Neutral Citation No. 2024:PHHC:012447

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-33294-2018 (O&M)
Date of decision : 30.01.2024

Amit Sofat and others **...Petitioners**

Versus

State of Punjab and others **...Respondents**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mrs. G. K. Mann, Senior Advocate with
Mr. Gursharan Singh, Advocate and
Ms. Simrat Kaur, Advocate

Mr. Kunwarbir Singh, AAG, Punjab.

MANISHA BATRA, J. *(Oral)*

1. The instant petition, under Section 482 Cr.P.C., had originally been filed by three petitioners, who are husband and parents-in-law, respectively of the daughter of respondent No. 2, who is complainant of case bearing FIR No. 0077 dated 13.05.2018, registered under Sections 420, 406 read with Section 120-B of the IPC at Police Station Sudhar, Ludhiana (Rural). However, vide order dated 16.12.2023, **the present petition was dismissed as withdrawn qua petitioner No. 1 Amit Sofat**, who is husband of the daughter of the complainant.

2. The facts of the case in brief as culled out from the record are that the victim, i.e. daughter of respondent No. 2/complainant, was married with aforesaid Amit Sofat on 24.03.2011 at Ludhiana according to Hindu rites and ceremonies. Her husband was permanent resident of Australia and after

15 days of their marriage, the complainant along with him had gone back to Australia. The complainant lodged aforementioned FIR on 13.05.2018 levelling allegations that on the asking of the members of the in-laws family of her daughter, huge amount of money was spent by her family at the time of ring/engagement ceremony as well as marriage ceremony. Several costly articles including gold ornaments etc. had been given in the marriage. Soon after marriage, the husband of the complainant's daughter had raised a demand of Rs. 2 Lakhs for the purpose of applying for her Visa. The demands gradually increased to Rs. 24 Lakhs on the pretext of opening a new business for the victim and her husband for their permanent settlement in Australia. On account of denial of the victim to meet out this demand, she was harassed and tortured by her husband. The complainant alleged that she had requested the petitioners to prevail good sense upon their son but the same met deaf ears. The victim was subjected to harassment while she was living with her husband in Australia. On 04.04.2012, she was turned out of her house by the son of the petitioners and was compelled to return back to India on 07.05.2012. She had subsequently gone back to Australia. The complainant then came to know that the husband of her daughter/victim had procured a decree of divorce from her in Australia at his own by engaging some counsel on behalf of her daughter, though her daughter had never applied for any such divorce. Forged documents were prepared by the present petitioners and their son for that purpose. The complainant alleged that she had met the petitioner thereafter and had made requests to them to return the gold items, which had been given to them by her as per their demand at the time of marriage of her daughter as well as an amount of Rs. 12 Lakhs but they denied to return the

same. Hence, she prayed for taking penal action against the culprits. On her complaint and after registration of FIR, investigation proceedings were initiated. Son of the petitioners had been declared a proclaimed person, whereas the present petitioners joined investigation and were admitted to bail. After completion of necessary investigation and usual formalities, challan against the petitioners has been presented in the Court for commission of offences punishable under Sections 406, 498-A, 420, 468, 467, 471 read with Section 120-B of the IPC.

3. The instant petition has been filed by the petitioners on the ground and it is argued by their counsel that they have been falsely implicated in this case. In fact, their son was studying in Australia in the year 2011. His marriage with the daughter of the complainant was performed on 24.03.2011 on his visit to India. His wife stayed with them only for 20 days and thereafter, she went back to her parental home. She had gone to Australia on 14.08.2011. There was matrimonial discord between the son of the petitioners and the daughter of the complainant. An agreement was executed between them in Australia on 16.11.2011 (Annexure P-2). The marriage between them was dissolved by a decree of divorce passed by an Australian Court on 24.05.2012. Both of them are residing in Australia. On the same set of allegations, a similar complaint had been filed by the husband of the present complainant previously, which was duly inquired into and was found to be false by the Inquiry Officer, vide report dated 31.07.2012 (Annexure P-5). It is submitted that the present FIR has been lodged by respondent No. 2 in total abuse of process of law and taking advantage of the fact that her husband is a politically influential person. The petitioners are harassed again, despite

the fact that in the agreement, which was executed between their son and the daughter of the complainant in Australian Courts at the time of obtaining divorce, it was agreed that the victim or her family members shall not commence any legal proceedings either in India or Australia against them and despite the fact that they were bound by the said agreement. He further argued that now the marriage between the children of the petitioners and respondent No. 2 already stands dissolved in the year 2012, therefore, it is apparent that the present FIR, which has been lodged after a gap of 06 years against them, is only with a view to harass and blackmail them. He further argued that even otherwise, the allegations, if any, taken on the face of record, do not make out any case for trial of the petitioners for commission of offences, for which, they have been booked and challaned. With these broad submissions, he has argued that the FIR in question is liable to be quashed.

4. Respondent No. 1-State has filed status report, as per which, on the complaint filed by respondent No. 2, an inquiry had been conducted by an officer of the rank of Superintendent of Police (Hq.), Ludhiana (Rural) and registration of FIR against the petitioners was recommended. The petitioners have joined investigation and *challan* has been presented against them. Learned State counsel argued that since there are allegations that the petitioners subjected the daughter of the complainant to cruelty on account of demand of dowry and while obtaining decree of divorce in Australia, the petitioners along with their son had forged the documents of the victim, therefore, after conducting a fair and impartial inquiry, the present FIR has rightly been registered against the petitioners. Learned State counsel has also stated that in view of specific mention of the names of the petitioners in the

FIR as well as in the chargesheet, it is not a case to quash the proceedings at this stage. The petitioners can prove their innocence in trial. There are allegations against them that they demanded a sum of Rs. 24 Lakhs from the victim and she was harassed on account of non-fulfillment of that demand. The fact that a decree of divorce has been passed dissolving the marriage between children of the petitioners and daughter of the complainant is not a ground to quash the proceedings.

5. I have heard learned senior counsel for the petitioners as well as learned counsel for the State, besides going minutely through the material available on record.

6. At the outset, I deem it appropriate to consider the scope of interference in chargesheet that has been filed by the police against the petitioners. An accused certainly can approach High Court under Section 482 Cr.P.C. or under Article 227 of the Constitution of India to have the proceedings quashed against him, when the complaint does not make out any case against him. Hon'ble Supreme Court has laid down broad principles of law relating to exercise of extraordinary power under Artcle 226 of the Constitution of India to quash the FIR/Challan report in a celebrated judgment cited as ***State of Haryana vs. Bhajan Lal and others : 1991 (1) RCR (Criminal) 383***, wherein it has been held that the power to quash an FIR/chargesheet can be exercised either to prevent abuse of process of Court or otherwise to secure the ends of justice. The following categories of cases have been detailed, wherein such powers can be exercised:

> 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and

accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

7. The principles of law as laid down by Hon'ble Supreme Court in ***Bhajan Lal'***s case (supra) have been followed recently in ***Google India Pvt. Ltd. vs. M/s Visakha Industries : 2017 (1) ALT 620*** and ***Dr. Dhruvaram Muralidhar Sonar vs. State of Maharashtra and others : 2019 (1) RCR (Criminal) 674***, wherein, while explaining the scope of dictum of ***Bhajan Lal***'s case (supra), it has also been observed that the power of quashing criminal proceedings are required to be exercised sparingly with circumspection and in rarest of rare cases.

8. Keeping the above mentioned principle of law into mind, let us notice as to whether in the instant case, there is any scope of interference of this Court in the present petition relating to quashing of FIR/Challan report as filed against the petitioners. The petitioners herein had originally been booked for commission of offences punishable under Sections 406 and 420 read with Section 120-B of IPC. As per status report, during investigation, offence under Section 498-A IPC was added, vide zimini no. 20 dated 08.11.2018 and offence punishable under Sections 467, 468 and 471 of IPC were added at the time of checking of *challan*. Chapter XXA of IPC deals with offence of cruelty by husband or relatives of the husband. It defines the offence of cruelty as under:

> "498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, "cruelty" means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

9. A cursory perusal of the aforesaid perusal shows that in order to establish the offence under Section 498-A IPC, the prosecution is required to establish (i) that the woman must be married; (ii) that she has been subjected to cruelty or harassment and (iii) such cruelty or harassment must have been made either by the husband or relatives of the husband. The word 'Cruelty' within the meaning of Section 498-A IPC has been explained in explanation appended to Section 498-A IPC. To attract this provision, it must be established that cruelty or harassment to the wife was caused to coerce her or cause bodily injury to herself or to commit suicide or the harassment was to compel her to fulfill illegal demand for dowry. It is not every type of cruelty that would attract Section 498-A IPC. Explanation 'B' to this section contemplates harassment of a female to coerce her to meet any unlawful demand for any property or dowry. Undoubtedly, if there are allegations of specific overt acts indicating the complicity of members of the family named in the FIR, in a given case such like the present one, the cognizance would be unjustified but in my opinion, if the FIR as it stands does not disclose specific allegations against the petitioners, it would be clear abuse of legal and judicial process to mechanically send them to undergo the trial unless of course the

FIR discloses specific allegations, which would persuade the Court to take cognizance of the offence alleged against the relatives of the main accused, who are *prima facie* not alleged to have indulged in physical and mental torturing of the complainant/wife. The Courts are expected to adopt a cautious approach in the matter of quashing, especially in cases of matrimonial disputes, whether FIR in fact discloses commission of offence by the relatives of the principal accused or the FIR prima facie discloses a case of over implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering.

10. The petitioners are the parents-in-law of the daughter of the complainant. Admittedly, the complainant's daughter as well as son of the petitioners are residing in Australia and even at the time of lodging of FIR in this case, they were there. As already discussed, they have procured a decree of divorce in the year 2012. On a perusal of the content of the FIR, it is revealed that the specific allegations, which have been levelled against the petitioners, are that at time of ring ceremony and marriage, petitioner Sanjeev Sofat and his son had demanded a sum of Rs. 10 Lakhs for getting issued a dependant Visa. A gold chain was gifted to him at the time of marriage and then both the petitioners along with their son had demanded a sum of Rs. 24 Lakhs to open a business for the daughter of the complainant to settle permanently in Australia. However, it cannot be ignored that this allegation had been levelled by the mother of alleged victim, who is daughter-in-law of the petitioners after a gap of more than 07 years of their marriage and 06 years from the date when the marital ties between her daughter with the son of the

petitioners had already been severed. There is no explanation on record as to why this delay of 06 years had taken place in lodging of FIR and as to why no role had been attributed to the petitioners qua commission of offences for which they have now been booked and challaned for that much period. Further, there is only casual reference regarding name of petitioner No. 2, i.e. mother-in-law of the victim, with regard to demand of money etc. The allegations do not disclose any active involvement of the petitioners in subject offence under Section 498-A IPC.

11. Further, with regard to offence punishable under Section 406 of IPC, it can be stated that the contents of FIR itself reveals that after her marriage, the victim stayed with her parents-in-law i.e. the petitioners only for a short period of 20 days. Though, it is alleged that as per demand made by the petitioners, a gold chain was given to petitioner Sunita Sofat at the time of marriage and both the petitioners had demanded a sum of Rs. 24 Lakhs from respondent No. 2, however, no offence under Section 406 IPC is *prima facie* made out against either of them as there is no allegations of entrustment of any specific property belonging to the daughter of respondent No. 2/complainant to the present petitioners. There is nothing to show that there was any demand for alleged Istridhan by respondent No. 2 and also that the alleged Istridhan of her daughter had been used by the petitioners for their own use. Respondent No. 2 or her daughter are not shown to have demanded alleged Istridhan from the petitioners. So far as the offence under Section 405 IPC, which is punishable under Section 406 IPC, is concerned, the ingredients of the same are that the accused must have been entrusted with the property or having dominion over it, must have misappropriated the same or dispose it off

and only then an offence under Section 405 IPC can be said to have been committed. Mere existence of dominion of a person over a property is not enough. Since in this case, there is nothing on record to show as to what particular property belonging to the daughter-in-law was entrusted to the petitioners or they, while having dominion over it, dishonestly misappropriated the same, it cannot be stated that any offence punishable under Section 406 IPC had been committed by them. In this regard, I draw reliance upon the judgments cited as ***Sardar Singh vs. State of Haryana : 1977 AIR (Supreme Court) 1766*** and ***S.W. Palanitkar vs. State of Bihar : 2001 (4) RCR (Criminal) 572.***

12. So far as the offence punishable under Section 420 IPC is concerned, there is no allegation that there was any inducement on the part of the petitioners. There is no specific allegation that the petitioner had any intention to deceive respondent No. 2 or her daughter or any other family member or with such intention, they had dishonestly induced them to deliver any property or had made any dishonest concealments of facts or had induced the family of the complainant to make alter or destroy any valuable security or even that they had connived/entered into any criminal conspiracy with their son or any other person in this regard. Therefore, no prima facie case for commission of offence punishable under Section 420 read with Section 120-B IPC appears to have been made out against the petitioners.

13. So far as the offences punishable under Sections punishable 467, 468 and 471 of IPC are concerned, as discussed above, they were added at the time of filing of challan as against the petitioners and their son, who has been declared a proclaimed person, on the basis of the allegations that the son of

the petitioners had obtained a decree of divorce from his wife by forging some documents. There is nothing on record to suggest that the present petitioners have any complicity in the fraud, which was allegedly committed 06 years back in Australia. As such, offences under these sections can also be not stated to have been attracted.

14. The well settled proposition of law is that the Courts should be very careful in proceeding against the relatives of the husband in crimes pertaining to matrimonial disputes and they should not be roped in on the basis of omnibus allegations, unless specific allegations are levelled making out *prima facie* case. Reference in this regard can be made to ***K. Subba Rao and others vs. State of Telangana : 2018 (14) SCC 452***. Criminal proceedings should be allowed to proceed only when a prima facie offence is disclosed. Keeping in view the fact that the allegations against the petitioners for commission of offences punishable under Sections 498-A, 420, 406 read with Section 120-B IPC are general and sweeping in nature, no specific incident, dates or details of incident have been mentioned in the complaint, the actual aggrieved person, if any, is the daughter of the complainant, who has not even bothered to file the complaint and it has been filed by her mother, that too after a gap of 06 years, after a decree of divorce was granted to them coupled with the fact that no case for commission of offence punishable under Sections 467, 468 and 471 of IPC has been made out against the petitioners leads this Court to conclude that the FIR has been lodged only with a view to harass the petitioners, who are parents-in-law of the daughter of the complainant.

15. In view of the above made discussion, the broad facts which are apparent on the face of record are as follows:

(a) The daughter of respondent No.2/complainant and son of the petitioners were married in the year 2011. They started living separately at Australia and a decree of divorce was passed between them in the year 2012, whereas a written complaint was filed by respondent No. 2 to the police as late as on 13.05.2018. There is no explanation forthcoming on record for delay of 06 years in lodging of the FIR.

(b) The allegations of raising demand of money is mainly on the husband of the daughter of the complaiant.

(c) The allegations of subjecting the victim to cruelty are general, omnibus and vague and not at all specific as against the petitioners. On the basis these allegations, without particulars thereof and in the absence of any particular to show that the dowry/gifts received at the time of marriage were kept by the petitioners and the criminally misappropriated the same or converted the same to their own use, I am of the considered opinion that no prima facie case for commission of offences punishable under Sections 406, 420 and 498-A of IPC has been made out.

16. As a fallout and consequence of above stated legal analysis, it is held that the instant one is a fit case for exercising inherent powers of this Court under Section 482 Cr.P.C. to do real and substantial justice. Accordingly, the present petition is allowed and FIR No. 0077 dated 13.05.2018, registered under Sections 420, 406 read with Section 120-B of the IPC (Sections 467, 468 and 471 of IPC added later on) at Police Station Sudhar, Ludhiana (Rural) as registered against the petitioners, challan report and proceedings pending in the Court of JMIC, Ludhiana are hereby ordered

to be quashed to the extent to which the present petitioners namely Sanjeev Sofat and Sunita Sofat only are concerned.

17. It is made clear that the prosecution against the son of the petitioners shall continue. The observations made in this order are for the purpose of deciding the present petition filed by the above named petitioners only and cannot be taken as an expression or opinion on the merits of the case. The concerned Court will decide the case pending against co-accused Amit Sofat strictly in accordance with law, without being influenced by any the observations made herein.

30.01.2024 **(MANISHA BATRA)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned	*Yes*
Whether reportable	*Yes*