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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-27739-2021 (O&M)

Judgment reserved on: 13.11.2024

Pronounced on: 21.11.2024

Rahul Basoya

...Petitioner

versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. S.P.S. Sidhu, Advocate
for the petitioner.

Mr. Akash Nagar, Advocate and
Mr. Vishal Verma, Advocate
for respondent No.2.

Mr. Vikas Bhardwaj, AAG Haryana

HARPREET SINGH BRAR, J.(ORAL)

1. The present petition is preferred under Section 482 Cr.P.C. seeking quashing of FIR, bearing No. 23 dated 29.04.2021 registered under Sections 313, 354-D, 498A, 384, 406, 506, 509 IPC at Police Station Women Cell, Narnaul, District Mahendergarh (Annexure P-1) and all subsequent proceedings arising out of the above stated FIR.

2. The facts, tersely put, are that the respondent No.2-complainant had filed a complaint before the police on 04.11.2020 against the petitioner-accused, who is the husband of respondent No. 2, and his other family members on account of being subjected to persistent harassment for dowry, sexual abuse, physical and mental torture and misappropriation of *stridhan*

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matrimonial home by the petitioner. The FIR (*supra*) was registered on the basis of this complaint and the investigation was initiated. Subsequently, on 15.05.2021, the SHO Police Station Women Cell, Narnaul prepared a cancellation report. Aggrieved by the same, respondent No.2 moved two complaints dated 18.06.2021 and 19.06.2021 before the police for reinvestigation which resulted in the matter being assigned to Dy. Superintendent of Police, Mahendragarh and vide enquiry report dated 29.06.2021 it was reported that on the basis of the evidence produced by the complainant and the enquiry conducted, the allegations of cruelty and harassment *qua* the husband are *prima facie* true. Relying on this report, the Superintendent of Police, Mahendragarh passed an order dated 01.07.2021 whereby the Police Station Women Cell, Narnaul was directed to further investigate the case. Consequently, the petitioner filed the instant petition seeking quashing of the FIR (*supra*)

3. Learned senior counsel for petitioner submits that after registration of the FIR (*supra*), the petitioner and his family members actively assisted in the investigation. The petitioner submitted a detailed reply along with evidence before the investigating agency, as a consequence of which the investigating agency filed a closure report. However, respondent No.2 produced fabricated evidence, including made up chats between her and the petitioner at a belated stage and managed to get the case reinvestigated. Moreover, regular wear and tear of matrimonial life cannot be equated with the petitioner possessing the guilty intention to subject respondent No.2 to cruelty and harassment. This is buttressed by the fact that both respondent



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by way of seeking divorce through mutual consent. Learned senior counsel further argued that the mother of the petitioner on the very second day of marriage had returned all the *stridhan* articles and jewellery belonging to the petitioner to her and as such, the invocation of Section 406 of IPC is completely unwarranted. Respondent No.2 had deep behavioural and psychological issues, which detrimentally affected the marital ties and their compatibility. Lastly, it was averred that there were numerous instances whereby the petitioner and his family members catered to every need of respondent No.2 and treated her with the utmost love and affection. The petitioner even made her the sole nominee for the benefits he was deriving from the Indian Airforce. For these reasons continuation of the case would tantamount to the abuse of the process of the law. Learned senior counsel relied on the judgments of the Hon'ble Supreme Court rendered in ***Abhinandan Jha and others vs. Dinesh Mishra 1967 SCR (3) 668; Neetu Kumar Nagaich vs. State of Rajasthan and others 2020 SCC OnLine SC 741; A P Mahesh Cooperative Urban Bank Shareholders Welfare Association vs. Ramesh Kumar Bung and others 2021(3) R.C.R.(Criminal) 491***; and the judgments of this Court in ***Rakesh Kumar Singla vs. Union of India 2021(1) R.C.R. (Criminal) 704 and Dharmesh Jain and others vs. State of Punjab and another CRM-M-58042-2022.***

4. *Per contra* learned counsel for respondent No.2 averred that the cancellation report was prepared after just 16 days from the registration of the FIR (*supra*), which clearly shows that it was prepared without conducting any thorough investigation and properly analyzing the evidence available before



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the investigating agency. Only after the matter was asked to be reinvestigated by respondent No.2 and the case was transferred to Deputy Superintendent of Police, Mahendergarh for investigation and the allegations and the evidence available against the petitioner were rightly inquired into. The inquiry report clearly confirms that respondent No.2 was harassed by the petitioner and that her jewellery, *stridhan* articles, educational certificates, etc. are still in the possession of the petitioner. Furthermore, it was contended that the Hon'ble Supreme Court has categorically laid down that the powers of the High Court under Section 482 of Cr.P.C. must be exercised sparingly, with circumspection and only in the rarest of rare cases. Since the Final Report under Section 173 of Cr.P.C. is yet to be filed, interference of this Court at this stage would thwart the investigation which would defeat the ends of justice. Reliance in this regard was placed on the judgments of the Hon'ble Supreme Court in *State of West Bengal vs. Swapan Kumar Guha (1982) 1 SCC 561*; *Skoda Auto Volkswagen India Private Limited vs. State of Uttar Pradesh 2020 SCC OnLine SC 958*; *Gian Singh vs. State of Punjab and another (2012) 10 SCC 303*; *State of Haryana and others vs. Bhajan Lal and others 1992 Supp (1) SCC 335*.

5. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that this Court does not find it proper to adjudicate upon disputed questions of fact while the matter is pending investigation. With respect to the claims of regular wear and tear of marriage and the issue of incompatibility between the petitioner and respondent No.2, those matters require to be adjudicated by the learned trial



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Court on the basis of the evidence adduced by the parties and the probable defence as set up by the petitioner cannot be gone into at this stage. The petitioner cannot be permitted to raise his defences under the guise of a petition filed under Section 482 of Cr.P.C. so as to escape investigation and surpass the entire trial court proceedings. A two Judge bench of the Hon'ble Supreme Court in **HMT Watches Limited vs M.A. Abida (2015) 11 SCC 776** has held that inherent powers under Section 482 of the Cr.P.C. cannot be extended to determining question of facts. It is only for the trial Court to determine the disputed questions of fact after examining the evidence on record and interference by this Court with regards to factual questions is impermissible in law.

6. A two Judge bench of the Hon'ble Supreme Court in the **Rathish Babu Unnikrishnan Vs. State (Govt. of NCT) 2022 SCC Online SC 513**, speaking through Justice Hrishikesh Roy, observed as under:

“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.”

7. Recently, in **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra AIR 2021 SC 1918**, the Hon'ble Supreme Court reiterated the



guiding principles to quash proceedings under Section 482 of Cr.P.C and held as follow-:

“80. In view of the above and for the reasons stated above, our final conclusions on the, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C , 1973 and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., 1973 while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C., 1973 and/or under Article 226 of the Constitution of India, our final conclusions are as under:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*
- ii) Courts would not thwart any investigation into the cognizable offences;*
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).*
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*
- vi) Criminal proceedings ought not to be scuttled at the initial stage;*
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;*
- ix) The functions of the judiciary and the police are complementary, not overlapping;*
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*



xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C., 1973 is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., 1973 only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C., 1973 and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C., 1973 before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final



report/chargesheet is filed under Section 173 Cr.P.C., 1973 while dismissing/disposing of the quashing petition under Section 482 Cr.P.C., 1973 and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C., 1973 and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

The well settled legal position that the Court will not normally interfere with an investigation and permit it to be completed as doing so would encroach upon the lawful power of the police to investigate into cognizable offences was further reiterated by the Hon'ble Supreme Court in ***Satvinder Kaur vs. State (Govt. of NCT of Delhi) 1999(8) SCC 728.***

8. Crucially, when the cancellation report dated 15.05.2021 was prepared by the SHO, no approval was granted by any senior police official. Further still, the cancellation report was never filed before the learned trial Court. A 'Police Report' has been defined under Section 2(r) of Cr.P.C. as a "*report forwarded by a police officer to a Magistrate under Sub-Section (2) of Section 173*". The cancellation report in the present case can be called a draft cancellation report at best. Since the draft cancellation report was never forwarded to the Magistrate, it would have no bearing on the present case.

Additionally, as per the status report filed by the Additional Superintendent of

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proceedings against the petitioner and hence quashing of the FIR (*supra*) against the petitioner would not be prudent.

9. Therefore, in light of the above discussion, this Court cannot delve into disputed questions of fact while dealing with a case of quashing of FIR, bearing No. 23 dated 29.04.2021 registered under Sections 313, 354-D, 498A, 384, 406, 506, 509 IPC at Police Station Women Cell, Narnaul, District Mahendergarh, under Section 482 of the Cr.P.C at the pre-trial stage. No ground for interference is made out by this Court. The present petition is bereft of any merit and is hereby dismissed. However, nothing observed hereinabove shall be considered to be an expression of opinion by this Court on the merits of the case

10. Pending miscellaneous application(s), if any, also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

21.11.2024*Ajay Goswami*

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No