregnum resulting in the recording of substantial/material prosecution evidence. While the mere continuation of trial Court proceedings and recording of substantial/material prosecution evidence should not, by itself, be the lone score for dismissing such petition; it nonetheless constitutes significant and relevant development(s) which must be considered by the Court at the time of final adjudication. It is not unknown that, petition(s) pending adjudication before Courts become unentertainable, due to efflux of time, especially when subsequent developments become significant nay pivotal. The Hon'ble Supreme Court, in a three Judges Bench judgment, in case of **Pasupuleti Venkateswarlu** (supra) has enunciated that subsequent events of fact which have material bearing on the case ought to be taken into consideration at time of final adjudication of such case. Therefore, the inevitable conclusion that emerges is that, where substantial/material prosecution evidence has been led even during pendency of a quashing petition before the High Court, it would be bounden upon the High Court to consider the aspect of such a petition having become unentertainable in view of this aspect of the matter. This Court must hasten to add a word of caution herein viz.; a quashing petition already pending adjudication before High Court, ought not to become unentertainable nay non-maintainable only on account of charge-sheet/challan (report under Section 173 of Cr.P.C., 1973) or framing of charges by trial Court during pendency of such a petition.*

9. *As a result of above discussion, the following postulates emerge:*

I) The powers of the High Court under Section 482 of Cr.P.C., 1973 are unbridled, unfettered and plenary in nature. The only restriction upon exercise of such powers is self restraint.

II) i) A plea filed for quashing of an FIR (as also the proceedings emanating therefrom) filed before the High Court does not ipso facto become barred or non-maintainable in a case wherein substantial/material prosecution witnesses have already been examined.

ii) In such a scenario, the High Court ought to exercise a high degree of circumspection and caution while dealing with such a plea since it would essentially involve adjudication upon the relevance, veracity & sufficiency of prosecution evidence brought on record during trial proceedings which ordinarily ought to be best left to be considered by the trial Court. Ergo, accentuating facts/circumstances ought to exist for exercise of such power by the High Court.

iii) It is neither conceivable nor desirable to even venture to lay-down any exhaustive set of guideline(s) in this regard, however alluring this aspect may be. Such exercise of inherent powers ought to be best left to the discretion of the Court which is in seisen of the matter, as every case is sui generis in nature.”

8. As per the allegations in the FIR as also the averments in the status report(s) filed by the State, it is indubitable that serious allegations have been made against the petitioners. The charges were framed against the petitioners on 26.09.2018 whereinafter testimony of the complainant/victim was recorded on 01.09.2021, whereinafter she was cross-examined at length on 03.10.2022 and 07.11.2022. Undoubtedly, vide order dated 20.11.2018 earlier passed by this Court; it was directed that the charges, if any, would be subject to the final outcome of this petition. Nonetheless, the factual position that emerges is that the testimonies of 04 prosecution witnesses have been recorded, which includes the testimony of the prime prosecution witness, namely the victim-wife. The submissions advanced by the learned counsel for the petitioners in support of the quashing petition encompass issues of meticulous analysis of the prosecution evidence especially that of testimony of victim, that is best left open to be adjudicated in trial. These issues essentially involve a detailed critical appreciation of the evidentiary value and credibility of the testimony of the prime prosecution witness namely the victim. Engaging in such an analysis at this stage would amount to this Court undertaking a mini-trial, which is not appropriate, especially at this juncture. Moreover, no compelling or accentuating facts have been brought forward that would persuade this Court to hold that continuation of trial proceedings is abuse of process of law or Courts. This is especially at

this stage, where the testimony of the key prosecution witness, namely the victim, has already been recorded.

Accordingly, the instant petition deserves dismissal.

Decision

9. Accordingly, the instant petition filed under Section 482 of the Cr.P.C., 1973 seeking quashing of the impugned FIR is dismissed. There is no gainsaying that petitioners shall be at liberty to raise all pleas, as available to them in law, during trial proceedings.
10. Needless to say that anything observed herein above shall not be construed to be an opinion on the merits of the case.
11. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

June 05, 2024
Ajay

Whether speaking/reasoned:	Yes
Whether reportable:	Yes