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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-40601-2024 (O&M)
Date of decision: 22.08.2024

Vikas and others

...Petitioners

Vs.

State of Haryana and another

...Respondents

CORAM: HON'BLE MR JUSTICE HARPREET SINGH BRAR

Present: Mr. Rohit Choudhary, Advocate
for the petitioners.

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.97 dated 09.07.2019 under Sections 323, 354-A, 406, 506, 498-A, 34 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Women Police Station Faridabad and all the subsequent proceedings arising therefrom.
2. Brief facts of the case are that FIR (*supra*) was registered on the basis of an application moved by respondent No.2 on the allegations that her marriage was solemnized with petitioner No.1 on 22.11.2015 according to Hindu rites and rituals and out of this wedlock, no child was born. After sometime of

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the marriage, her in-laws started harassing her and demanded Rs.20.00 lacs to purchase a flat and on being objected, she was maltreated by her mother-in-law. When she informed to her father, he came to her matrimonial home and he was also abused by her mother-in-law and brother-in-law and they threatened to kill her, if their demand was not fulfilled. She was pressurized to give birth to a child and in this regard, her mother-in-law took her to a tantrik and threatened to throw her out of the matrimonial home, if she did not give birth to a child. Eventually, her father gave Rs.10.00 lacs to her in-laws. About one year ago, her brother-in-law attempted to assault her and he threatened not to tell about the incident, otherwise he would ruin her life. On being informed to her mother-in-law, she assured that her brother-in-law namely Ashish would not harm her again. The petitioners demanded Rs.10.00 lacs more and when she expressed her displeasure, she was shunted out of her matrimonial home. After that, she went to her parental home and narrated the entire incident to her parents and thereafter, filed a complaint at Police Station Sector-31, Faridabad on 21.02.2019 and on being summoned by the office of ACP/CAW, the petitioners along some respectables of the society apologized in writing and assured not to commit such mistake in future and took her back to her matrimonial home and shifted her to a separate flat. On 01.05.2019, her grandmother-in-law passed away and she went to her in-laws house and after 15-20 days, the petitioners again started harassing her and they conspired to eliminate her, by leaving the gas supply leaked in the kitchen. On 31.05.2019, petitioner No.1 left her at Sector-31, Faridabad at night and threatened not to return her matrimonial home without additional money for



the flat. With these averments, complainant-respondent No.2 requested to take legal action against the petitioners.

3. Learned counsel for the petitioners, *inter alia*, contends that initially, respondent No.2-complainant made a complaint and the matter was compromised between the parties and pursuant to that, respondent No.2-complainant withdrew the complaint. Petitioner No.1 filed a divorce petition before the jurisdictional Family Court and as a counter-blast to the same, FIR (*supra*) was registered. It is further contended that continuation of the proceedings in the FIR (*supra*) is sheer abuse of process of law, as the same is apparently a counter-blast to the divorce petition filed by petitioner No.1. Learned Family Court has already granted divorce on the ground of cruelty. The earlier complaints filed by the complainant were found to be false and the allegations made in the FIR (*supra*) lack specificity. Petitioner No.2 is uncle of husband of complainant-respondent No.2 and he is residing separately.

4. *Per contra*, learned State counsel appears on advance notice and submits that at this stage, probable defence of the petitioners cannot be looked into by this Court and it is a matter of trial, as the disputed questions of facts can only be adjudicated on the basis of evidence led by the parties.

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 petitioners. The probable defence set up by the petitioners in the present petition cannot be appreciated in a petition under Section 528 BNSS, 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 528 BNSS 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 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. In view of the aforementioned facts and circumstances of the case at hand, present petition is dismissed being devoid of merit.

10. All the pending miscellaneous application(s), if any, shall stand disposed of.

11. Needless to say that 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.

12. However, considering the fact that petitioners No.2 to 4 are residents of Delhi and petitioner No.5 is residing in District Gurugram and trial of FIR (*supra*) is progressing at Faridabad and attending trial on each and every date would cause great inconvenience and hardship to them, therefore, in view of the ratio laid down by this Court in CRM-M-25963-2023 titled as ***Suresh Kumar and another Vs. The State of Haryana and another, 2023 (2) Law Herald 1498***, personal appearance of petitioners No.2 to 5 before learned trial Court is ordered to be exempted, subject to the following conditions:-

- i) they will be represented through their counsel;*
- ii) they will not delay/stall the trial proceedings;*
- iii) they will not dispute their identity as accused;*
- iv) they will have no objection if the prosecution evidence is recorded in their absence but in the presence of their counsel;*
- v) they will appear before the trial Court as and when required; and*
- vi) any other condition, which the trial Court may impose.*

22.08.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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