

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

CRM-M-25367-2019 (O&M)

Date of decision: 05.04.2024

Sairun Nisha and another

...Petitioners

Versus

U. T., Chandigarh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Khalid Shah, Advocate
for the petitioners.

Mr. Y. S. Rathore, Addl. P.P., U.T., Chandigarh.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioners under Section 482 of Cr.P.C. seeking quashing of FIR No. 49 dated 19.05.2018, registered under Sections 406 and 498-A of IPC at Women Police Station, Chandigarh and the proceedings having emanated subsequently therefrom.

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR had been registered on the basis of a written complaint filed by the complainant-respondent No.2 Shahin Nisha alleging therein that the marriage of her daughter/respondent No. 3 Ambari Firdos was performed with one Manowar Alam on 01.01.2016 according to Muslim rites and rituals. Huge amount of money was spent on the marriage. Sufficient dowry articles including gold and silver jewelleryes

were given in the marriage. On the demand of in-laws of her daughter, a cash amount of Rs. 2.50 Lakhs was also given by way of a cheque. However, respondent No.3/victim was subjected to harassment and cruelty on account of demand of dowry. Even the accused persons pressurized the victim to get the house of complainant, which is situated at Greater Noida transferred in their name. The victim was threatened that in case of non-fulfillment of their demand, she would either be killed or divorced by her husband. The complainant alleged that specific demands of motorcycle, microwave or a cash amount of Rs. 5 Laks were made by the husband and parents-law of the victim. The mother-in-law of the victim even abused the complainant. The *istridhan* of the victim had been criminally misappropriated by her in-laws and ultimately she had been turned out of her matrimonial home on 25.02.2016 and ever since then, the victim has been residing with her parents. The complainant prayed for taking action against the culprits. After registration of FIR, investigation proceedings were initiated. The petitioners, who are parents-in-law of the daughter of respondent No.2/complainant, had been extended benefit of bail. They had joined the investigation. After completion of necessary investigation and usual formalities, *challan* under Section 173 Cr.P.C. was presented and presently, the petitioners along with co-accused are facing trial for commission of aforementioned offences.

3. The petitioners have sought quashing of FIR on the grounds and it has been argued by their counsel that they have been falsely implicated in this case. The victim/respondent No.3 was a short tempered and quarrelsome person. She had stayed at her matrimonial home for a brief period i.e. only for

two months and during her stay in the matrimonial house, she had spoiled the atmosphere of the house. The son of the petitioners had even filed a petition under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights but since respondent No. 3 was not ready to join the company of her husband, the said petition was dismissed as withdrawn. It is further submitted that even the son of the petitioners had given *Shariya* divorce to respondent in the presence of witnesses on 01.05.2017 and thereafter, a matrimonial case had been filed in the Court of Principal Judge, Family Court at Patna but respondent No. 3 is not appearing before the Court. It is further argued that both the petitioners are old age persons and are suffering from several age related health problems. The allegations as levelled by the complainant are general in nature. Even if all the allegations in the FIR are taken to be true, there would be no chances of the petitioners being convicted. Therefore, it was argued that the petition deserved to be allowed.

4. Learned State counsel, on the other hand, had argued that the investigating agency had conducted thorough investigation in the matter and had thereafter presented *challan* qua commission of offences punishable under Sections 406 and 498-A of IPC as against the present petitioners. There were specific allegations against them. He has submitted that charges have been framed and the trial is going on. One prosecution witness has been examined and the complainant is yet to be examined. Therefore, he has argued that no case for quashing of the FIR and other consequential proceedings arising therefrom has been made out.

5. I have heard learned counsel for the petitioners as well as learned State counsel at considerable length and have also perused the material placed on record.

6. At the outset, it will be profitable to look into the scope and ambit of the Court's power under Section 482 Cr.P.C. as spelt out in several judicial pronouncements of Hon'ble Supreme Court as well as different High Courts. The well settled proposition of law is that in exercise of inherent powers under Section 482 Cr.P.C., the High Court is not expected to analyze all the facts, which are to be placed before the High Court. The power conferred under this section is very specific and to secure the ends of justice or to prevent the abuse of process of Court or to make any such orders as may be necessary to give effect to any order under the Code, such power can be exercised to prevent abuse of process of Court. The Hon'ble Supreme Court has drawn up some guidelines in some categories of cases by way of illustration to circumscribe the exercise of inherent power under Section 482 of Cr.P.C. to prevent abuse of process of any Court or to secure the ends of the justice or to give effect to an order of the Court. A celebrated pronouncement on this point is the case cited as ***State of Haryana vs. Bhajan Lal : 1992 SUPP (1) SCC 335***, wherein several guidelines have been laid down. Some of them, which are relevant for the purpose of disposal of the present petition, are reproduced as under:

“(a) 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;

xxx xxx xxx xxx

(c) 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;

xxx xxx xxx xxx

(e) 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;

xxx xxx xxx xxx

(g) 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. Reference can further be made to ***Gian Singh vs. State of Punjab : (2012) 10 SCC 303***, wherein Hon'ble Supreme Court has observed that the power of the High Court in quashing a criminal complaint or an FIR, in exercise of its inherent jurisdiction, is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accordance with the guidelines engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. Reference can also be made to ***Padal Venkata Rama Reddy @ Ramu vs Kovvuri Satyanarayana Reddy and others : (2011) 12 SCC 437***, wherein it was observed that the inherent power under Section 482 Cr.P.C. can be exercised only when no other remedy is available to the litigant

and not in a situation where a specific remedy is provided by the statute. Reliance can further be placed upon *State of Andhra Pradesh vs. Gourishetty Mahesh and others, 2010 Criminal Law Journal 3844*, wherein the Apex Court has propounded that while exercising jurisdiction under Section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained as that is the function of the trial Court.

8. It is also well settled proposition of law that the exercise of powers under Section 482 Cr.P.C. to quash proceedings is an exception and not a rule. In *Dr. Monica Kumar and another vs. State of U.P. and others : (2008) 8 SCC 781*, the Apex Court has propounded that the inherent jurisdiction under Section 482 Cr.P.C., though wide, is to be exercised sparingly, carefully and with caution, only when such exercise is justified by the test specifically laid down in the section itself and appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of this power. The inherent powers do not confer an arbitrary jurisdiction upon the High Court to act according to whims and caprice. In *Taramani Parakh vs. State of M.P. and others : 2015 (2) RCR (Criminal) 445*, Hon'ble Supreme Court has held that Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or

records but on an opinion formed prima facie. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied, if there is substantial compliance with the requirements of the offence.

9. It is also well settled that if a petition under Section 482 Cr.P.C. has been filed at the stage of investigation, then it is only required to be considered whether a cognizable offence is disclosed or not. However, when the statements of the witnesses are recorded, evidence is collected and the chargesheet is filed after conclusion of investigation/enquiry, the matter stands on a different footing and the Court is required to consider the material/evidence collected through investigation. Even at that stage, the High Court is not required to go into the merits of the allegations and/or entering into the merits of the case as if it is exercising the appellate jurisdiction and/or conducting trial. If in order to examine as to whether the factual contents of the FIR disclose any cognizable offence or not, the High Court cannot act like investigating agency nor can exercise the powers like an appellate court. The said question is required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring any proof. At this stage, the High Court cannot appreciate the evidence as to whether it can draw its own inference from the contents of the FIR and the material relied on it. The appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C. Reference in this regard can also be made to the observations made by Hon'ble Supreme Court

in *Kaptan Singh vs. State of U.P. and others*, 2021 SCC Online SC 580 and *Dhruvaram Murlidhar Sonar vs. State of Maharashtra* :, (2020) 3 SCC (Criminal) 672, wherein Hon'ble Supreme Court has observed that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. Inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.

10. I have considered the contentions raised by learned counsel for the parties in the wake of above discussed position of law. In view of the arguments raised by the parties, the foremost issue, which in the opinion of this Court requires determination, is whether the allegations made against the petitioners are general/omnibus and are liable to be quashed. On applying the ratio of law as laid down in the above cited cases to the facts and circumstances of the present case, I am of the considered opinion that no case for quashing the FIR or the consequential proceedings arising therefrom has been made out. Respondent No. 2/complainant, in her complaint filed before the police, had levelled specific allegations against the petitioners qua her daughter/respondent No. 3 being harassed by them on account of bringing insufficient dowry, qua demand of dowry and also to the effect that her *istridhan* in the form of ornaments etc., which was in the custody of the petitioners, has been criminally misappropriated by them. On the basis of these allegations, it cannot be stated that no case for commission of offences punishable under Section 406 and 498-A of IPC has been made out against the

petitioners. It would be pre-mature to say so and the aforesaid aspect is to be considered during trial.

11. Keeping in view the facts and circumstances of the case, this Court finds no ground whatsoever to interfere at this stage for quashing of the FIR as well as consequent proceedings emanating therefrom. The petition is accordingly dismissed. The trial is directed to be conducted further in accordance with law and on its own merits.

12. It is, however, clarified that no observations made herein above are the reflection on the merits of the case and shall have no bearing on trial. The same are confined for the decision of the present petition only.

05.04.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>