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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-48275-2024 (O&M)
Date of decision: 26.09.2024

Hajara Ram and another

...Petitioners

Vs.

State of Haryana and another

...Respondents

CORAM: HON'BLE MR JUSTICE HARPREET SINGH BRAR

Present: Mr. Raj Kumar Bhatia, Advocate
for the petitioners.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J.

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking quashing of FIR No.189 dated 13.03.2020 under Sections 323, 34, 406, 498-A, 506 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Sirsa City, District Sirsa 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 was solemnized with Kheriat Lal was solemnized on 11.02.2018 according to

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Hindu rites and rituals and her parents spent huge amount on the marriage and various household items were given to the accused persons. The parents of respondent No.2-complainant also gave gold and silver ornaments to her in-laws. Soon after the marriage, her in-laws started harassing her on account of bringing less dowry. Respondent No.2-complainant told about this to her parents and they gave Rs.50,000/- in cash to her in-laws, but after few days, they again started harassing her. Husband, father-in-law and mother-in-law of the complainant behaved with her like a slave and on the provocation of her two sisters-in-law, her husband gave beatings to her and thrown her out of the matrimonial home. Thereafter, she went to her parental home and on 20.09.2019, when the complainant along with her sister visited her matrimonial home, her in-laws insulted them and her husband pulled her by catching her hair. Her husband and father-in-law asked her to bring Rs.50,000/- from her father, failing which, they would perform second marriage of her husband. Her mother-in-law and sister-in-law gave beatings to her by fist and kick blows. Thereafter, she made a phone call at 100 and police from Police Station Sadar came on the spot, but the accused persons took her inside the house and did not allow the police to enter their house and she was turned out of the matrimonial home in three wearing clothes. On 02.01.2019, she moved an application to SHO, Police Station Sadar and a panchayat was convened, in which the accused persons said that they would keep the complainant in her matrimonial

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home, if their demand of Rs.1.00 lacs would be fulfilled. Upon this, father of the complainant requested to keep her daughter in her matrimonial home, as he is a poor persons and cannot fulfill their demand, but the accused flatly refused to keep her and stated that they are ready for divorce. Hence, the FIR (*supra*) was registered.

3. Learned counsel for the petitioners, *inter alia*, contends that the petitioners are father-in-law and mother-in-law of respondent No.2-complainant and are 69 and 66 years of age, respectively. Both are suffering from various age related ailments. The case is pending for examination of the prosecution witnesses since 16.07.2021 and till date, no prosecution witness has been examined. He relies upon the zimni orders of the years 2021 & 2022 passed by learned trial Court (Annexure P-5). It is further contended that all the family members have been exonerated by the police except the petitioners and their son. The petitioners are living separately and they have no concern with the matrimonial life of respondent No.2-complainant and her husband.

4. *Per contra*, learned State counsel appears on advance notice and submits that the contention of the petitioners with regard to non-examination of the prosecution witnesses is incorrect; rather perusal of the order dated 17.02.2023 (Annexure P-6) reveals that respondent No.2 has already examined and out of total 07 prosecution witnesses, 05 have already been examined and 01 has given up. As such, at this stage, when the trial is



about to conclude, this Court ought not to exercise the power under Section 482 Cr.P.C. and disputed questions of fact can only be determined by learned trial Court on the basis of evidence to be led by the parties. All the contentions raised by the petitioners are matter of evidence.

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 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:-

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"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, present petition is dismissed being bereft of any 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. Keeping in view the fact that the petitioners are senior citizens and they are 69 and 66 years of age, respectively, 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 the petitioners before learned trial Court is ordered to be exempted, subject to the following conditions:-

i) petitioners will be represented through their counsel;

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

26.09.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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