

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-41306-2019 (O&M)
Date of order: 28.02.2024

Raj Rani & Others

.....Petitioner(s)

Vs.

Nisha Badhan

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Amit Dhawan, Advocate
for the petitioners.

Mr. Sahil Soi, Advocate
for the respondent.

Nidhi Gupta, J.

Present petition under Section 482 Cr.P.C. is filed seeking quashing of complaint No.336/2017 dated 09.06.2017 titled as "Nisha Badhan Vs. Ashwani Kumar & Others" (Annexure P7) filed under Section 12 of The Protection of Women from Domestic Violence Act, 2005; and subsequent summoning order dated 09.06.2017 passed by learned JMJC, Jalandhar (Annexure P8); and order dated 28.07.2017 passed by learned CJM (NRI Cases), Jalandhar (Annexure P10).

2. Learned counsel for the petitioners inter alia submits that Petitioner No.1 is the mother-in-law, petitioner No.2 is the father-in-law, petitioner No.3 is the brother-in-law and petitioner No.4 is the sister-in-law of the respondent/complainant. The respondent was married to son of petitioners No.1 and 2 on 30.01.2011. Son of petitioners No.1 and 2 was settled in Australia. As such, soon after the marriage the son of the

petitioners No.1 and 2 left for Australia. From there he regularly sent money to the respondent as is evident from receipts of money transfer (Annexure P1). Thereafter, the complainant also went to Australia in August, 2012, after being granted a visa on 11.07.2012. One daughter was born to them on 21.08.2013. On 14.09.2014, the respondent and the son of petitioners No.1 and 2 was granted permanent residency in Australia. Learned counsel submits that immediately thereafter, behavior of the respondent changed drastically, and she left the matrimonial home in Australia in December, 2014. Even though the respondent was working and earning in Australia, her husband/son of petitioners No.1 and 2 has been regularly making payments towards child support to the respondent in compliance of order dated 18.03.2015 passed by the competent authorities in Australia as is evident from the receipts (Annexure P3 colly).

3. It is further submitted that present complaint under Section 12 of The Protection of Women from Domestic Violence Act, 2005 has been filed by the respondent on 09.06.2017 (Annexure P-7), against 6 accused persons, the same being the present 4 petitioners, the sister-in-law and the husband of the respondent. It is submitted that the petitioners have never co-habited with the respondent in her matrimonial home and therefore, there is no truth in the allegations made in the complaint. Moreover, the respondent and her husband have also been granted divorce by the Federal Circuit Court of Australia on 05.07.2017 (Annexure P5).

4. Ld. Counsel further submits that prior to filing of the present complaint, the respondent had also filed another complaint dated 15.5.2017 (Annexure P6) to the Inspector General of Police, NRIs & Women

Wing, Chandigarh, against the present petitioners (excluding petitioner No.4) and her husband. It is stated that similar allegations were made in this complaint dated 15.05.2017 (Annexure P6), as are contained in the present complaint dated 09.06.2017(Annexure P7). It is pertinent that the said complaint dated 15.05.2017 was marked for enquiry to DSP, NRIs Sub-Division, Jalandhar. The said police officer got the matter enquired from SHO, Police Station NRI, Jalandhar Rural and he submitted his report dated 03.04.2018 concluding therein that the allegations leveled by the respondent/complainant are not true and therefore, the complaint of the respondent may be filed in office. Thereafter, the Deputy Supdt. of Police, NRI Sub-Division, Jalandhar also submitted his enquiry report dated 06.04.2018 and he too recommended that the complaint of the respondent be filed in office. Later on, a thorough and detailed enquiry was conducted by Incharge Women Cell, NRI Wing at Mohali, whereupon the allegations of the respondent were found false. The said officer submitted his enquiry report dated 26.02.2019 to the Addl. Director General of Police, NRIs wing Mohali. Later on, a thorough enquiry was also conducted by District Community Police officer, Commissionerate, Jalandhar, after joining both the parties in the enquiry proceedings. The said officer submitted his enquiry report dated 08.04.2019 concluding therein that the respondent could not produce any evidence to substantiate the allegations leveled by her. The said officer recommended that no action is warranted in the complaint of the respondent and same may be filed in office. The above said Enquiry Report was approved by Joint Director, Prosecution NRIs Wing, Phase VII, SAS Nagar and was submitted to the ADGP, NRIs wing Phase VII,

SAS Nagar. The said report was perused and approved by ADGP, NRIs wing, SAS Nagar on 16.04.2019. Hence, the allegations leveled by the respondent/complainant have been thoroughly enquired into and have been found to be false by the concerned police during detailed and through enquires.

5. It is submitted that the present complaint and the subsequent proceedings are liable to be quashed as a perusal of the present complaint shows that the respondent has leveled vague and baseless allegations against the petitioners just to harass and humiliate them. Moreover, as noted above, the said allegations have already been thoroughly investigated by different police officers after joining both the parties, and were found to be false.

6. It is further argued that the present complaint and subsequent proceedings are liable to be quashed as the petitioner No.4 is wife of petitioner No.3 and their marriage was solemnized on 05.03.2014 i.e. almost 2 years after the respondent had gone to Australia and started residing with her husband Ashwani Kumar. As such, the respondent could not have had any cause of action against petitioner no. 3. Furthermore, the respondent did not level any allegation of harassment and demand of dowry against petitioner No.4 in her complaint dated 15.05.2017 and no action was sought against her. Yet she has been arrayed as accused in the instant complaint. It is contented that accordingly the prime object behind impleading the petitioners No.3 and 4 is to use the same as tool of harassment of the entire family of her husband. It is further submitted that

the petitioners are being caused great harassment due to this impugned summoning order.

7. On the other hand, learned counsel for the respondent vehemently opposes the prayer made on behalf of the petitioners and submits that very specific allegations have been made in the complaint. All the accused have harassed the respondent ceaselessly by demanding dowry; as also humiliated her for her dark complexion, and giving birth to a female child. In this regard, learned counsel has extensively referred to the complaint (Annexure P7) and stated that due to gravity of the allegations made against the petitioners, the present complaint does not deserve to be quashed.

8. Learned counsel for the respondent also submits that mother-in-law of the respondent i.e. petitioner No.1 herein went to Australia and maltreated the complainant there. On a specific Court query put by this Court as to the dates on which petitioner No.1 had maltreated the respondent, learned counsel for the respondent is unable to provide the said information.

9. No other argument is made on behalf of the parties.

10. I have heard learned counsel for the parties, as also perused the case file in great detail.

11. A perusal of the impugned complaint (Annexure P7) reveals that the thrust of the allegations contained therein are against the husband of the respondent. Whereas, the sum total of the allegations made against the present petitioners in the said complaint are as follows:-

“When the complainant was in family way, the respondent No.3 joined the complainant in Australia in order to look after her but instead of taking care of the complainant she also taunted and maltreated the complainant regarding her looks and complexion. When the complainant on 21.3.2013 delivered a female child then the respondent No.1 and 3 were not happy with the same and they expected a boy child. It is pertinent to mention here that after the birth of female child the mother of the complainant visited Australia in order to look after the complainant as well newly born child and had to spent about Rs.4 to 5 lakhs as one gold kitty set and one set of gold bangles and a golden chain were gifted to the new born child and other expensive clothes etc. The respondent No.2 to 4 always instigated the respondent No.1 against the complainant telephonically...”.

12. A perusal of the above allegations makes it crystal clear that the same are vague, general, and unspecific. Moreover, a comparative reading of the complaint dated 15.05.2017 (Annexure P6), with the present impugned complaint dated 09.06.2017 (Annexure P7) reveal that the same are almost verbatim identical. As already noted above, the petitioners have already been exonerated in the complaint dated 15.05.2017 after thorough investigation at various levels, by various investigating agencies.

13. It is also relevant that the respondent ever since her marriage has been residing in Australia, whereas the petitioners have admittedly, been residing in India and therefore, they have never shared any common household during this time to attract the provisions of the Domestic Violence Act. Accordingly, it is my considered view that the present complaint is nothing but an abuse of the process of law.

14. In this regard reference may be made to judgment of the Hon'ble Supreme Court in **"Harmanpreet Singh Ahluwalia & Others Vs. State of Punjab & Others"** Law Finder Doc ID # 190773, wherein it has been held as under:-

"A. Criminal Procedure Code, Section 482 – Indian Penal Code, Section 420 and 406 Criminal Procedure Code Section 178 – Territorial jurisdiction – Parties married at Jalandhar thereafter living in Canada – Demand of dowry made in Canada – FIR lodged at Jalandhar – FIR quashed, inter alia, on the ground that larger part of offence was committed in Canada".

15. It is also relevant that the respondent in her complaint dated 15.5.2017 has not made any allegations of harassment and demand of dowry against the present petitioner no. 4. The extent of the vengeance of the respondent is evident from the fact that petitioner no. 4 was married to petitioner No.3 almost 2 years after the respondent had left for Australia, yet, she too, has been roped into the matter. It is therefore clear that the present complaint has been filed with the sole malicious motive to harass and embroil the entire family of the husband in vexatious litigation. The Hon'ble Supreme Court in **"Kahkashan Kausar@ Sonam & Others Vs. State of Bihar & Others"** Law Finder Doc ID # 1941423 has categorically held that *"general and omnibus allegations cannot manifest in a situation where relatives of complainant's husband are forced to undergo trial - FIR liable to be quashed"*. Para 12 of **Kahkashan Kausar** (supra) reads as under:-

"12. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true,

that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his relatives."

16. The above view has been reiterated by the Hon'ble Supreme Court in "**Geeta Mehrotra & Another Vs. State of UP & Another**" Law Finder Doc ID # 397283; "**Preeti Gupta & Another Vs. State of Jharkhand & Another**" Law Finder Doc ID # 214039; and "**K. Subba Rao & Others Vs. The State of Telangana & Others**" 2018 (14) SCC 452.

17. Reliance may also be placed upon judgment of the Hon'ble Supreme Court in '**Social Action Forum for Manav Adhikar & Anr. v. Union of India, Ministry of Law And Justice & Ors., (2018) 10 SCC 443**', wherein it was observed:-

*"3. Regarding the constitutionality of Section 498A IPC, in **Sushil Kumar Sharma v. Union of India and others** (2005) 6 SCC 281: AIR 2005 Supreme Court 3100, it was held by the Supreme Court:-*

"..... The object of the provisions is prevention of the dowry menace. But many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame-work."

18. It is my considered view that in the facts and circumstances of the case, it has been amply established that the respondent has misused the contemporaneous provisions of the Domestic Violence Act to unleash personal vendetta against the petitioners.

19. In view of the above discussion, the present petition is **allowed**. The Complaint No.336/2017 dated 09.06.2017 titled as “Nisha Badhan Vs. Ashwani Kumar & Others” (Annexure P7) filed under Section 12 of The Protection of Women from Domestic Violence Act, 2005; and subsequent summoning order dated 09.06.2017 passed by learned JMJC, Jalandhar (Annexure P8); and order dated 28.07.2017 passed by learned CJM (NRI Cases), Jalandhar (Annexure P9), accordingly, stand quashed.

20. Pending applications, if any, stand disposed of.

28.02.2024
Sunena

(Nidhi Gupta)
Judge

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