

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



05.04.2023, the petitioner did not visit Punjab. As per the version of the petitioner, he had been transferring money from time to time to respondent No.2-wife *qua* maintenance of respondent No.2 as well as their daughter through Western Union, Privacy Office, 7001 E, Belleview Ave, Denver, CO 80237 as well as through Money Gram and sometimes, the brother of the petitioner had been transferring some amount to respondent No.2 through NEFT directly in her account in HDFC Bank, Garhshankar-Hoshiarpur Road. However, respondent No.2-wife refused to accept the said amount. Communication dated 03.01.2023 (Annexure P-7) and communication dated 01.05.2023 (Annexure P-8) was received by the petitioner from the Western Union.

3. Learned counsel for the petitioner further contends that the petitioner had made all efforts for getting the visa for respondent No.2-wife and their daughter. Reference has also been made to the Retainer Agreement dated 14.03.2019 (Annexure P-11) and Notice/Receipt I-30 dated 19.10.2018 (Annexure P-12). It is further contended that initially, due to COVID-19 pandemic, the work of grant of immigration was suspended for a period of two years, as such, delay occurred in the decision on the application for grant of visa to respondent No.2-wife and their daughter.

3.1 It is further contended that on 15.01.2020, the immigration authorities sought documents i.e. the marriage certificate, marriage palace bill, bills of expenses incurred on food in the marriage and the proof of birth of the child in the hospital etc. These documents could have been provided only by respondent No.2, since the marriage took place in India. However, the decision on the application regarding denial for grant of immigration visa to respondent No.2-wife was sent to the petitioner by the U.S. Citizenship and Immigration



Services by way of communication dated 20.08.2020 (Annexure P-16), whereby, it was informed that the petitioner did not submit sufficient evidence needed for espousal of the petition and additional evidence was again sought with regard to the aforesaid documents. The said message was forwarded to respondent No.2-wife through the office of the attorney of the petitioner. However, respondent No.2-wife did not send any such documents to the immigration authorities.

3.2 It is further contented that the petitioner, due to his pre-occupational assignments in U.S.A., could not visit India for a long period, as such, he had been informing respondent No.2 to do the needful for sending the requisite documents but failure in sending the requisite documents on the part of respondent No.2 culminated in the closure of immigration case of respondent No.2 and their daughter.

3.3 It is further alleged that during the visit of the petitioner to India on 09.03.2019 to 24.05.2019, respondent No.2 again became pregnant. However, she insisted for abortion of the pregnancy which was objected by the petitioner. The petitioner was attacked by the family of respondent No.2 and respondent No.2 even threatened him to commit suicide by jumping into a river. On 11.05.2019, the petitioner took respondent No.2-wife to a maternity home situated on Garhshankar-Nawanshahr Road, where the medical opinion was given against abortion, as per the OPD Slip (Annexure P-18). Ultimately, the petitioner went back to U.S.A. on 24.05.2019. Thereafter, respondent No.2 managed to get the child aborted in the absence of the petitioner.

3.4 Learned counsel for the petitioner further contends that the present FIR has been registered as a counter-blast to the application/complaint dated 05.01.2022 (Annexure P-2), sent by the petitioner through e-mail from U.S.A. to



NRI ADGP, Punjab for redressal of his grievances and on account of harassment by respondent No.2-wife by way of giving threats to the petitioner. It has been further contended that the present FIR has been got registered with the help of relative of respondent No.2 namely Sh. Raj Kumar, who is DSP in Punjab Police. It is contended that a look-out circular was illegally got issued against the petitioner and the petitioner was arrested in the present FIR on his arrival at New Delhi Airport on 31.03.2024.

3.5 Learned counsel for the petitioner further contends that despite making all efforts for obtaining immigration visa for respondent No.2-wife and their daughter, the visa case was closed as respondent No.2-wife did not supply the requisite additional documents. Due to the stubborn attitude of respondent No.2, cohabitation of the petitioner with her became impossible, as such, the petitioner had filed a petition under Section 9 of the Hindu Marriage Act, 1955 on 18.11.2022 before the Family Court, Hoshiarpur.

3.6 Learned counsel for the petitioner further contends that the present FIR is barred by period of limitation, as envisaged under Section 468 Cr.P.C., since the cognizance in the matter cannot be taken after a period of 03 years. It is contended that the last meeting of the petitioner and respondent No.2 was during the period from 09.03.2019 to 23.05.2019, as such, the registration of the present FIR on 05.07.2022 i.e. after a period of more than 03 years of the alleged cruelty, is a misuse of the process of law. Cognizance cannot be taken by the Magistrate. It is further contended that at the time of filing of the present petition, even the final report/challan under Section 173 Cr.P.C. was not presented before the trial court.



4. On the other hand, learned State counsel has opposed the present petition on the ground of gravity of allegations levelled against the petitioner. It has been informed that after completion of the investigation, final report (*'challan'*) has been presented before the trial Court. A copy of the said report has been submitted in Court today, which is taken on record as Annexure R-1.

5. I have heard learned counsel for the parties and perused the relevant documents.

6. Keeping in view the fact that final report/challan under Section 173 Cr.P.C. has already been presented before the trial Court and copy of the report has been supplied, seeking of formal reply from the State is dispensed with.

7. The petitioner is seeking quashing of the FIR primarily on the following three grounds:-

(i) That the present FIR is a counter-blast to the complaint/e-mail dated 05.01.2022 sent by the petitioner to NRI, ADGP, Punjab.

(ii) That the present FIR has been registered with the aid and assistance of a relative of the petitioner namely Sh. Raj Kumar, who is DSP in Punjab Police; and

(iii) That the registration of the FIR is a misuse of the process of law.

8. Admittedly, the marriage of respondent No.2/complainant took place with the petitioner on 11.01.2017. A daughter was born out of the wedlock on 18.11.2017. After the marriage, the petitioner went back to U.S.A. within a period of two months. As per the version of the petitioner, he visited India only for a period of about two months in the year 2019. As per the allegations in the



FIR, the petitioner and his family members stayed in a rental house for a period of one month at the time of marriage. Thereafter, the petitioner and his relatives did not permit respondent No.2/complainant to stay in her matrimonial home situated at Village Kitna. After marriage, before going to U.S.A., the petitioner left respondent No.2-wife in her parental house. There are also allegations that after the birth of the female child, the petitioner and his family members had been showing their displeasure as they wanted to have a baby boy. The petitioner and his family members had been pressurizing respondent No.2/complainant for sex determination test.

9. It is further an allegation against the petitioner that during the second visit of the petitioner to India in the year 2019, the complainant again got pregnant and she was advised by the doctor that said pregnancy is not safe. There are allegations against the petitioner that he subjected respondent No.2-complainant to cruelty. The complainant became sick, as such, her abortion took place on 20.05.2019. The petitioner did not take care of the complainant and he went back to U.S.A. on 24.05.2019.

10. The complainant has further alleged that she had sent all the documents, which were required for submission of the visa application. However, the petitioner never gave the consent letter for applying passport for their daughter and he has been levelling false allegations that the complainant had not sent the requisite documents for submission to the visa authorities.

11. The investigation is complete. Challan/final report under Section 173 Cr.P.C. has been presented before the trial Court. The said report is not under challenge in the present petition. The allegations as to whether the present FIR is counter-blast to a complaint sent by the petitioner through e-mail, is a



matter of trial. The sole ground that the petitioner has filed a petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights, is not sufficient at this stage to conclude that the present FIR is a misuse of the process of law, since the said petition has been filed after filing of the complaint by respondent No.2/complainant. The present FIR was though registered on 22.03.2023, however, the complaint was filed by respondent No.2-wife on 05.07.2022, which is the basis for registration of the present FIR. Some inquiry has been conducted prior to the registration of the FIR on the basis of the said complaint.

12. Copy of the petition under Section 9 of the Hindu Marriage Act, 1955 is submitted by the learned counsel for the petitioner during the course of arguments, which is taken on record as Annexure-PX. A perusal of the said petition indicates that the contentions raised by the petitioner-husband in the said petition and the conduct of the petitioner are self-contradictory. The said petition was filed on 18.11.2022. As per the version of the petitioner, he had visited India during the period from 17.03.2023 to 05.04.2023 but he has never visited Punjab in that period nor did he meet the complainant. In such circumstances, filing of a petition for restitution of conjugal rights, is merely an eye-wash. Even otherwise, the requisite documents, which were sought by the immigration authorities were never submitted, as such, the visa application of respondent No.2-complainant was *prima facie* not allowed. From the year 2017, till the registration of the FIR, the petitioner has never lived with respondent No.2-complainant.

13. In Para No.12 of the petition filed by the petitioner under Section 9 of the Hindu Marriage Act, 1955, he has submitted that he has made many attempts to resume the matrimonial life with respondent No.2, but in vain.



Contrary to that, the petitioner has alleged in Para No.15 of the present petition that due to the stubborn attitude of respondent No.2, cohabitation of the petitioner with respondent No.2 became impossible and that is why the petitioner had filed a petition under Section 9 of the Hindu Marriage Act, 1955. Such contradictory plea taken in the present petition as well as in the petition filed under Section 9 of the Hindu Marriage Act, 1955 indicates that the petitioner is trying to blow hot and cold in the same breath. The allegations in the FIR and the grounds taken by the petitioner in the present petition are a matter of trial.

14. Keeping in view the final report/challan presented by the prosecution under Section 173 Cr.P.C. and in the light of the arguments raised by the learned counsel for the petitioner, this Court is of the considered opinion that the allegations against the petitioner *prima facie* show the commission of cognizable offence by the petitioner, which can only be adjudicated by means of evidence during the trial.

15. 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.”

16. Keeping in view the facts and circumstances on record and in view of the ratio of the decision by the Hon’ble Apex Court in ***Ch. Bhajan Lal’s case (supra)***, no ground is made out for quashing of the present FIR.

17. Consequently, the present present petition stands dismissed.

18. However, it is made clear that the observations made hereinabove would not affect the trial Court while proceeding further.

19. Pending miscellaneous applications, if any, shall stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

17th July 2024
simran

Whether Speaking : Yes/No
Whether reportable : Yes/No