

115

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-51881-2024 (O&M)
Date of decision: 25.10.2024

Dr. Rohit Gaur

...Petitioner

Vs.

State of Haryana and another

...Respondents

CORAM: HON'BLE MR JUSTICE HARPREET SINGH BRAR

Present: Mr. Deepak Grover, Advocate
for the petitioner.

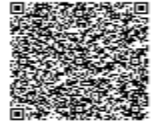
Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J.

1. This petition has been filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') [*erstwhile Section 482 of
the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.')*] seeking quashing
of FIR No.43 dated 30.04.2023 under Sections 34, 377, 406, 498-A, 511 of the
Indian Penal Code, 1860 (for short 'IPC'), registered at Women Police Station
Ballabgarh, District Faridabad and all the subsequent proceedings arising
therefrom.

2. Brief facts of the case are that FIR (*supra*) was registered at the

2024:PHHC:140271



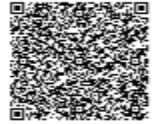
instance of respondent No.2 on the allegations that her marriage was solemnized with the petitioner on 18.07.2021 according to Hindu rites and rituals and in the marriage, her father gave sufficient dowry i.e. ornaments, cash, car (Honda City), household articles etc., beyond his capacity. After few days of the marriage, her mother-in-law, her husband, her brother-in-law (*jeth*) started harassing her on account of bringing less dowry. Her mother-in-law said that lacs of rupees have been spent on his son for doing the MBBS and in getting the govt. job. After 15 days of the marriage, when the complainant went to her parental house, she disclosed about the behavior of her in-laws to her mother and thereafter, her parents had a talk to her in-laws and her mother-in-law refused to keep the relations with poor people and said to have talk with them after giving cash amount of Rs.10.00 lacs, 40 told gold and a Fortuner car. The in-laws of the complainant treated her like a servant and abused her and her parents. After some time, when her parents requested her mother-in-law to bring her to her matrimonial home, she refused to do so. When the complainant told about this to her husband, he also supported her mother and said that they are rich people and have good reputation in the society and now he became RMO and cut the phone by saying that they would have a talk, only when her family achieve the level equal to them. On the request of her parents, after one month, her husband took her to her matrimonial home and her mother-in-law did not allow her to enter in the house and on entering the house from other gate, she abused the complainant

2024:PHHC:140271



in filthy language. In order to save her matrimonial life, she kept herself quite. She was not provided basic facilities like food, water and soap to bath etc. and by doing the household work for whole days, she became weak, on which her husband gave her tablets, due to which her health became worse. When she visited her parental home, after taking treatment, it came to know that there is paucity of calcium in her body. When she told about the harassment at the hands of her mother-in-law to her jeth and jethani, they also supported her. She was kept in a small dirty room and snatched her phone and did not allow her to talk to anyone. All the members of her in-law's family made a plan to declare her mad. Her husband tried to make unnatural physical relations with her and on her refusal to do so, he did not make natural physical relations with her and nor he disclosed the fact of marriage to his companion employees. In the month of October, 2021, on asking of her mother-in-law on the eve of Karva Chauth, her husband took her for purchasing and dropped her to her parental home by saying that due to an urgent call from the hospital, he had to go there and after purchasing, they would return to their home. After waiting for long time, she came to know that they left her at her parental home under the pre-planned conspiracy and thereafter, refused to bring her back to her matrimonial home and till then, she is living with her parents. When she along with her sister went to the hospital and tried to have a talk with her husband, she was threatened by him to face the consequences, if she would again come there. All of her ornaments and clothes were taken by her mother-in-law on the

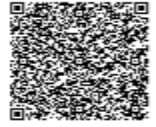
2024:PHHC:140271



pretext that every day, theft incidents were being happened and she would keep the ornaments safe in the locker. Her husband, her jeth and her mother-in-law threatened her by saying that she would not get justice, as they had good relations with IPS, Judges, IAS, politicians and other higher officials. On 19.07.2022, her parents, elder sister and her brother came to her matrimonial home to bring her and to have talk with her in-laws, then her mother-in-law said that only after giving cash amount of Rs.10.00 lacs, 40 told gold and a Fortuner car, she would allow the complainant to go with them and after insulting them, banished them out of the house.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is serving as doctor in Govt. Hospital, whereas respondent No.2-wife is a practicing lawyer at District Courts, Faridabad. The marriage between them was arranged marriage and respondent No.2 performed marriage with the petitioner with some ulterior motives and she was habitual of leaving the conjugal fold of the petitioner and has been continuously avoiding cohabitation and she kept the petitioner deprived from marital bliss. Further, respondent No.2 abandoned her matrimonial duties and she never participated in the domestic chores and used to harass and humiliate the petitioner and his family members. Respondent No.2 was a lady of quarrelsome nature and her brother is serving as Colonel in Indian Army and she used to disclose all petty issues of her matrimonial life to her parents and they used to interfere in the marital life of the petitioner and his wife-

2024:PHHC:140271



respondent No.2. The allegations contained in the FIR (*supra*) are false and frivolous and the entire family has been roped in. The investigating agency has exonerated brother and mother of the petitioner, which vindicates the stand of the petitioner that respondent No.2 has falsely implicated him.

4. *Per contra*, learned State counsel appears on advance notice and submits that there are serious and specific allegations against the petitioner and probable defence set up by the petitioner in the present petition can only be appreciated by learned trial Court on the basis of evidence adduced by the parties. The investigating agency has already concluded the investigation and presented the final report under Section 193 of BNSS (*erstwhile* Section 173 of *Cr.P.C.*) before the jurisdictional Court.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is husband of respondent No.2 and all the averments made in the present petition and the arguments raised by learned counsel for the petitioner cannot be looked into by this Court at this stage. The probable defence set up by the petitioner in the present petition, however, convincing it may seem, can only be appreciated on the basis of evidence adduced by the parties. It is settled law that disputed questions of fact can only be adjudicated on the basis of adducing evidence by the parties before learned trial Court. The High Court, in exercise of its inherent powers under Section 528 of BNSS (*erstwhile* Section 482 *Cr.P.C.*) is obligated to make a just and equitable choice and

2024:PHHC:140271



cannot go beyond its ambit to evaluate the truthfulness of the allegations or the veracity of the defence. 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:-

"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

2024:PHHC:140271



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:-

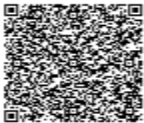
"17. As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact."

9. Keeping in view the aforesaid facts and circumstances of the case and the ratio of law laid down by the Hon'ble Supreme Court in the cases referred to above, 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

2024:PHHC:140271



construed as an expression of opinion by this Court on the merits of the case,
the trial Court shall decide the case on its own merits in accordance with law.

25.10.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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