



220 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-43913-2017 (O&M)
Date of Decision: 06.11.2024

SHEETAL GARG

...Petitioner

V/S

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manuj Nagragh, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

Mr. S.S. Majithia, Advocate for respondent No. 2.

Mr. R.D. Rattewal, Advocate for respondent No. 3.

HARPREET SINGH BRAR J. (Oral)

1. Present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No. 7 dated 21.01.2016 registered under Sections 323, 498-A and 506 of Indian Penal Code registered at Police Station Sadar Ludhiana.

2. Brief facts of the case are that marriage of the petitioner was solemnized with respondent No. 2 on 29.08.1999 as per Hindu rites and ceremonies and on 30.08.1999 as per Sikh rites as they both belong to different religions and out of the wedlock two children i.e. daughter Mehreen Garg and son Arnav Garg were born. FIR(supra) was registered on the allegations of harassment, beating and demand of dowry levelled against the petitioner.

3. Learned counsel for the petitioner *inter alia* contends that FIR(supra) has been registered only to wreck vengeance upon the petitioner. Admittedly, the marriage between the parties was solemnized, 18 years prior to registration of the FIR(supra) and the decree of divorce has been passed against the complainant-respondent No. 2 on the ground of adultery, which vindicates the



stand of the petitioner that he has been falsely implicated in the present case. The allegations levelled by respondent No. 2 are too far fetched and no prudent man would find those credible. It is further contended that apparently FIR(supra) has been registered as a counter blast to the divorce petition filed by the petitioner against respondent No. 2 on the ground of cruelty and adultery. Learned counsel for the petitioner further submits that during the pendency of the present petition, a compromise has been effected between the parties and all the allegations have been withdrawn on the basis of said compromise. As such, continuation of the proceedings in the FIR(supra) would amount to sheer abuse of the process of law. Learned counsel further placed reliance upon the judgment of Hon'ble Supreme Court passed in *Achin Gupta Vs. State of Haryana and Another* (2024) 6 SCR 129.

4. Per contra, learned counsel for respondent No. 2 assisted by counsel for respondent No. 3 have opposed the prayer made by learned counsel for the petitioner on the ground that the findings of learned Family Court with regard to adultery are not conclusive as respondent No. 2 has already challenged the impugned judgment and decree of divorce by filing appeal before this Court. Further the compromise between the parties is also not complete and petitioner has abandoned his children and is not paying any maintenance to them. Further the probable defence of the petitioner cannot be looked into at this stage by this Court while exercising powers under Section 482 of Cr.P.C. as these disputed questions of facts can only be adjudicated on the basis of evidence adduced by the parties before the trial Court.



5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that there are specific instances of continuous beating, harassment against the petitioner and demand of dowry. Respondent No. 2 after receiving injuries at the hands of the petitioner has been medically examined at the Civil Hospital, Ludhiana and the probable defence, however, convincing it may seem, cannot be looked into at this stage by this Court and the disputed questions of facts raised by the petitioner can only be appreciated by learned trial Court on the basis of evidence adduced by both the parties.

6. 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 obliged 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.

7. 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, made the following observations: -

“17. The consequences of scuttling the criminal process at a pre-trial 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 un-



merited 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.”

8. A two Judge Bench of the Hon’ble Supreme Court in **HMT Watches Ltd Vs. M.A. Abida (2015) 11 SCC 776** 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.”

9. In **Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458**, decided by the Hon’ble Supreme Court, following observations were made: -

“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.”

10. In view of the above discussion, this Court cannot examine the probable defence of the petitioner set up in the present petition and scuttle the proceedings before the trial Court. The disputed questions of fact and the probable defence of the petitioner can only be seen by the trial Court on the basis of evidence adduced by the parties.

11. Accordingly, present petition stands dismissed being bereft of any merit.
12. However, petitioner would at liberty to take all the pleas raised in the present petition at the appropriate stage during the course of trial.
13. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

06.11.2024	(HARPREET SINGH BRAR)	
Ajay Goswami	JUDGE	
	Whether speaking/reasoned	Yes/No
	Whether reportable	Yes/No