

Sr. No.319

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52425-2022 (O&M)
Reserved on: 05th March, 2024
Date of decision: 21st March, 2024

DAVINDERPAL SHARMAPetitioner

versus

STATE OF PUNJAB AND ANOTHERRespondents

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. B.S. Jatana, Advocate
for the petitioner.

Mr. Adesh Pal Singh, AAG, Punjab.

Mr. Arshpreet Khodial, Advocate
for respondent No.2.

HARPREET KAUR JEEWAN, J.

1. The instant petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.44 dated 25.02.2022, under Sections 376, 506 IPC, 1860, registered at Police Station City-2, Mansa, District Mansa (Annexure P-1) and all subsequent proceedings arising therefrom.
2. Learned counsel for the petitioner contends that respondent No.2/ complainant is habitual of moving applications by levelling similar kind of allegations in order to grab money under the threat of registration of the case. Earlier in the year 2014 also, the respondent No.2/complainant got registered an FIR against one Balwinder Singh bearing FIR No.83 dated 20.10.2014, under Sections 363, 366-A, 376 IPC, registered at Police Station Mansa City, District Mansa (Annexure P-2).

2.1 Learned counsel for the petitioner further contends that respondent No.2/complainant has alleged herself to be unmarried in the FIR whereas, she had earlier performed marriage with one Sonu. On 29.04.2021, she gave birth to a girl child and as per the entry in the Register of Birth Registration, the name of the father of the child has been mentioned as "Sonu". The said entry of Birth Registration dated 29.04.2021 (Annexure P-3) has been thumbmarked by the maternal grandmother of the child. Learned counsel for the petitioner further contends that the respondent No.2/complainant has even filed a suit for permanent injunction (Annexure P-8) against her husband Sonu seeking injunction to restrain the defendant (Sonu) from performing second marriage. It is further contended that even as per the FIR and the statement of the prosecutrix, recorded under Section 164 Cr.P.C. dated 08.03.2022 (Annexure P-7), the allegation of commission of rape by the petitioner is not made out since the ingredients of Sections 375 and 376 IPC are not fulfilled. The registration of the FIR and presentation of the challan/final report under Section 173 Cr.P.C. is an abuse of the process of law, as such, the FIR is liable to be quashed.

3. Learned State counsel, assisted by learned counsel for the complainant, has opposed the present petition. It is contended that after the completion of the investigation, final report under Section 173 Cr.P.C. has already been presented before the trial Court (Annexure P-6). After registration of the FIR, the prosecutrix was got medically examined and the DNA profile of the daughter of the prosecutrix was sent for comparison with the DNA profile of the petitioner-accused. The blood sample of the petitioner was also sent for DNA comparison. As per the report dated 25.05.2023, received from the Forensic Science Laboratory, Punjab, the DNA profile of the complainant-mother matched with the baby and the DNA profile of

record in the Court as Annexure RX, which is taken on record. Registry to do the needful.

3.1 Learned State counsel further contends that the allegations levelled against the petitioner are serious in nature and merely on the ground of contentions raised in the present petition, the FIR cannot be quashed.

4. I have considered the aforesaid contentions and perused the paper book.

5. Final report/challan under Section 173 Cr.P.C. has been presented and charges have already been framed. As per the petitioner, the case is fixed for prosecution evidence.

6. The Hon'ble Apex Court in **"Amit Kapoor vs. Ramesh Chander and Another", 2012 (9) SCC 460**, laid down principles for quashing of FIR on merits where charges have been framed. It was held as under:-

"19. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the Courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:-

"1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.
3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.
4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.
5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.
6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.
7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.
8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.
9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the

case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*.

14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

These are the principles which individually and preferably cumulatively (one or more) are to be taken into consideration as precepts to exercise extraordinary and wide plenitude jurisdiction

under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.”

7. The abovesaid principles were also reiterated by the Hon’ble Apex Court in “**Supriya Jain vs. State of Haryana**”, **decided on 04.07.2023, arising out of SLP (Crl) No. 3662 of 2023.**

8. The Hon’ble Apex Court in “**State of Haryana and others vs. Ch. Bhajan Lal and Others**”; **1992 AIR SC 604**, laid down broader guidelines and principles to exercise the extraordinary powers under Article 226 of the Constitution of India or inherent powers under Section 482 of the Code for quashing of the proceedings in criminal cases. The said principles read 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;

(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.”

9. The case was registered against the petitioner with the allegations that the petitioner has enticed the respondent No.2/complainant on the pretext of marriage and took her to his house at Mansa and committed rape upon her. While residing at Mansa, respondent No.2/complainant got pregnant with the petitioner. On 29.04.2021, she gave birth to a baby girl in the hospital. However, the petitioner got recorded the name of some other person namely “Vicky” to be father of the baby girl. Later on, when respondent No.2/complainant came to know about the said fact, there was a quarrel between the petitioner and respondent No.2. However, the petitioner threatened to kill the respondent No.2/complainant as well as her daughter.

10. No doubt, in the entry made in Birth Registration Register (Annexure P-3) and Birth Certificate (Annexure P-4), the name of the father of the child, who was born on 29.04.2021, is recorded as “Sonu” and the name of the mother is recorded as “GXXX” (complainant), however, as per the report received from the Forensic Science Laboratory, Punjab, the petitioner-accused is the biological father

of the child. There are allegations against the petitioner that he has cheated the respondent No.2/ complainant by recording incorrect name of the father in the birth records of the child. The medical evidence supports the contentions of respondent No.2/ complainant.

11. In view of the facts and circumstances of the case, the contentions of the petitioner that the prosecutrix was already married and she had filed a civil suit (Annexure P-6) against her husband; the evidentiary value of the statement of the prosecutrix and the registration of the previous FIR (Annexure P-2) against some other person in the year 2014, are matter of trial, which would be looked into by the trial Court. The present case does not fall in any of the categories, as per the Hon’ble Apex Court’s decision in the case of Bhajan Lal (supra) and Amit Kapoor (supra).

12. In view of the facts and circumstances of the present case and in view of the ratio of decision by the Hon’ble Apex Court in the case of Bhajan Lal (supra), and “Amit Kapoor (supra)”, no ground is made out to invoke extraordinary jurisdiction under Section 482 Cr.P.C. for quashing the FIR and the subsequent proceedings arising therefrom.

13. Consequently, the present petition stands dismissed.

14. Pending miscellaneous application(s), if any, shall stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

21st March, 2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No