

2024:PHHC:164923



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

283

CRM-M-36530-2024

Date of decision: 04.12.2024

Ashish Mahna alias Kumar Zeenat Mahna and another

....Petitioners

V/s

State of Haryana and another

....Respondents

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Jatin, Advocate for
Mr. Rohit Jindal, Advocate for the petitioners.
Ms. Mahima Yashpal, DAG Haryana.
Mr. Vicky Sharma, Advocate for
Mr. Kunal Jindia, Advocate for respondent No.2-complainant.

SUMEET GOEL, J. (Oral)

1. By way of present petition filed under Sections 528 of Bhartiya
Nagarik Suraksha Sanhita, 2023, the petitioners are seeking quashing of FIR
No.0440 dated 10.05.2022 (Annexure P-1) under Sections 323, 34, 406,
498-A, 506 of IPC, registered at Police Station, Camp Palwal, District
Palwal, Haryana and final report dated 24.08.2023 (Annexure P-21) filed
under Sections 323, 34, 406, 498-A and 506 of IPC as also charge-sheet
dated 22.02.2024 (Annexure P-22).

2. The FIR, as spelt out in the present petition, is as follows:

*“Complaint regarding demanding dowry and physical assault against
Ashish Mahna (husband) and Shashi Mahna (Mother in law). Sir, I Neha
Mahna wife of Ashish Mahna and daughter of Gian Chand Shan is permanent
resident of House no. 62A/L New Colony, Palwal, Haryana. I got married to
Ashish Mahna son of Late Rajpal Mahna resident of 308, Ground Floor,
Behera Enclave, Pashchim Vihar, New Delhi on 10.12.2006 as per Hindu
Rites and ceremonies. Out of this wedlock, two children were born namely
Aditya Mahna aged about 14 years and Arjan Mahna aged about 11 years. At
the time of marriage, on the demand of my mother in law Shashi Mahna one
Maruti valeno car and lot of other dowry articles and jewelry were given on*

the demand of my husband and mother in law, list is attached. After sometime of marriage my mother in law and husband started torturing and taunting me for bringing less dowry and started demanding various things. In order to save myself from torture time to time I brought goods, jewelry and cash from my parents. But the greed of my husband and mother in law kept increasing. During this period my husband has sold the car and sofa set given in dowry and till date I have no knowledge regarding the amount received for them My husband had asked me to bring Rupees twenty lacs cash from my parents in order to start his business, but I refused, in the month of June 2013 my husband took me to my parental home after pressurizing me and I demanded Rupees twenty lacs from my parents under the pressure of my husband and they gave it to my husband and mother in law after arranging it so that I can reside peacefully. Again in the month of march, 2014 my husband took Rupees thirty lacs in cash by saying that they are purchasing one floor/house in Fateh, Delhi which shall be purchased in the joint name of me and my mother in law and the same is being bought at a very low price. On this my father in order to save me from the atrocities of my husband and mother in law gave rupees thirty lacs after arranging it from relatives on 09.03.2014. On 16.03.2014 when I asked my mother in law about the floor, then my mother in law provoked my husband and said that I speak a lot and I should be taught a lesson. On this my husband took me to the room and pushed me on the bed and threw newspapers and oil on the bed and set them on fire and he ran away outside, I somehow extinguished the fire and saved myself. My husband has taken my signatures on many documents forcefully. After that my mother in law and my husband in connivance with each other have got the registry of floor transferred in their name on 16.04.2014, when I came to know about this on 17.04.2014 I asked my husband about it and he gave me merciless beatings and my husband ran away from the house, I kept on calling him and sending SMS requesting him to come home and his mother continuously threatened me. My husband came back at 3 A.M. in the morning and threatened me that he will not allow me to live in the house for a moment. Next day on 18.04.2014 on the eve of the birthday of my younger son Arjan my brother Anuj and sister in law Supriya came to my in laws house but I didn't talk to them about this. But my husband never bothered about anything and misbehaved with them and said that they should take their sister with them and she has no place in their house in this manner my husband and mother in law threw me and my children out of the house and my brother took me to his home at Palwal. After that a lot of efforts were made by my family but my husband and mother in law did not agree to keep me in their house on which I had given a written complaint in the Police Station on which FIR No. 337 dated 02.07.2014 was registered at Police Station Camp Palwal. After the registration of FIR my husband and mother in law had filed a petition in

the Hon'ble Court for Anticipatory Bail. During the proceedings both the parties were directed to appear before the mediation center at Palwal where both the parties entered into a MOU Agreement in which my husband and mother in law promised to return Rupees fifty lacs and to treat me well.. Copy of the MOU dated 22.07.2014 is attached. On this Hon'ble District and Sessions Judge recorded the joint statement of both the parties as per MOU in which my husband and mother in law had agreed to return Rupees fifty lacs along with interest, certified copies are attached herewith. And they took me to matrimonial home. Thereafter my husband and mother in law got the FIR quashed from the High Court Chandigarh on 20.08.2015. The Rupees Fifty lacs which was promised to be returned and which is mentioned in the MOU, even a single penny has not been returned till date but my husband and mother in law again started torturing me and taunting me and threatened me that we will not let you live here. I kept quiet due to my children and kept on tolerating everything and never told this to my parents. During this, my husband and mother in law started instigating my children against me and created distance between me and my children. Whenever I tried to demand for the amount my mother in law and husband gave me beatings and would create trouble. I was going through troubling times but I kept on tolerating due to my children. On 09.03.2021 my husband and my mother in law had brutally beaten me and the photos of the same are attached, I informed my parents regarding this, on this, on the date of 13.03.2021 my parents reached the house of maternal uncle (Mama) of my husband to talk and I, my husband and mother in law also reached there, when my parents started talking with them, my husband and my mother in law insulted them and told that they will not keep me and asked them to take me away. My parents tried a lot to convince them but they did not agree and they threw me out of the house in three clothes and my parents took me to Palwal. All of my istridhan, jewelry etc. are with them. During this I asked about coming back to home but they did not pay any heed and clearly refused to keep me at home. I requested your goodself that my istridhan, certificate, passport, driving license and Rupees Fifty lacs along with interest may kindly be returned back to me, list of which is attached and I may be allowed to meet my children and strict action may be taken against the accused persons and justice may be delivered to me. Accused persons are very clever and I am having threat that they can kill me. Thanking you. Attached Copy of MOU, Copy of Dowry Articles, Copy of Earlier FIR and copy of order of Court, Photographs regarding beatings. SD/ Applicant XXXX”

3. Learned counsel for the petitioners contends that after the earlier FIR was quashed between the parties, petitioner No.1-husband resumed his married life with respondent No.2-complainant for the sake of his family. Pursuant to the execution of the memorandum of agreement, the petitioners brought respondent No.2-complainant back to her matrimonial home with the hope of rekindling their marital relationship but the behaviour of respondent No.2 became increasingly cruel. According to learned counsel, the respondent No.2 has filed the instant FIR against the petitioners on the same set of allegations as those in the earlier FIR. Learned counsel has iterated that the allegations leveled by the respondent No.2-complainant are baseless and appear to have been made in collusion with her family members with the sole intent to extort money from the petitioners. Learned counsel has further iterated that there is delay of 08 years in filing the instant FIR, during which no specific offences were mentioned by respondent No.2-complainant. The delay and the repeated allegations raised serious doubts about the veracity of the claims of the complainant. Learned counsel has further contended that a bogus and fabricated story has been concocted in order to harass and humiliate the petitioners. It has been further argued that from the evidence available on record, no element of criminality has been made out against the petitioners. Moreover, the FIR is absolutely mala fide and is lodged with ulterior motive. Additionally, the present case is a matter of private vendetta against the petitioners. Thus, the quashing of the instant FIR has been prayed for.

4. Status report dated 10.10.2024 by way of affidavit of Mohinder Singh, HPS, Deputy Superintendent of Police, District Palwal has been filed by the State of Haryana; relevant whereof reads as under:-

“4. That thereafter further investigation of the case was carried out by HC Seema Rani, P.S. Camp Palwal. On 1.4.2023 the accused Ashish Mahana (petitioner No.1) and Shashi Mahana (petitioner No.2) were joined in the investigation after they were granted concession of interim anticipatory bail by this Hon'ble Court. During investigation, they did not cooperate and refused to sign on their respective disclosure statements. They were released on bail as directed.

5. That on completion of the investigation, the final report against the present petitioners was filed on 11.10.2023 and now their trial is pending before the learned Court of Chief Judicial Magistrate, Palwal and same is fixed for 24.10.2024 for recording of prosecution witnesses. The charge against the petitioners was framed on 22.2.2024. No witness of the prosecution has been examined out of the total seven witnesses.

6. That the present petitioners are named in FIR and there is sufficient evidence on record against them. Moreover, the charge against them has already been framed by the learned Trial Court. Therefore, the present petition deserves to be dismissed.”

Learned State counsel has raised submissions in tandem with the above-said reply.

5. Learned counsel for the respondent No.2-complainant has chosen not to file any written reply and has raised submission in consonance with the submissions raised by learned State counsel.

6. I have heard learned counsel for the rival parties and have perused the available record.

7. The primary allegations made in the impugned FIR against the petitioners relate to causing harassment to respondent No.2, both physically and mentally, in relation to dowry demands and eventually expulsion of the complainant from the house & non-returning of the dowry articles/istriddhan. The petitioners have sought quashing of the FIR as also further proceedings on the ground that allegations raised in the FIR do not constitute any offence as neither the FIR nor the evidence collected disclose commission of any offence against them; the petitioner No.1-husband and respondent No.2-

complainant (wife) are living happily as evidenced by the photographs

annexed as Annexure P-10 to P-13. Furthermore, the instant FIR appears to be a mere tactic employed by respondent No.2-complainant to exert undue pressure on the petitioners, ostensibly for monetary gain and to claim their property. It would be apposite to refer herein to a judgment of the Hon'ble Supreme Court titled as ***State of Haryana and others vs. Ch. Bhajan Lal and others, 1992 AIR (Supreme Court), 604***, relevant whereof reads as under:

“107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 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 F.I.R. 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 F.I.R. 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.

108. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice”

7.1. Another aspect of the argument advanced by the petitioners is that the present FIR (Annexure P-1) appears to be a clear instance of double jeopardy, as the allegations raised by the respondent No.2/complainant are identical to those made in the earlier FIR, which has already been quashed by this Court. At this stage, in the considered opinion of this Court, the disputed questions of fact are to be addressed only after proper appreciation of evidence which can only be done during the course of trial and not at this stage. Furthermore, the principle of double jeopardy is not applicable in the present case as the earlier FIR was quashed on the basis of a compromise having been arrived at between the parties and did not result in a full trial or adjudication on the merits of the allegations. The instant FIR is based on additional facts and subsequent conduct of the petitioners, which are not part of the earlier proceedings. Moreover, the contention being of factual nature,

has to be gone into during the course of trial after consideration of evidence

led by the rival parties. The Hon'ble Supreme Court in a catena of judgments has held, that while exercising inherent jurisdiction under Section 482 of Cr.P.C., the High Court cannot act like a trial Judge and can only evaluate the material and documents on record but cannot appreciate the evidence. A profitable reference can be made to the judgment in the case titled as ***State of Madhya Pradesh vs. Awadh Kishore Gupta and others*** **2004(1) RCR (Criminal) 233**, has held as under:

"13. xxxxxxxxxxxxxxxxxxxxxxxxxxxx. While exercising jurisdiction under Section 482 of the Code, it is not permissible for the Court to act as if it was a trial Judge. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. In Chand Dhawan (Smt.) v. Jawahar Lal and Ors. (1992(3) SCC 317: 1992(3) RCR(Cr.) 534 (SC)), it was observed that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 of the Code, which cannot be termed as evidence without being tested and proved. When the factual position of the case at hand is considered in the light of principles of law highlighted, the inevitable conclusion is that the High Court was not justified in quashing the investigation and proceedings in the connected case."

8. Though, the aforesaid two judgments deal with the parameters pertaining to Section 482 of Cr.P.C., 1973 but in essence the provision contained in Section 528 of BNSS, 2023 is same as in Section 482 of Cr.P.C., 1973. Therefore, the ratio decidendi of the aforesaid judgments would apply with the same vigour to the petition in hand which has been filed under Section 528 of BNSS, 2023. Moreover, at this stage, such a detailed discussion on disputed question of fact is not warranted, otherwise it

BNSS, 2023. A disputed question of fact is to be addressed after proper appreciation of evidence which can be done only during trial and not at this stage.

9. Keeping in view the entirety of the facts and circumstances of the present case, I am of the considered view that no case for quashing of instant FIR is made out. No interference is, thus, called for to invoke inherent jurisdiction of this Court. The petitioners shall, however, be at liberty to raise all their pleas before the trial court at an appropriate stage, if so advised.
10. Nothing said hereinabove shall be deemed to be an expression of opinion upon merits of the case/investigation.
11. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)

JUDGE

December 04, 2024

Ajay

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