

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Date of order: 16.02.2024

CRM-M-22377-2023 (O&M)

Birinder Singh Grewal @ Birinder Singh

.....Petitioner(s)

Vs.

State of Punjab & Another

.....Respondent(s)

CRM-M-27748-2019 (O&M)

Birinder Singh Grewal @ Birinder Singh

.....Petitioner(s)

Vs.

State of Punjab & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Tushar Madaan, Advocate
for the petitioner.

Mr. Sukhsandesh Singh Chahal, AAG Punjab.

Mr. V.G. Jor, Advocate
for respondent No.2.

Nidhi Gupta, J.

CRM-M-22377-2023

Present petition under Section 482 Cr.P.C. is filed for issuance of an appropriate order or direction quashing the impugned proceedings dated 13.05.2019 initiated against the petitioner under Section 105-B Cr.P.C. (Annexure P5); and communication dated 04.06.2019 (Annexure P6) for Execution of service of notice abroad under Section 105-B Cr.P.C. upon the accused/petitioner; arising out of case FIR No.13 dated

13.03.2019 (Annexure P3) under Section 498-A IPC registered at Police Station NRI, Police Commissionerate, Ludhiana.

CRM-M-27748-2019

Present petition under Section 482 Cr.P.C. is filed seeking quashing of FIR No.13 dated 13.03.2019 (Annexure P-3) under Section 498-A IPC registered at Police Station NRI, Police Commissionerate, Ludhiana.

2. Both matters are being disposed of by common order as they arise out of common facts and circumstances, and same FIR No.13 dated 13.03.2019 (Annexure P3) registered under Section 498-A IPC at Police Station NRI, Police Commissionerate, Ludhiana. Being a Permanent Resident of Canada, the petitioner has filed the present petitions through his Special Power of Attorney holder/his father namely Inderpaljit Singh. For the sake of convenience, facts/Annexures are being referenced from CRM-M-22377-2023.

3. Ld. Counsel for the petitioner states that the petitioner was married to the complainant on 21.04.2014. The parties had gone to Canada in 2015, after which they have not returned to India. It is contended that accordingly not only are the the allegations made in the present FIR totally false and fabricated, even no offence is made out in India. Moreover, provisions of Sections 188, 156 and 157 of the Cr.P.C have not been complied with; and that the local police has no jurisdiction to enquire into the present matter. It is further submitted that similar allegations were made by the complainant against the petitioner in a criminal complaint

filed by her in Canada. The same have already been enquired into by the Superior Court of Justice in Brampton, Canada, whereupon the criminal complaint filed by respondent No.2 has already been dismissed by the said Court vide detailed order dated 21.09.2021 (Annexure P-11). Furthermore, after registration of the above said FIR dated 13.3.2019, the parties have been granted divorce in Canada on 16.9.2019; and have even remarried thereafter. It is stated that therefore, the present case has assumed the nature of 'luxury litigation' and pursuing this would be an exercise in futility, as also a waste of the valuable time of this Court. It is further stated that great harassment and humiliation is being caused to the petitioner and his family due to the vengeful and frivolous litigation imposed upon the petitioner.

4. Ld. Counsel for the petitioner further relies upon judgement of the Hon'ble Supreme Court in **"Social Action Forum for Manav Adhikar & Another v. Union of India Ministry of Law and Justice & Others"** Law Finder Doc Id # 1220455.

5. Ld. Counsel for the complainant submits that the matter may be referred to mediation for amicable resolution of all disputes.

6. No other argument is made on behalf of the parties. I have heard learned counsel for the parties.

7. Briefly stated, the admitted facts as borne out from the record may be noted in chronological order as follows: –

21.04.2014 - The petitioner solemnized marriage with the respondent no. 2/ complainant as per Sikh rites and ceremonies on 21.04.2014 at Ludhiana.

08.11.2015 - The respondent No.2 is a Permanent Resident of Canada since 2013. The respondent no. 2 sponsored the petitioner whereafter he got his visa and reached Canada on 08.11.2015. The petitioner got Permanent Residency after 3 months of reaching Canada.

10.04.2018 – No child was born out of the wedlock of the petitioner and the complainant. Till 2018, the parties lived happily. However, thereafter, due to certain issues that arose between both of them, and temperamental differences, the petitioner and the respondent no.2 decided to part ways vide separation agreement dated 10.04.2018 (Annexure P1).

23.04.2018 – The petitioner and respondent No.2 never returned to India after their marriage. However, respondent No.2, through her Special Power of Attorney/her father, moved applications dated 23.04.2018, with the IGP, NRI and Women, Mohali levelling allegations against the petitioner and his parents.

06.02.2019 - Balwinder Singh, the special power of attorney of respondent no. 2 again approached the Punjab State Commission for NRIs, where after the Commission gave various directions to the Police officials at Annexure P-2 Colly.

13.03.2019 –Then the present FIR dated 13.03.2019 (Annexure P-3) was registered against the petitioner and his parents. However, Challan was filed only against the present petitioner/husband of the complainant/respondent No.2 herein.

20.06.2019/08.11.2019 - Thereafter, the petitioner and the respondent no.2 had appeared before the competent court in Canada and recorded

their statements dated 20.06.2019 (Annexure P7) agreeing for divorce; whereupon their marriage stood dissolved by an order dated 16.09.2019 of the Superior Court of Justice, Brampton; and the divorce took effect on 17.10.2019; and vide decree dated 08.11.2019 (Annexure P9) they were granted decree/certificate of divorce by the abovesaid Court of Canada.

18.02.2020 – Simultaneously, the respondent no. 2 also initiated criminal proceedings against the petitioner in Canada in which the petitioner was inter alia charged for unlawfully committing assault on the complainant and sexual assault on the complainant on various dates, vide Charge Sheet dated 18th February 2020 (Annexure P-10).

8. Counsel for the parties are also in agreement that thereafter, the respondent No.2 has remarried and so has the petitioner. It is therefore, clear that much water has flown under the bridge as the parties have moved on with their lives in Canada, while the present litigation is being pursued in India through their Special Power of Attorney holders/fathers.

9. Perusal of the FIR reveals that the complainant has made general omnibus allegations against the petitioner and his parents regarding alleged demands of dowry made by them upon her. However, no specific instances or dates and times are mentioned as to when such demands of dowry were made by the petitioner and his parents. Moreover, it has been admitted therein that the complainant had left for Canada after five months of marriage. It has also been admitted by the complainant on

record that for the first three-four years of her marriage with the petitioner, they were happy and living together harmoniously.

10. The Hon'ble Supreme Court in "**Kahkashan Kausar @ Sonam & Others Vs. State of Bihar & Others**" Law Finder Doc ID # **1941423**, has categorically held that "general and omnibus allegations cannot manifest in a situation where relatives of complainant's husband are forced to undergo trial - FIR liable to be quashed". Para 12 of Kahkashan Kausar (supra) reads as under:-

"12. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his relatives."

11. The above view has been reiterated by the Hon'ble Supreme Court in "**Geeta Mehrotra & Another Vs. State of UP & Another**" Law Finder Doc ID # **397283**; "**Preeti Gupta & Another Vs. State of Jharkhand & Another**" Law Finder Doc ID # **214039**; and "**K. Subba Rao & Others Vs. The State of Telangana & Others**" **2018 (14) SCC 452**.

12. Perusal of the Order Sheets shows that Proceedings dated 13.05.2019 initiated against the petitioner under Section 105-B Cr.P.C. (Annexure P5); and communication dated 04.06.2019 (Annexure P6) for Execution of service of notice abroad under Section 105-B Cr.P.C. upon the accused/petitioner were stayed by a Co-ordinate Bench of this Court

vide order dated 12.05.2023; whereby the parties were also referred to mediation. Report dated 02.08.2023 of the Mediator is as follows: –

“The case is a non-starter as no one has appeared on behalf of the respondent on any date of the mediation. Both the parties Birender Singh and Sukhjot Kaur are staying in Canada, however, parents of the petitioner came present on every date of mediation. The father of the petitioner has placed his power of attorney on record. No one appeared on behalf of the respondent on any date of mediation so, mediation could not take place. The counsel for the respondent has informed the Mediation Centre that his party is out of station/country, so, they would not be able to attend the mediation proceedings on any future date also. The case is listed on 16.9.2023 before the Hon’ble High Court.

Under the circumstances, the case file be sent back to the Hon’ble Court for further adjudication.”

13. It is also pertinent to note that the complainant in her testimony before the Superior Court of Justice in Canada, has denied making the present complaint/FIR, stating that the same has been initiated by her parents in India. Be that as it may, the observations/findings of the Superior Court of Justice in Brampton, Canada as contained in order dated 21.09.2021 (Annexure P-11) while dismissing the criminal complaint filed by respondent No.2, may be briefly noticed as below:

“17. The couple had a major argument on April 9, 2018. The next day the accused convinced the complainant to go to a lawyer's office and sign a separation agreement. It was backdated a year in order to allow for immediate divorce.

18. A criminal marriage fraud investigation in India was commenced very soon afterwards. It appears that the essence of it

was the allegation that the accused married the complainant only for the purpose of entering Canada and becoming a permanent resident. There was also an allegation with respect to a dowry fraud. This subject came up in the Crown's examination-in-chief but it was only in cross-examination that the marriage fraud investigation was fully explored. The complainant conveyed the impression throughout that while she knew generally of the marriage fraud investigation, she knew virtually nothing of the details. It was her parents who were the driving force.

19. Throughout the complainant's evidence, it was stressed that what she most wanted post-separation was to reunite with the accused and resume the marriage. This was emphasized over and over and was common ground between the Crown and the defence. The complainant said she loved the accused and tried to retain the relationship "at any cost." The marriage fraud investigation had an important potential purpose in facilitating this hoped-for reconciliation. The complainant's family also pursued monetary compensation from the accused and his family. The marriage fraud allegation and investigation sought to visit on the accused all the consequences of a criminal conviction if the two did not get back together.

20. The marriage fraud allegation was aggressively extortive. It exerted maximum pressure on the accused. If the accused agreed to get back together with the complainant, it is likely the fraud allegation would have evaporated. The message was "Get back together with the complainant or you might suffer very serious consequences, including jail and monetary penalties." There was nothing subtle about this.

21. The impression that the marriage fraud allegation was brought for an ulterior motive was strengthened by the reality that the accused separated from the complainant well after the two year point at which he was already eligible for permanent residency. If he really had intended to use the complainant as his "human passport" as the complainant and the emails alleged, the separation from her would likely have been much earlier in their relationship, following closely after the expiration of the two-year period for permanent residency status. The marriage fraud allegation, as it appeared at this trial, was weak.

22. The documents concerning the marriage fraud allegation that Mr. Locke used to confront the complainant hit her credibility with incendiary impact and attacked the very foundation of this prosecution. The complainant denied writing the emails, saying that it was her parents, sister or their lawyer who had written them. She also denied having any specific knowledge of them previously.

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25. I disagree with the Crown's argument that the complainant agreed to knowing about the emails and the marriage fraud investigation. Her evidence was quite clear in this regard. She made persistent efforts in her evidence to deny knowledge of the details and to distance herself from the emails. It is my conclusion that she

likely orchestrated the marriage fraud investigation and wrote the emails herself, perhaps with some help. In any case, at the very least, there can be no doubt that she was aware of the emails and did nothing to correct the admittedly false information they conveyed.

26. The problem with involvement in or knowledge of the emails is that the complainant in this trial testified that other than the offences committed by the accused against her, her married life with the accused was relatively good. Yet the emails to the authorities describe a miserable existence. Nothing in her trial evidence supported these allegations. In addition, the vindictiveness evident in the emails, merited or not, demonstrates a deep antagonism towards the accused and a committed attempt to rain dire consequences upon him. As the marriage fraud investigation was still ongoing at the time of the criminal complaint to the police in December of 2018, it is reasonable inference that the criminal complaints of sexual assault and assault were part of the same extortive effort to force the accused back into the marriage or suffer extreme consequences for ending their marriage.

27. In summary, the marriage fraud investigation provides a glimpse into the complainant's antagonism towards the accused, hoping to manipulate him to resume the marriage. This level of virulent antagonism severely damages her credibility. Furthermore, the evidence demonstrates that the complainant likely wrote these documents. There are multiple falsehoods in them. I find that in her testimony, when the complainant denied writing them or having prior specific knowledge of them, she attempted to mislead the court. This further erodes her credibility.

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39. I do not need to avert to or evaluate the accused's evidence. I have serious credibility questions about the complainant and her sister's evidence. The evidence with respect to the marriage fraud investigation poses an insurmountable hurdle for the prosecution. In addition, I am convinced that the complainant gave false evidence on several subjects during her testimony. This taints all the complainant's evidence and all counts on the indictment. Findings of guilt are impossible on this record. The Crown's case falls well below the beyond a reasonable doubt level of certainty required. It must be dismissed."

14. Without commenting on the above observations/findings of the Court in Canada, however, keeping in view the totality of the facts and circumstances of the case as noted above, present petition is **allowed**, and impugned proceedings under Section 105-B Cr.P.C. (Annexure P5) dated 13.05.2019 and 04.06.2019 (Annexure P6) arising out of case FIR No.13 dated 13.03.2019 (Annexure P3) under Section 498-A IPC

registered at Police Station NRI, Police Commissionerate, Ludhiana; and FIR No.13 dated 13.03.2019 under Section 498-A IPC registered at Police Station NRI, Police Commissionerate, Ludhiana (Annexure P3), are quashed qua the petitioner.

15. Pending application(s) if any also stand(s) disposed of.

16.02.2024			(Nidhi Gupta)
Sunena			Judge
	Whether speaking/reasoned	Yes/No	
	Whether reportable	Yes/No	