

Sr. No.129

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-23784-2023
Date of decision: 13th March, 2024

SURJIT KAUR AND ANOTHERPetitioners

versus

STATE OF PUNJAB AND ANOTHERRespondents

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Ms. Navneet Kaur, Advocate
for the petitioners.

Ms. Himani Arora, A.A.G.,Punjab.

HARPREET KAUR JEEWAN, J. (ORAL)

1. The instant petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.0020 dated 21.04.2022 (Annexure P-1), under Sections 406, 498-A IPC, 1860, registered at Police Station Sudhar, District Ludhiana (Rural).

2. Petitioner No.1 is the mother-in-law and petitioner No.2 is the father in law of the complainant, at whose instance the FIR was registered.

3. Learned counsel for the petitioners *inter alia* contends that the marriage of the complainant was solemnized with the son of the petitioners on 16.02.2021. Immediately thereafter, the husband of respondent No.2/complainant went abroad and the present FIR has been lodged on 21.04.2022 only with an intention to extract money, which is evident from the audio recordings contained in the CD (Annexure P-3). As per the said conversation, the father of the daughter-in-law of the petitioners is talking about extracting more money from the petitioners.

3.1 It is further contended that respondent No.2 has relied upon the fabricated bills in order to lodge the present FIR. Petitioner No.1 is the mother-in-

law and petitioner No.2 is the father-in-law of respondent No.2. They have nothing to do with the matrimonial dispute *inter se* the respondent No.2 and her husband.

4. Learned State counsel has opposed the present petition. Learned State counsel contends that the investigation is complete and challan/final report under Section 173 Cr.P.C. has been presented before the trial Court. The audio clips contained in the CD (Annexure P-3) have been verified and the following observations have been given in the status report:-

“xxx xxx xxx xxx

2. *That there are 5 audio clips which are feed in the CD produced by the petitioners and the same are examined in compliance with the orders of this Hon'ble Court and the result of the conversation is as under:-*

i) Audio Clip No. 1

The voice is not heard clearly in this audio clip. It is only heard that we can level allegations i.e. of dowry or any other stating that we have solemnized the girl. with a NRI boy.

ii) Audio Clip No. 2

In this audio clip the petitioner party is talking with somebody saying that the family of the girl is poor family, she is educated and we have not taken any money. We think that they have different rooms. The girl used to switch on her mobile phone every moment. One day whole of the night she has witness the video of marriage of her friend perhaps he was from Canada. One day the phone remained on hold and the mother of the girl was saying to the party of petitioner as old and saying that after turned them out of the kothi we will reside there and thereafter will take amount of Rs. 7-8 Lacs.

iii) Audio Clip No. 3

Voice is very low in this audio clip and even the voice is not clear.

iv) Audio Clip No. 4

In this audio clip the members of the complainant party are quarreling with each other saying that today when the boy will come and it will be asked on phone from him why the girl will touch the feet and is it wrong there. The mother of the girl is saying to the father of the girl that he is not doing any talk.

v) Audio Clip No.5

In this audio clip, the members of complainant are talking with each other and father of the girl is saying that give him advice now that there is expenditure of Rs.5 lacs including expenditure of 2-1/2 Lacs of palace. If we will demand amount of Rs.7-8 Lacs then they will give them 3-4 Lacs and this will be our decision.

xxx xxx xxx xxx”

4.1 Learned State counsel further contends that no conclusion can be drawn on the basis of the said audio clip.

5. I have considered the aforesaid contentions.

6. The Hon’ble Apex Court in “**State of Haryana and others vs. Ch. Bhajan Lal and Others**”; 1992 AIR SC 604, laid down the broader guidelines and principles to exercise the extraordinary powers under Article 226 of the Constitution of India or inherent powers under Section 482 of the Code for quashing of the proceedings in criminal cases. The said principles read as under:-

“(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 FIR 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 FIR 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. In the present case, the petitioner is relying upon the audio recordings contained in the CD (Annexure P-3) to allege that the FIR has been registered to extract money from the petitioners. However, it is alleged that the petitioners, who are the mother-in-law and father-in-law of respondent No.2/complainant, have nothing to do with the matrimonial life of their son. As per the Investigating Agency, the details of the said audio clips submitted by the State, are of no help to the petitioners. As per the status report, most of the said audio clips are not audible and even as per the Audio Clip No.5, no conclusion *ipso facto* can be drawn that the FIR was registered with the motive of extracting money. The authenticity of the audio clips in the CD (Annexure P-3) is a matter of evidence.

8. The second contention raised by the learned counsel for the petitioners is that respondent No.2/complainant has relied upon the fabricated bills to lodge the present FIR. Even, the allegation of fabrication of the bills is a matter of evidence. The investigation is complete. Final report under Section 173(2) Cr.P.C. has already

been presented before the trial Court. The authenticity/verification of the bills is matter of trial.

9. For triable issues, appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C.. The Hon'ble Apex Court, while setting aside a High Court judgment in the case of "Kaptan Singh vs. The State of Uttar Pradesh and others"; 2021(3) R.C.R. (Criminal) 840, has held as under:-

“xxxxxxx

9.1 At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 Cr.P.C. has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 Cr.P.C., 1973 quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the Learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 Cr.P.C. 1973 was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of Dineshbhai Chandubhai Patel

(Supra) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

(Emphasis Supplied)

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10. Keeping in view the fact that audio clips alleged by the petitioner seeking quashing of the FIR are required to be proved by the leading evidence, as such, in view of ratio of decision of the Apex Court in the case of *Kaptan Singh (supra)* and also in view of ratio of decision of the Apex Court in *Bhajan Lal (supra)*, the present case is not covered in any of the categories to quash the proceedings under Section 482 Cr.P.C.

11. Keeping in view the above discussion, no ground is made out to use inherent powers under Section 482 Cr.P.C. for quashing the proceedings in the present case. Consequently, the present petition stands dismissed.

13. All the pending miscellaneous applications, if any, shall stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

13th March, 2024
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