

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-41139-2018(O&M)

Date of order: 01.04.2024

Gurjot Singh Randhawa

.....Petitioner(s)

Vs.

State of Punjab & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Navkiran Singh, Advocate  
Ms. Harpreet Kaur, Advocate  
for the petitioner.

Mr. Sukhsandesh Singh Chahal, AAG Punjab.

Mr. Harindar Kumar Aurora, Advocate  
for respondent No.2.

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Nidhi Gupta, J.

CRM-31489-2023

This is an application for placing on record reply on behalf of respondent No.2.

After going through the contents of the application, the same is allowed subject to all just exceptions and reply on behalf of respondent No.2 is taken on record.

MAIN CASE

Prayer in the present petition under Section 482 Cr.P.C. is for quashing of FIR No.203 dated 06.08.2005 (Annexure P1) registered under Sections 406, 498-A, 354, 509, 420 and 120-B IPC at Police Station

Mohali, District Ropar (now district SAS Nagar Mohali); and all other subsequent proceedings arising therefrom; and proclamation order dated 23.09.2010 (Annexure P4) passed by learned Sub-Divisional Judicial Magistrate, Mohali.

2. Learned counsel for the petitioner/husband inter alia submits that the petitioner was married to respondent No.2/complainant on 27.03.2005. As the petitioner is a permanent resident of Canada, he stayed in India for only about 30 days after the marriage and thereafter, he left for Canada. Learned counsel contends that the complainant had married the petitioner only to immigrate to Canada. However, the petitioner was unaware of this. Accordingly, before leaving, the petitioner had initiated proceedings for the complainant's immigration to Canada. This fact has been admitted by the complainant. However, the immigration application of the complainant was rejected by the Canadian Immigration Authorities as they did not believe the marriage between the petitioner and the complainant to be a genuine marriage as the complainant's previous application for immigration to Canada through her brother had also been rejected and this was the second application filed by her.

3. Learned counsel further submits that the complainant is now a permanent resident of Australia and has re-married. It is for this reason that she is contesting present petition through her Special Power of Attorney holder, who is her 76-year-old father. Father of the complainant is a retired Deputy Superintendent in the Punjab Police.

4. Learned counsel further submits that in the present FIR, besides the petitioner, the complainant had also named father, mother and brother of the petitioner as co-accused. However, the present FIR stands quashed qua the said co-accused vide order dated 08.08.2018 passed by a Co-ordinate Bench of this Court in CRM-M-28036-2010 and CRM-M-29631-2010 (Annexure P-3). Learned counsel contends that identical allegations as made against the co-accused, have been made against the petitioner as well. It is further submitted that the petitioner has been living in Canada since 2005 and till date, he has not visited India. Hence, present FIR was registered 4 months after the petitioner's arrival in Canada, and therefore, it is prayed that present FIR be quashed qua the petitioner also.

5. As regards quashing of PO order dated 23.09.2010 (Annexure P4), learned counsel contends that the same is liable to be set aside on the ground that provisions of Section 82 Cr.P.C. have not been complied with. It is submitted that in the FIR, it has been specifically mentioned that the petitioner was a resident of Canada and had gone to Canada on 29.04.2005 and had never visited India after that. Therefore, for all intents and purposes, the residence of the petitioner was in Canada but the record shows that proclamation under Section 82 Cr.P.C. issued by learned SDJM, Mohali on 10.08.2010 was made by giving the address of the petitioner to be in Dharowali, Tehsil Dera Baba Nanak, District Gurdaspur, as is clear from the report of the Process Server dated 20.08.2010 (Annexure P6); and proclamation (Annexure P5). It is submitted that accordingly, the proclamation has been treated to be served upon the village address of the petitioner, which he had left 5 years before the

service of the proclamation; and therefore, the same cannot be treated to be effective service in view of provisions of Section 82 CR.P.C. It is therefore, prayed that the order dated 23.09.2010 (Annexure P4) declaring the petitioner as PO be set aside.

6. Per contra, learned counsel for the complainant/respondent No.2 (through SPA) vehemently opposes prayer made on behalf of the petitioner and submits that although the challan in the present case was filed as far back as in 2006, however, the petitioner has not appeared before the Investigating Agency even once. It is submitted that this conduct of the petitioner is not such that can be condoned. Ld. Counsel further informs that the complainant has filed SLP before the Hon'ble Supreme Court challenging order dated 08.08.2018 whereby present FIR has been quashed qua the co-accused; and the said SLP is pending before the Hon'ble Supreme Court as is evident from order dated 04.02.2019 (Annexure R2/1), whereby the Hon'ble Supreme Court has issued notice in the matter. It is further contented that the allegations made in the FIR are correct, and therefore, the present petition be dismissed.

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

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

9. Perusal of record of the case shows that the complainant was married to the petitioner on 27.03.2005. No child was born out of this wedlock. The petitioner is a permanent resident of Canada.

As such, after about one month of marriage, the petitioner left for Canada on 29.04.2005. During this time the complainant and the petitioner had also gone to Kullu Manali for their honeymoon which was paid for by the father of the petitioner. No complaint was made by the complainant during this time when the petitioner was in India.

10. A perusal of FIR reveals that the complainant has stated therein that she is M.Sc. Honors in Microbiology and was doing her M.Sc. (IT). It has further been stated in the FIR that the accused had *“also promised that after the marriage ceremony, I would be sponsored for immigration to Canada by Gurjot Singh.”*. Admittedly, before leaving, the petitioner had initiated proceedings to facilitate the immigration of the complainant to Canada. The petitioner had extended his stay in India in order to be able to take the complainant personally for her required medical examination in Amritsar. This fact has been admitted by the complainant in the FIR that *“on 25.4.2005, my medical examination for immigration purpose was got conducted by my husband at Dr Sushil Mahindroo’s clinic at Amritsar.....That after reaching Canada my brother received him at the airport and my husband stayed with them for 2 days at their residence. During this period, he dispatched immigration papers for my signature and also asked for some wedding photos, wedding cards, and other documents which I sent him by speed post. ....”*, yet, contradictorily, it has been simultaneously alleged that the petitioner had asked the complainant to get her name changed in the passport so that she could not avail the benefit of immigration case sponsored by her brother.

Complainant has stated in the FIR that *“this revelation on his part made me*

*almost faint and depression overpowered my good feeling to the extent that I thought of committing of suicide.*"It is admitted fact on record that the complainant had previously been denied immigration which had been filed through her brother. Despite that, though on the one hand complainant has admitted that the petitioner took her for her medical examination for immigration purposes, and immediately on his return to Canada also dispatched her immigration papers et cetera. On the other hand, she has also simultaneously alleged that the petitioner tried to scuttle her immigration process. From the above facts, it appears that the complainant was aggrieved of the fact that her immigration did not come through. It was in this background that the complainant had lodged the present complaint within less than four months after the marriage on 18.07.2005, which led to registration of present FIR on 06.08.2005.

11. It is further undisputed that almost immediately thereafter, the complainant also initiated divorce proceedings on 07.09.2005, in which she was granted ex-parte divorce against the petitioner in October, 2006. The said decree has not been challenged. Perusal of reply filed on behalf of the complainant shows that it has further not been denied that the complainant is a permanent resident of Australia, and that she has remarried thereafter. Thus, since the registration of the present FIR, much water has flown under the bridge.

12. The FIR further reveals that various other general and omnibus allegations regarding demand of dowry by the petitioner have been made by the complainant. It has been alleged by the complainant that

the accused including the petitioner demanded ₹20 lakhs, and a house in Canada etc. from the complainant and her family. However, it is my view that no truth can be ascribed to the said allegations as, as per the saying of the complainant herself as recorded in the FIR, she has specifically mentioned therein that at the time of marriage there had been no demand of dowry by the petitioner or his family and that they had wanted a simple marriage as the girl was their only consideration. The complainant has stated that *“At the time of the settlement of marriage, no demand of dowry whatsoever was placed, rather it was stated by Gurjot Singh and his father and mother that they want simple marriage and nothing else. Their only consideration was the girl in question. They also promised that after the marriage ceremony, I would be sponsored for immigration to Canada by Gurjot Singh. ....”* It has further been admitted by the complainant that *“My mother-in-law also gave me a golden set as dowry to me.”*

13. Moreover, 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. On the contrary, the FIR clearly shows that customary gifts were exchanged at the time of various ceremonies. 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. Clearly, to my mind, the allegations made by the

complainant against the petitioner in the FIR, are vague, incoherent and a desperate attempt to implicate the petitioner somehow or the other.

14. It was in this background that the present FIR was quashed by this Court in respect of the co-accused of the petitioner. Perusal of the FIR shows that far worse allegations have been made against the co-accused than against the petitioner as the co-accused were still in India, whereas the petitioner had departed for Canada. As such, I am in complete concurrence with the following findings and reasoning recorded by the Co-ordinate Bench of this Court while quashing present FIR in respect of co-accused in order dated 08.08.2018 relevant extract of which reads as under:-

*“...The facts are not in dispute. The marriage took place on 27.03.2005. The complainant admits to the fact that there was no demand of dowry before marriage. It is also not in dispute that the husband was a Canadian immigrant. The brother of the complainant was also abroad. The husband stayed in India for a month before he left on 29.04.2005. It is not disputed that the husband had taken his wife for her medical test for immigration purposes. It is not disputed that the couple stayed together for the entire month and there was no complaint. The father of the complainant had gone to see off his son-in-law at the airport. Before that, the in-laws and the husband had come to stay with the complainant's parents. It is not disputed that Amanjot was a student and was studying in Amritsar.*

*In the light of this background it is difficult to accept that demands would be raised before the reception ceremony ended or that the harassment and demand of Rs.20 lacs was made before the departure of Gurjot. The petitioners had*

*explained that Gurjot had postponed his departure since he wanted to be with his wife for the medical examination and the complainant had admitted this fact that the husband had accompanied her for her medical. Therefore, allegations levelled that the departure was postponed as Gurjot was waiting for the amount demanded by them are false, The marriage was registered on 20.04.2005. The husband insisted on giving his surname because she was to come abroad. It shows that all was fine till then. The family had been visiting each others' houses. The boy's family stayed with the girl's parents. It is difficult to accept that there was demand of Rs.20 lacs. If relation became bitter the complainant's father would not have travelled to see off his son-in-law at the airport. The complainant admits that her brother had already submitted immigration papers and those were rejected the following year. It appears that differences arose on account of this and false allegations were levelled.*

*The complainant gave a colored version and made-up allegations which on the face of it appear to be baseless. The complainant had given exaggerated distorted account of incident. In the considered opinion of this Court, the allegations in the FIR are absurd and improbable and warrant interference to meet the ends of justice and prevent the abuse of the process of the Court.*

*In view of the discussion made above, both the petitions are allowed and the FIR and consequent proceedings taken therein are quashed."*

15. The only particular allegation against the petitioner is that *"Gurjot started torturing me mentally on telephone by giving me lengthy calls even twice a day. He started levelling false allegations against me about my misbehaviour with him, his parents and his brother.....",. As*

already noted above, the said allegations are vague and unsubstantiated, and therefore, prima facie, no case is made out against the petitioner. Moreover, it has not been denied by learned counsel for the complainant that the complainant is a permanent resident of Australia or that she has re-married.

16. The legal position in such like cases is crystal clear. Reference may be made to a judgment of the Hon'ble Supreme Court rendered in case of **"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 a litigant does not suffer utilising the institution of justice for unjust means. Relevant extract 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."*

17. 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.”*

18. In the facts and circumstances of the present case, reliance may be placed upon judgment of this Court in **“Satish Sarin & Others Vs. Union Territory, Chandigarh & Another”** Law Finder Doc ID # **489101**; wherein it has been held as under:-

*“Indian Penal Code, 1860, Sections 406, 498-A, 506 and 120-B – F.I.R. registered under – Dispute in case, arises from matrimonial differences of parties, has been settled as parties settled matter and their marriage has been dissolved by grant of divorce decree by mutual consent – FIR, all subsequent proceeding and consequent orders passed thereon, including order declaring Sanjay Sarin as a proclaimed offender/person, are quashed”.*

19. As regards the impugned order dated 23.9.2010 declaring the petitioner as a proclaimed offender, I find merit in the submissions advanced on behalf of the petitioner. It remains undisputed that proclamation under Section 82 Cr.P.C. issued by learned SDJM, Mohali on 10.08.2010 was made by giving the address of the petitioner in Dharowali, Tehsil Dera Baba Nanak, District Gurdaspur, as is clear from the report of the Process Server dated 20.08.2010 (Annexure P6); and proclamation (Annexure P5). Whereas, admittedly, the petitioner has not returned to India after 2005. As such, service as required under section 82 CRPC was not affected upon the petitioner.

20. In the above said facts and circumstances, reference may be made to judgment of this Court in **“Jasvinder Singh Vs. State of Punjab & Another” 2013(1) R.C.R. (Criminal) 310**, wherein it has been held as under:-

*“Criminal Procedure Code, Section 482 - Indian Penal Code 452/427/506/323/148 and 149 - Many accused named in the FIR - One accused remained absconded Petitioner - Remaining accused acquitted for want of cogent evidence - During Trial petitioner went abroad, married there - Declared proclaimed offender and he did not come back - Claimed parity with the other co-accused - Same set of evidence - No additional against the petitioner came on record - Proceedings against the petitioner quashed - Petitioner being a proclaimed offender, will not come in the way of quashing the FIR - Held :-*

*(i) It would be a futile exercise to continue the proceedings against the present petitioner when the other co-accused stands acquitted on the basis of same set of allegation - FIR*

*and all consequential proceedings arising there from quashed - 2011 (2) RCR (Criminal) 453, 1988(1) RCR (Criminal) 565(SC), 2007(1) RCR (Criminal) 246, 1974 SC 294, 1996(1) C.C. Cases 465, 1995(2) RCR (Criminal) 127.”*

21. In the present facts it will be apposite to refer to judgment of this Court in **“Kulwant Singh Vs. State of Punjab & Another” 2011(3) RCR (Criminal) 266**, wherein it has been held as under:-

*“Criminal Procedure Code, 1973, Section 482 – Indian Penal Code, 1860, Sections 307, 323 and 506 – Quashing of FIR against proclaimed offender – FIR was registered against petitioner along with other co-accused under Sections 307, 323 and 506 Indian Penal Code - However, during the pendency of trial petitioner left the country and he was declared proclaimed offender - Other 24 co-accused acquitted - Petitioner filed application for quashing FIR against him - Held, there is no other evidence then what was produced in case of 24 other co-accused acquitted - No useful purpose will be served by allowing the prosecution to proceed against the petitioner on same set of facts and evidence - FIR Quashed - 1995(2) RCR (Crl.) 127: 1996(1) SCC 465, relied.”*

22. Learned counsel for the complainant has not been able to deny the legal position as noticed here in above. Learned counsel has also been unable to demonstrate that prima facie offence as alleged has been made out against the petitioner. No evidence has been brought against the petitioner. On the contrary, it appears that the complainant had married the petitioner only to find a way to immigrate to Canada.

23. In view of the factual and legal position noticed above, present petition is **allowed**; and FIR No.203 dated 06.08.2005 (Annexure

P1) registered under Sections 406, 498-A, 354, 509, 420 and 120-B IPC at Police Station Mohali, District Ropar (now district SAS Nagar Mohali); and all other subsequent proceedings arising therefrom; as also the proclamation order dated 23.09.2010 (Annexure P4) passed by learned Sub-Divisional Judicial Magistrate, Mohali, are hereby quashed qua the petitioner.

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

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|---------------------------|--------|----------------------|
| <b>01.04.2024</b>         |        | <b>(Nidhi Gupta)</b> |
| Sunena                    |        | <b>Judge</b>         |
| Whether speaking/reasoned | Yes/No |                      |
| Whether reportable        | Yes/No |                      |