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CRM-M-40527-2023 (O & M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-40527-2023 (O&M)

Reserved on :23.08.2024

Date of Pronouncement:28. 08.2024

Kamaljeet Singh and ors.

... Petitioners

Versus

State of Punjab and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Kanwal Goyal, Advocate, for the petitioners.

Mr. Prabhdeep Singh Dhaliwal, AAG, Punjab.

Mr. Aarav Gupta, Advocate, (Amicus Curiae),
for respondent No.2.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of FIR No.16 dated 18.02.2023 under Section 4 of the Dowry Prohibition Act, 1961 registered at Police Station Chhajli, District Sangrur (Annexure P-1) as well as the consequential proceedings arising therefrom including the report under Section 173 (2) Cr.P.C. dated 12.06.2023 (Annexure P-2).

2. The brief facts of the case leading to the registration of the FIR are that the complainant-Surjan Singh son of Mangat Singh got registered the aforementioned FIR with the allegations that he had got fixed the marriage of his daughter-Kuldeep Kaur with accused-petitioner

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No.1 Kamaljeet Singh for 07.12.2022. The accused forced him to book the California Palace at Dirba. The marriage cards had been printed and all the planning had taken place including distribution of cards. However, the accused persons got greedy and demanded Rs.25 lacs as dowry as a condition precedent for the marriage. A Panchayat was convened and respectables reached the house of the accused persons where they again reiterated their demand of dowry of Rs.25 lacs, upon which, they would perform the marriage of Kamaljeet Singh with his daughter-Kuldeep Kaur. Therefore, the accused had committed the offence in question for which they were liable to be prosecuted. A copy of the FIR is attached as Annexure P-1 to the petition.

3. Based on the investigation conducted, the report under Section 173(2) Cr.P.C. was presented and the copy of the same is attached as Annexure P-2 to the petition.

4. The aforementioned FIR (Annexure P-1) and the report under Section 173(2) Cr.P.C. (Annexure P-2) are under challenge in the present petition.

5. The learned counsel for the petitioner contends that in terms of Section 8-A of the Dowry Prohibition Act, 1961 as applicable to the State of Punjab, the prosecution itself could not be instituted against any person under the Act without the previous sanction of the District Magistrate, etc. Initiation of prosecution meant that the FIR could not be registered and therefore, there was no question of consequential



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investigation. As there was an express bar to the very institution of proceedings, therefore, the FIR (Annexure P-1) and the final report (Annexure P-2) were liable to be quashed. Reliance is placed on the judgments in '*State, CBI versus Sashi Balasubramanian & Anr., 2006(4) RCR (Criminal) 947, Deepak Kumar and Anr. Versus The State of Punjab and anr. (in Crl. Misc. No.-5304-M of 1988 decided on 13.01.1989, Mrs. Sukhwinder Kaur versus Mrs. Harjinder Kaur (in Crl.Misc. No.8580-M of 1988 decided on 25.09.1989), Angrez Singh and ors. Versus State of Punjab and ors. (in Crl. Misc. No.8021-M of 1990 decided on 12.04.1991), Nirmal Kaur versus Balbir Singh and ors. (in CRR No.272 of 1991 decided on 08.12.1991), Komal Jain versus Amit Jain and ors. (in CRR-3000 of 2010 decided on 04.08.2011) and State of Haryana versus Ch. Bhajan Lal, AIR 1992 SC 604*'.

6. The learned Amicus Curiae for respondent No.2 has not disputed the legal position as argued by the learned counsel for the petitioner.

7. The learned counsel for the State, on the other hand, while referring to the reply dated 30.01.2024 contends that as the offence was established from the allegations levelled in the FIR, the present petition was liable to be dismissed.

8. I have heard the learned counsel for the parties.

9. Before proceeding further, it would be relevant to examine the provisions of Section 8-A of the Dowry Prohibition Act, 1961 as



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applicable to the State of Punjab and the same is reproduced hereinbelow:-

“8-A. Institution of proceedings.--No prosecution shall be instituted against any person in respect of any offence committed under this Act without the previous sanction of the District Magistrate or of such officer as the State Government may by special or general order appoint in this behalf.”

10. In ***‘State, CBI versus Sashi Balasubramanian & Anr., 2007(2) Crimes 91’***, one of the questions which had arisen was as to when did a prosecution begin. The Hon’ble Supreme Court held that the term ‘prosecution’ would include institution or commencement of a criminal proceeding and would also include an inquiry and an investigation. The relevant paragraphs of the said judgment is reproduced herein below:-

15.A declaration is required to be filed in the form prescribed therefor. Time and manner of payment of tax arrears is provided for in Section 90. Section 91 provides for immunity from prosecution and imposition of penalty in certain cases. Section 95 provides for exceptions as regards the applicability of the Scheme, Clause (iii) whereof, which is relevant for our purpose, reads as under :

“95. The provisions of this Section shall not apply

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... ..

(iii) to any person in respect of whom prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, 1860, the



Foreign Exchange Regulation Act, 1973 (46 of 1973), the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Terrorists and Disruptive Activities (Prevention) Act, 1987 (28 of 1987), the Prevention of Corruption Act, 1988 (49 of 1988), or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any such enactment.

The principal questions which arise for consideration are-

- (i) Whether the Scheme is applicable in relation to a public servant ?*
- (ii) When does a prosecution start ?;*
- (iii) Whether the offences enumerated under Section 95(iii) are excluded from immunity in terms of Section 91 of the Act ?*

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25. It is in the aforementioned context, interpretation of the word ‘prosecution’ assumes significance. The term ‘prosecution’ would include institution or commencement of a criminal proceeding. It may include also an inquiry or investigation. The terms ‘prosecution’ and ‘cognizance’ are not interchangeable. They carry different meanings. Different statutes provide for grant of sanction at different stages.



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11. The judgments in '*State, CBI versus Sashi Balasubramanian & Anr., Deepak Kumar and Anr. Versus The State of Punjab and anr. Mrs. Sukhwinder Kaur versus Mrs. Harjinder Kaur, Angrez Singh and ors. Versus State of Punjab and ors., Nirmal Kaur versus Balbir Singh and ors. Komal Jain versus Amit Jain and ors. and State of Haryana versus Ch. Bhajan Lal (supra)*' are to the effect that the proceedings are liable to be quashed if there is no prior sanction under Section 8-A of the Dowry Prohibition Act, 1961 as applicable to the State of Punjab obtained from the District Magistrate.

12. As to the circumstances in which proceedings can be quashed, the Hon'ble Supreme Court in '*State of Haryana versus Ch. Bhajan Lal, AIR 1992 SC 604*', has held as under:-

“(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;



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(4) where the allegations in the FIR 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 FIR 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”.

13. A perusal of Section 8-A of the Dowry Prohibition Act, 1961 as applicable to the State of Punjab alongwith the various judgments of the Hon’ble Supreme Court and this Court would go to show that no prosecution can be instituted against any person in respect of any offence committed under the Act without the previous sanction of the District Magistrate.

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14. As in the instant case, the FIR has been registered without any prior sanction of the concerned officer, it is apparent that there is an express legal bar engrafted in provisions of the Act to the institution and continuation of proceedings.

15. In view of the above, I find considerable merit in the present petition. The same is allowed and the FIR No.16 dated 18.02.2023 under Section 4 of the Dowry Prohibition Act, 1961 registered at Police Station Chhajli, District Sangrur (Annexure P-1), the final report under Section 173 (2) Cr.P.C. dated 12.06.2023 (Annexure P-2) as well as all the consequential proceedings arising therefrom are hereby quashed.

(JASJIT SINGH BEDI)
JUDGE

August 28, 2024
sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No