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124 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24425-2024
Date of Decision: 15.05.2024

Mohit ...Petitioner

versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. R.S. Kundu, Advocate and
Mr. Chirag Kundu, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG Haryana

HARPREET SINGH BRAR, J.(ORAL)

1. The present petition is preferred under Section 482 Cr.P.C.
seeking quashing of:

- (i) FIR, bearing No. 23 dated 27.01.2023 registered under Sections 315, 323, 328, 342, 366, 376(2)(n), 377, 506 IPC at Police Station Civil Lines, Rohtak (Annexure P-1).
- (ii) Final Report under Section 173 Cr.P.C. dated 24.05.2023 under Sections 315, 323, 366, 376(2)(n), 506 IPC (Annexure P-3)
- (iii) Charge dated 15.01.2024 under Sections 315, 498-A, 377, 506 IPC (Annexure P-4)

and all subsequent proceedings arising out of the above stated FIR.

2. The facts, tersely put, are that the petitioner-accused met the victim and offered her juice, which the victim later realized was spiked. The petitioner then took her to a hotel and raped her. He also shot a video of the

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occurrence in order to blackmail and threaten the victim. Subsequently, the petitioner took the victim to Rohtak Railway Station on knife point and kept issuing threats that in case she does not accompany him, he will kill her father and brother. The petitioner took the victim to Jind, where his father and mother snatched the victim's bag and took her to Village Shahpur. The next day i.e. 10.09.2022, the victim was forcibly wedded to the petitioner. The petitioner and his family members also captured few pictures and shot a video. There are further allegations of the petitioner physically assaulting and engaging in unnatural sex with the victim. Further, when the victim got pregnant, the petitioner and his mother gave leg and fist blows and the petitioner pushed her down the stairs.

3. Learned counsel for petitioner submits that the present case arises out a love marriage, wherein the victim-complainant married the petitioner of her own volition and both of them resided together. The petitioner and the complainant married each other against the wishes of the parents of the complainant and had together approached the learned Sessions Court, Jind by way of filing a protection petition as they were strongly apprehending danger to their lives. Learned counsel further argues that no medical evidence was brought on record by the prosecution to substantiate the claims of harassment and dowry. The Medical Board has specifically observed that there were no external injuries on the body of the complainant as per the MLR. The FIR was lodged on the basis of the complaint sent by the complainant by post and no one was present at the police station at the time of the registration of the FIR. Moreover, the investigating agency has already exonerated the father and the mother of the petitioner during the course of investigation. Hence, it is clearly

a case of false implication. Lastly, he submits that the complainant left the



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matrimonial home on 27.12.2022, whereas, the FIR was registered on 27.01.2023. Thus, there was substantial delay in the lodging of the FIR for which no justification has been advanced by the prosecution.

4. *Per contra* learned State counsel submits that the matter is still pending consideration before the learned trial Court and the parties are yet to lead evidence. As such, interference by this court at this stage would be unwarranted.

6. Having heard the learned counsel for the petitioner and after perusing the record with his able assistance, it transpires that this Court does not find it proper to adjudicate upon disputed questions of fact while the matter is pending consideration before the learned Court below. The matter requires to be adjudicated by the learned trial 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. 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 questions of fact. 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.

7. 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



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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. 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."

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 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 dismissed accordingly.

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

(HARPREET SINGH BRAR)
JUDGE

15.05.2024
Ajay Goswami

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