

121 THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35060-2024
Date of decision: 24.07.2024

Deepak Duhan ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manish Saharan, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C./Section 528 of BNSS seeking quashing of FIR No.0279 dated 08.10.2023 (Annexure P-1) under Sections 323/34/377/406/498-A of IPC registered at Police Station PS Sector 14, Gurugram along with reports dated 25.11.2023 under Section 173 Cr.P.C. (Annexure P-2).

2. Briefly, the facts as alleged are that the marriage between the petitioner and respondent No.2 was solemnised on 06.12.2014, in accordance with Hindu rites and rituals. On 03.04.2016, the petitioner, under the influence of liquor, forcible had unnatural sexual intercourse with respondent No.2 He also mercilessly beat her, following which respondent No.2 made dialled the Women Helpline at 1091. Two police personnel showed up and took the petitioner away. On 04.04.2016, respondent No.2 moved a complaint before Women Police Station, Sector 10-A, Gurugram. Consequently, the petitioner started threatening to divorce respondent No.2. A panchayat was convened and



CRM-M-35060-2024

-2-

the matter was settled, however, respondent No.2 was yet again subjected to physical cruelty in lieu of a demand for a luxury car and a plot. The petitioner left for Bulgaria in June, 2018 and respondent No.2 joined him there in December, 2018. Due to ongoing physical cruelty, respondent No.2 returned to India on 02.08.2019. On 29.10.2022, respondent No.2 was shunned out of her matrimonial home. Not only her *istridhan* is in possession of the accused, the petitioner also pressurised her to transfer Rs. 13- 15 lakh to his account. The petitioner also took Rs. 10 lakh in cash from the father of respondent No.2 in order to buy a new house in Jind.

3. Learned counsel for the petitioner *inter alia* contends that the FIR (*supra*) has been registered as a counter blast to the divorce petition filed by him under Section 13 of the Hindu Marriage Act on the ground of cruelty and desertion. Admittedly, the FIR was registered after two years of her leaving the matrimonial home. During investigation, the veracity of the allegations made by the complainant, have been thoroughly examined and two of the co-accused against whom the same set of allegations were levelled, have been exonerated and offences under Sections 377/34 of IPC have been dropped. The complainant has also refused medical examination, therefore, in the absence of any corroborative material, no offence is made out against the petitioner. It is further contended that there are material contradictions in the prosecution case and that the bank transfer from the wife's account to the petitioner's account cannot be construed as criminal act. Lastly, when the wife was diagnosed with cancer, the petitioner himself paid the entire expense of the treatment.

4. Having heard the learned counsel for the petitioner and after perusing the record with his able assistance, this Court does not find it proper to



CRM-M-35060-2024

-3-

adjudicate upon disputed questions of fact while the matter is pending consideration before the learned Court below. The matter requires to be adjudicated by the learned trial Court on the basis of the evidence adduced by the parties and the probable defence as set up by the petitioner cannot be gone into at this stage.

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

6. A two Judge bench of the Hon'ble Supreme Court in the ***Rathish Babu Unnikrishnan Vs. State (Govt. of NCT) 2022 SCC Online SC 513***, speaking through Justice Hrishikesh Roy, observed as under:

“17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”

Furthermore, in ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458***, a two Judge bench of the Hon'ble Supreme Court, speaking through Justice Adarsh Kumar Goel, made the following observations:

“17. As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact.”

7. Accordingly, the present petition is dismissed. Pending miscellaneous application(s), if any, also stand disposed of.
8. However, nothing observed herein shall be construed as expression of an opinion by this Court lest it may prejudice 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

24.07.2024
Neha

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