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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-37798-2024 (O&M)
Date of decision: 05.08.2024

Ravi Kumar

...Petitioner

Vs.

State of Haryana and another

...Respondents

CORAM: HON'BLE MR JUSTICE HARPREET SINGH BRAR

Present: Mr. Shokeen Singh Verma, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J.

1. This petition has been filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023 seeking quashing of FIR No.12 dated
28.04.2023 under Sections 323, 34, 354, 498-A of the Indian Penal Code,
1860 (for short 'IPC'), registered at Women Police Station Sonipat and all
the subsequent proceedings arising therefrom.

2. Brief facts of the case are that FIR (*supra*) was registered at
the instance of respondent No.2 on the allegations that her marriage with

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the petitioner was solemnized according to Hindu rites and rituals. After 10 days, the accused persons started demanding car and cash of Rs.2.00 lacs and abused her. In 2015, a male child namely Viyan was born out of the said wedlock, at Panipat, as all the accused persons thrown her out of the matrimonial home on 06.08.2014 and for the last 07 years, she was living in her father's house. In June, 2016, she filed a case before learned Family Court for livelihood of herself and her son, in which Rs.6,000/- per month was fixed. To avoid the maintenance, in December, 2021, after admitting the fault of his brother and mother in front of her parents, her husband took her and their son to her matrimonial home. After some time, the petitioner again started demanding dowry and gave beatings to her. When she told about the wrong doing of Deepak with her, to her husband, he and his mother beaten her up. On 30.05.2022, the accused pressurized her and aborted two months old child without her free will. On 31.03.2023, the accused persons gave beatings to her and thereafter, she called the police twice on 1091. The police/PCR officials provided mobile number i.e. 7015743034 of ASI Narender, Police Station Murthal, who was already known to the accused persons and he threatened her and told her to visit the police station, otherwise, he would put her in jail. After giving beatings to her, she was put inside a room and on 01.04.2023, she freed herself from the clutches of the accused persons and went to her parental home and if they came to know about this, they would kill her. Thereafter, she along

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with her mother went to the hospital for preparing medical report and do not trust ASI Narender and investigation of the case should be done by other police station. On 02.04.2023, ASI Narender came to her house and threatened her to come to police station, otherwise he would register a case against her and said that he would not let anything happen to the accused persons. At that time, she was alone in her house. With these allegations, FIR (*supra*) was registered.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case. On the same set of allegations, earlier also, one FIR No.18 dated 24.03.2017 under Sections 498-A, 406, 323, 506 read with Section 34 of IPC was registered at Police Station Women Cell, District Sonipat against the petitioner and his family members. Thereafter, the petitioner filed a petition seeking divorce from his wife-respondent No.2 on 12.09.2017, which was allowed on 16.12.2019. The petitioner and his family members were acquitted by learned trial Court in aforementioned FIR No.18. It is further contended that in another FIR No.204 dated 14.06.2024 under Sections 323, 34, 376, 506, 511 of IPC, registered at Police Station Murthal, District Sonipat against brother and mother of the petitioner, cancellation report was submitted.

4. *Per contra*, learned State counsel appears on advance notice and opposes the prayer made by the petitioner on the ground that in FIR No.18, the petitioner was acquitted, as his wife-respondent No.2 had

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appeared before learned trial Court and on the basis of compromise between the parties, she started living in her matrimonial home, but the petitioner continued to harass her and she was compelled to register another FIR. It is admitted case that respondent No.2-complainant challenged the decree of divorce before this Court by way of filing FAO-806-2020 and during pendency of the said appeal, the petitioner and respondent No.2 appeared before this Court and submitted that they have compromised the matter and they are staying together. As such, the appeal was allowed and decree of divorce dated 16.12.2019 was set aside vide order dated 19.12.2022. The petitioner once again started harassing respondent No.2 and as such, FIR (*supra*) was registered on 28.04.2023. The investigating agency has already concluded the investigation and submitted the final report under Section 173 Cr.P.C. and the case is fixed for framing of charge before learned trial Court.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, this Court finds no force in the arguments raised by the learned counsel for the petitioner. The probable defence set up by the petitioner in the present petition cannot be appreciated in a petition under Section 482 Cr.P.C., as it is a matter of evidence. It is settled law that disputed questions of fact can only be adjudicated after the parties have duly adduced their evidence. The High Court, in exercise of its inherent powers under Section 482 Cr.P.C. is



obligated to make a just and equitable choice and cannot go beyond its ambit to evaluate the truthfulness of the allegations or the veracity of the defence, however, convincing it might seem. Any such attempt would be impermissible in law, as it would amount to giving finality to the accusations, even before the prosecution is allowed to adduce evidence to substantiate the same.

6. A two Judge Bench of the Hon'ble Supreme Court recently examined this issue in ***Rathish Babu Unnikrishnan Vs. State (Govt. of NCT of Delhi) and another, 2022 SCC Online SC 513*** and speaking through Justice Hrishikesh Roy, the following was observed:-

"17. The consequences of scuttling the criminal process at a pretrial 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."

7. A two Judge Bench of the Hon'ble Supreme Court in ***HMT Watches Ltd Vs. M.A. Abida, (2015) 11 SCC 776***, speaking through Justice



Dipak Misra, has held as under:

"10..... Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties."

8. Further, a two Judge Bench of the Hon'ble Supreme Court in ***Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited, (2016) 10 SCC 458***, 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."

9. Keeping in view the aforesaid facts and circumstances of the case and also in view of law settled by the Hon'ble Supreme Court in the cases referred to above, present petition is dismissed being devoid of merit.

10. All the pending miscellaneous application(s), if any, shall be

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disposed of.

11. Nothing observed in this order shall be construed as an expression of opinion by this Court on the merits of the case, lest it may prejudice the outcome of the trial.

05.08.2024
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[HARPREET SINGH BRAR]
JUDGE

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