



124

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24684-2024

Date of decision: 16.05.2024

Amit Parkash

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Aakash Juneja, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

Mr. Ashit Malik, Advocate
for respondent No.2.**HARPREET SINGH BRAR, J. (ORAL)**

The present petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No.169 dated 04.04.2024 under Sections 323/406/498-A/506 of IPC (Section 377 of IPC added later on) registered at Police Station Sadar Thanesar, Kurukshetra and all consequential proceedings arising therefrom.

Learned counsel for the petitioner *inter alia* contends that the FIR (*supra*) has been registered to wreak vengeance on the petitioner due to the personal and private spite. Respondent No.2/wife has procured the medical evidence only to falsely implicate the petitioner with an offence under Section 377 of IPC. It is further contended that before the registration of the FIR, several panchayats had made every effort to reconcile and to save matrimonial life of the petitioner and respondent No.2. Respondent No.2 was pressurizing



CRM-M-24684-2024

-2-

the petitioner for having a separate house and share in the property and she has levelled allegations which are too far-fetched and implausible and the members of panchayat, who attended the reconciliation meetings between the parties have, furnished their affidavits which are available on record as Annexures P-2 to P-4 and the factual ingredients of the offence as alleged in the FIR (*supra*) are clearly missing and the continuation of the criminal proceedings is the sheer abuse of the process of law. Counsel further submits that the various High Courts have held that husband cannot be held liable for non-consensual unnatural sex with his wife while observing that the relationship between the husband and wife cannot be confined to their sexual relationship only.

Per contra, learned counsel for respondent No.2 submits that the present petition is totally premature and misconceived and the FIR (*supra*) was only registered on 04.04.2024 and there are specific allegations and this Court cannot examine the defence set up by the petitioner in the present petition under Section 482 Cr.P.C. All the allegations are matter of trial which have to be determined by the learned trial Court on the basis of the evidence and his anticipatory bail has already been declined by the learned Sessions Court.

Having heard learned counsel for the petitioner and after perusing the record of the case, this Court finds no merit in the present petition as the disputed question of facts can be determined only on the basis of the evidence led by the parties. The probable defence set up by the petitioner in the present petition cannot be appreciated 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



CRM-M-24684-2024

-3-

powers under Section 482 of the Cr.P.C. cannot be extended for 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.

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



CRM-M-24684-2024

-6-

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."

Therefore, in light of the above discussion, this Court cannot delve into disputed questions of fact and examine the probable defence taken by the petitioner in the present petition while invoking the power under Section 482 of the Cr.P.C.

The present petitioner is dismissed accordingly.

However, nothing observed hereinabove shall be construed as expression of an opinion by this Court, lest it may prejudice the outcome of the trial. The learned trial Court is directed to proceed with the trial on its own merits, strictly in accordance with law.

(HARPREET SINGH BRAR)
JUDGE

16.05.2024

Neha

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