

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M No. 34635 of 2022 (O&M)
Reserved on: 05.03.2024
Pronounced on :15.03.2024

Manpreet Kaur and another Petitioners
Versus

State of Punjab and another Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sunil Panwar, Advocate for petitioner No.2.

Mr. Siddharath Sandhu, Assistant Advocate General, Punjab
for respondent No. 1.

Mr. Kamaldip Singh Sidhu, Advocate
for respondent No. 2-complainant.

HARKESH MANUJA, J.

The petitioners, by way of present petition filed under Section 482 Cr.P.C., seeks quashing of FIR No. 38 dated 01.07.2022 (Annexure P-1) under Sections 420 & 120-B of IPC, registered at Police Station Bhadaur, District Barnala (Punjab) alongwith all the subsequent proceedings arising therefrom.

[2] The FIR (supra) is primarily based on an alleged breach of agreement dated 17.08.2020 (**Annexure P-2**) executed between the father of petitioner No. 1 and father of respondent No. 2-complainant. Relevant extract from the agreement dated 17.08.2020 followed by the extract from the FIR (supra), are re-produced hereunder:-

“ Agreement dated 17.08.2020:-

That Manpreet Kaur daughter of Party No. 2 had secured 6 bands in IELTS in September 2019 where after Party No. 2 with

the best of their knowledge and free will as also with the consent of their above said daughter got her engaged with Gurdeep Singh Gill son of Party No. 1 where after with the consent of Manpreet Kaur she was sent to Canada and the entire expenses were borne by Party No. 1. After 3½ months Manpreet Kaur came back to her parents place (Party No. 2) for getting married with son of Party No. 1 Gurdeep Singh Gill where after both the parties got the marriage performed of their son and daughter with due customs in the presence of all the relatives and friends on 25.12.2019 at Brar Palace Bhagta Bhaika and the entire expenses were borne by the Party No. 1. After marriage both Manpreet Kaur and Gurdeep Singh Gill are happily leading their married life and now Manpreet Kaur has again gone back to Canada and Party No.1 had borne the entire expenses of sending her again and till date Party No. 1 has spent total Rs.30 Lacs and apart from this the college in Canada in which Manpreet Kaur has to study one Semester Fee amounting to Rs. 4.50 Lacs has to be paid by 18.08.2020 by Party No. 1 and will keep on paying further also and Manpreet Kaur while staying in Canada along with her study will try to work and take out her expenses as well as fees and Manpreet Kaur will be bound to finish the paper work as soon as possible and call her husband Gurdeep Singh Gill to Canada. If Manpreet Kaur rather than calling her husband Gurdeep Singh Gill to Canada keeps dilly-delaying or gets married over there again then Party No. 2 shall be bound to return whatever money is spent by Party No. 1 along with 1.5% interest and if they do not return Party No. 1 shall recover the entire amount along with interest from Party No. 2 legally and if Manpreet Kaur again calls her husband Gurdeep Singh Gill to Canada then she will not leave him and neither will Gurdeep Singh Gill leave his wife Manpreet Kaur.

FIR No. 38 dated 01.07.2022

That the complainant was desirous of settling abroad and the complainant and his family wanted the complainant to go to Canada and settle, so in the meantime, accused Balwinder Singh

son of Harchand Singh, resident of Sangatpura, District Moga, met who told that his daughter Manpreet Kaur has got 6 band from IELTS and his family wants that if any eligible boy is ready to send her to Canada by paying all expenses, then they are ready to marry Manpreet Kaur with that boy. So after 1-2 meetings with accused mentioned in the subject, it was decided between us that we will bear whatever the cost will come to send Manpreet Kaur abroad and the marriage will also be done with the rituals and customs of Manpreet Kaur and the complainant permanently. It was also decided that after marriage an application will be filed by Manpreet Kaur in favour of complainant to settle in Canada with Manpreet Kaur in the immigration file, and that all this work was decided to be done by Manpreet Kaur and her parents, that is, by the accused mentioned in the subject. 2. That after our mutual consent, an engagement ceremony of Manpreet Kaur and the complainant was held on dated 03-09-2019 at Kaka Sweets and Restaurant at Mukam Badhani Kalan, after which Manpreet Kaur was sent to Canada and she was sent to ST. Clair College, Chathan, Ontario was admitted. All the expenses of which were done by the complainant. Copy is attached. 3. That after that Manpreet Kaur came back to India in December 2019 to get married with the complainant and the complainant and his family organized a grand wedding program at Brar Palace, Bhakta Bhaika with maximum expenses and the marriage of complainant and Manpreet Kaur took place in Gurudwara Singh Sabha, Sangatpura on 25-12-2019 through Anand Karz and after some time after the marriage, Manpreet Kaur returned to Canada again in January 2020 after cohabiting as wife in the house of the complainant. 4. That the marriage was also registered at the Registrar's Office, Bhadaur for filing the immigration file of the complainant during Manpreet Kaur's stay in India. 5. That the complainant spent approximately Rs.57,00,000/- on the asking and believing the accused of the subject matter which amount was spent in cash and through Bank in the presence of witness from time to time.

6. That earlier Manpreet Kaur used to talk to complainant and his family members over phone but after some time Manpreet Kaur's behaviour started to change and she started refraining from talking to complainant and his family members. It also happened that the other accused mentioned in the subject also started ignoring complainant and his family members, while many times the complainant and his family members went to the said accused from time to time and complained that Manpreet Kaur is not calling or is refusing to answer the phone. From the conversation of whose, it was clear that Manpreet Kaur is doing all this with the conspiracy and consent of her parents and brother. 7. That on 22-01-2022, Manpreet Kaur again came back to Punjab, and was brought by the complainant from Delhi Airport. But the complainant saw that the behaviour of Manpreet Kaur had completely changed who was refusing to talk to complainant and after staying for 3 days at complainant's house, she left the house of complainant with the accused in the subject cited above. When the complainant tried to bring Manpreet Kaur back to house again, she started to hesitate. Then the said accused gave a straight reply to the complainant and said that Manpreet Kaur is not ready to live in the house of the complainant at any cost rather she wants to end the relationship and all the accused mentioned in the subject have cheated the complainant by planning with a calculated conspiracy and now she wants to end the relationship with complainant and return to Canada again. The complainant and his family tried to bring Manpreet Kaur back to their home through the relatives, but Manpreet Kaur instead of staying at complainant's house started threatening and said that if complainant forcibly takes her home then she will kill herself by eating some poisonous substance and implicate complainant's whole family in a murder case because of which complainant and his family are very scared of and the complainant is now fully convinced that he has been defrauded of such a huge amount of Rs.57,00,000/- by the accused persons mentioned in subject under calculated conspiracy which is very a

necessary to be recovered. 8. Accordingly, by presenting the complaint, it is requested that by registering a case against the accused persons mentioned in the subject, under relevant legal provisions and after arresting them, the amount of Rs. 57,00,000/- should be recovered and should be returned to the complainant and justice should be given to the complainant.”

[3] Impugning the aforesaid FIR, learned counsel for the petitioners submitted that even if the contents of agreement and the FIR were taken at face value, at best, the present was a case of breach of terms of agreement and there was no element of cheating involved. Learned counsel pointed out towards the covenants under the agreement dated 17.08.2020, whereby in case of any delaying in tactics being adopted by petitioner No. 1 in calling respondent No.2 to Canada or petitioner No.1 getting remarried in Canada, petitioner No. 2 at best was bound to return the amount alongwith interest and thus, the proper remedy for respondent No. 2 or his father was to file a suit for recovery by seeking enforcement of the agreement dated 17.08.2020. Relevant portion of the agreement dated 17.08.2020 in this regard is reproduced hereunder:-

“ If Manpreet Kaur rather than calling her husband Gurdeep Singh Gill to Canada keeps dilly-delaying or gets married over there again then Party No. 2 shall be bound to return whatever money is spent by Party No. 1 along with 1.5% interest and if they do not return Party No. 1 shall recover the entire amount along with interest from Party No. 2 legally.”

[3.1] Learned counsel for the petitioners further submitted that in the entire FIR, it was nowhere alleged that right from inception, there was any dishonest or fraudulent intent, apparent on the part of petitioner No. 1 or her

father, so as to make respondent No.2 or his father to part with the money for sending petitioner No. 1 abroad or spending towards her education there and thus, no offence under Sections 420 & 120-B of IPC was made out. He also submits that even as per the records, the agreement dated 17.08.2020 was executed between the parents of the parties i.e. Bhola Singh, father of respondent No. 2 and Balwinder Singh (petitioner No. 2), father of petitioner No. 1 and as such, no complaint as regards cheating on its basis could have been entertained at the instance of respondent No. 2-Gurdeep Singh Gill.

[4] On the other hand, learned State Counsel vehemently opposed the prayer made in the present petition, while submitting that the petitioners having made respondent No. 2 and his family to spend on her education have chosen not to take respondent No. 2 abroad and as such, committed an act of cheating; thus, the FIR in question warrants no interference.

[5] Learned counsel representing respondent No.2 also opposed the prayer made herein while submitting that the FIR in question was registered after a thorough inquiry being conducted by the investigating agency having associated the petitioners therein, followed by filing of final report under Section 173 Cr.P.C. as well as framing of charges by the Court concerned upon the material available on the file vide order dated 17.10.2023 and thus, at this stage, the Court below having formed *prima facie* opinion based on the material available on record, the exercise of power under Section 482 Cr.P.C. was not called for in order to quash the FIR in question. For the said purpose, he placed reliance upon latest decision rendered by this Court in case ***“Jaspal Kaur Versus State of Punjab and others”, 2023(2) RCR (Criminal) 715***. Learned counsel also submitted that once the charge was

framed by the trial Court vide its order dated 17.10.2023, the appropriate remedy available to the petitioners was to assail the same in revisional jurisdiction under Section 397 Cr.P.C., rather than, invoking Section 482 Cr.P.C., seeking quashing of the FIR.

[5.1] Learned counsel for respondent No.2 also placed reliance upon the documents attached to the written statement to contend that petitioner No.1 having reached Canada, sent certain messages to respondent No.2-complainant for the purpose of enabling him to migrate to Canada, however, during the inquiry conducted by the police officials, petitioner No.1 could not produce any document to support the same.

[5.2] Referring to the contents of the FIR coupled with the final report, learned counsel for respondent No.2-complainant pointed out that a clear cut case of dishonest intention on the part of petitioners, right from the inception, was clearly made out and thus, there was no occasion for this Court to invoke its jurisdiction under Section 482 Cr.P.C.

While referring to Annexure R-2/1, learned counsel respondent No.2 also pointed out that the version mentioned therein was in total contrast to the stand taken in the petition.

[6] I have heard learned counsel for the parties and gone through the paper-book/relevant record and I find substance in submissions made by the ld. Counsel for the petitioners. During arguments as well as in his reply, respondent No 2 has admitted the execution of the agreement between his father and petitioner No 2. Sum and substance of this agreement is that all the future expenses regarding the studies of petitioner No 1 at Canada, in

addition to Rs. 30 lakh already paid by him, will be borne by the father of respondent No 2 and in turn, petitioner No 1 will be bound to finish the paperwork and call her husband i.e. respondent No 2 to Canada. At the same time, consequences in case of breach of this agreement were also specified therein and it was duly recorded that petitioner No 2 shall be bound to return whatever money is spent along with 1.5% interest and if they do not return, father of respondent No 2 shall recover the entire amount legally along with interest.

[7] It is not the case of respondent No 2/complainant that this agreement was entered under some coercion, rather the father of respondent No.2/complainant entered into this agreement with eyes wide open, respondent No 2 also being fully aware about this factual position. In agreement, it was categorically specified that father of respondent No.2/complainant would be entitled only for the recovery of money spent by him through legally permissible ways. Having entered into this agreement, the only recourse available to respondent No 2 is to approach Civil Court for the recovery of money as the liability in the present case is only civil. After restricting his options by way of this agreement, respondent No 2 is not entitled to give criminal colour to the present case so as to pressurize the petitioners. Once an agreement has been entered between the parties specifying the consequences of the breach as well, then registration of the FIR and initiation of the criminal proceedings by respondent No 2 for the breach of the agreement clearly amounts to abuse of the process of law and the judicial process.

[8] There is also substance in the another argument raised by Id. Counsel for the petitioners that in the facts and circumstances of the present case, it cannot be held that right from the inception, there was any dishonest or fraudulent intent or inducement by petitioners. Marriage in the present case was held on 25.12.2019, while the agreement was registered on 17.08.2020. Execution of the agreement nullifies the case of respondent No.2 because of the fact that in the agreement it was duly mentioned that both the parties were happily leading their married life. Therefore, the requirement of dishonest intentions from the inception so as to attract any offence under Section 420 IPC was never fulfilled in the present case. Reliance in this regard can be placed on the judgment Of Hon'ble Apex Court in "**Mariam Fasihuddin v. State by Adugodi Police Station**" bearing neutral citation 2024 INSC 49, which has also been relied upon by the Id. Counsel for the petitioner. Relevant para of the same is reproduced here under:

“11. It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.”

[9] Judgment in **Jaspal Kaur**'s case, which has been relied upon by the learned Counsel for the respondent No 2, did not held as a principle

of law that once charges have been framed, this Court cannot exercise its power u/s 482 CrPC to quash the FIR, rather it was merely an observation in the form of obiter in relation to the facts and circumstances of that particular case. Relevant para from this judgment is reproduced here under:

“14. A reading of the judgments (supra) in the light of the facts of the present case would clearly establish that there are sufficient grounds to presume that the offence has been committed by the petitioner as well in conspiracy with her husband-Jasmer Singh. The specific role of the petitioner has been clearly enumerated by the complainant not only in the original complaint but also during the course of enquiry, which culminated in the FIR, and therefore, the uncontroverted allegations in the FIR as also the report under Section 173 Cr.P.C., which has culminated into an order of framing of charges prima facie establishes the commission of the offence by the petitioner as well and a full-fledged enquiry or appreciation of evidence is not to be done at the stage.”

[10] A perusal of the aforesaid reveals that this point was neither argued nor there was any discussion as such on this aspect. To the contrary, judgment relied upon by the Id. Counsel for the petitioners in "**Anand Kumar Mohatta v. State (Govt. of NCT of Delhi)**", reported as 2019(11) SCC 706, upheld the counter position. Relevant para from this judgment are reproduced here under:

“Conclusion

15. First, we would like to deal with the submission of the learned Senior Counsel for the Respondent No.2 that once the charge sheet is filed, petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in Joseph Salvaraj A. v. State of Gujarat, 2011(3) RCR (Criminal) 632 : (2011) 7 SCC 59. In the case of Joseph Salvaraj A. (supra), this Court while deciding the ques-

tion whether the High Court could entertain the 482 petition for quashing of FIR, when the charge sheet was filed by the police during the pendency of the 482 petition, observed: -

"16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not."

16. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 Cr. P.C and that this Court is hearing an appeal from an order under Section 482 of Cr.P.C. Section 482 of Cr.P.C reads as follows:-

"482. Saving of inherent power of the High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial court G. Sagar Suri and Anr. v. State of U.P and Others, 2000(1) RCR (Criminal) 707 : (2000) 2 SCC 636 (Para 7). Umesh Kumar v. State of Andhra Pradesh and Anr. (2013) 10 SCC 591 (Para 20). Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court."

[11]. Therefore, considering the parameters laid down by Hon'ble Supreme Court in "**State of Haryana and others v. Ch.Bhajan Lal and others**", reported as 1991 (1) RCR (Criminal) 383, in my considered opinion, present petition satisfies the criteria specified under section 482 of Cr.P.C. to invoke its powers for quashing of the FIR to prevent the abuse of the process of Court and present case is duly covered under the following specified conditions in Ch.Bhajan Lal's case (supra), which is reproduced hereunder:-

"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;"

[12]. In view of the discussion held above, petition is allowed. FIR No. 38 dated 01.07.2022, registered under Sections 420 & 120-B IPC at Police Station Bhadaur, District Barnala (Punjab) and all the subsequent proceedings arising therefrom are hereby quashed.

[13]. Pending application(s), if any, shall also stand disposed of.

March 15, 2024
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(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>