

Sr. No.137

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-63610-2023 (O&M)
Date of decision: 19th April, 2024**

DEEPAK**Petitioner**

versus

STATE OF HARYANA AND ANOTHER**Respondents**

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Himanshu Joshi, Advocate
for the petitioner.

Mr. Amrik Singh Narwal, D.A.G., Haryana.

HARPREET KAUR JEEWAN, J.

CRM-15843-2024

This is an application for placing on record the copy of final report dated 31.07.2023 as Annexure P-4.

Keeping in view the averments made in the application, the same is allowed. Copy of final report dated 31.07.2023 is taken on record as Annexure P-4, subject to all just exceptions.

Registry is directed to tag the same at the appropriate place.

Disposed of.

CRM-M-63610-2023

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.318 dated 18.05.2023, under Sections 323, 354, 377, 406, 498-A, 506 IPC (Sections 354, 377, 34 IPC deleted later on), registered at Police Station Shivaji Colony, District Rohtak (Annexure P-1) and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner *inter alia* contends that the marriage of the petitioner-husband and respondent No.2-wife was solemnized on 28.11.2022. The respondent No.2 was pregnant and she wanted to keep the name of the child as “Anik”, which is also the name of a friend of respondent No.2, which was objected by the petitioner-husband. However, thereafter, the relationship *inter se* the petitioner and respondent No.2 was cordial. They happily celebrated the birthday of the petitioner along with their family on 28.01.2023, which is reflected in the photographs and videos in the CD (Annexure P-3). Respondent No.2, in connivance with her family members, consumed pills for abortion of the child. However, she made an excuse of falling down from the stairs. She reached the Civil Hospital, Rohtak on 22.02.2023, where her abortion was conducted by the doctor without inquiring the reason of the vaginal bleeding. The petitioner made a complaint to the Deputy Commissioner, Rohtak and the statement of the petitioner (Annexure P-2) was recorded. The present FIR has been registered as a counter-blast to the aforesaid proceedings. The registration of the present FIR is a misuse of the process of law. Subsequently, the final report under Section 173 Cr.P.C. has also been filed by the Investigating Agency, which is also liable to be quashed.

3. Learned State counsel, while referring to the final report dated 31.07.2023 (Annexure P-4) contends that thorough investigation was conducted before submitting the challan/final report under Section 173 Cr.P.C. before the trial Court. The said report has not been challenged in the present petition as there is no such prayer in the present petition. The said report was submitted during the pendency of the present petition. Though a copy of the said report has been placed on record, but the petition has not been amended by making a prayer to set aside the said report as well.

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

5. The FIR dated 18.05.2023 (Annexure P-1) has been registered at the instance of respondent No.2. As per the paper book, an application dated 10.03.2023 was moved by respondent No.2 to Police Station Women, Rohtak and the petitioner had submitted reply to the said application on 31.03.2023. However, subsequently, FIR dated 18.05.2023 (Annexure P-1) was got registered by respondent No.2. Copy of the final report/challan under Section 173 Cr.P.C. (Annexure P-4) also indicates that before the registration of the FIR, inquiry was conducted on the said complaint dated 10.03.2023, moved by respondent No.2 and the FIR was registered on the basis of an inquiry report.

6. Copy of the FIR (Annexure P-1) indicates that the marriage of the petitioner with the respondent No.2 was solemnized on 28.11.2022. Though the FIR was registered against the petitioner-husband and 04 other co-accused, however, final report/challan under Section 173 Cr.P.C. has been presented only against the petitioner. As per the final report (Annexure P-4), the co-accused of the petitioner were found to be innocent during the investigation.

7. As per the contents of the FIR as well as the final report/challan presented under Section 173 Cr.P.C., there are allegations against the petitioner of having unnatural sex immediately on the next day of marriage and at subsequent occasions; doubting the chastity of respondent No.2; harassing and taunting the respondent No.2 for bringing insufficient dowry; beating and abusing her and raising a demand of car and gold ornaments after the marriage. As per the FIR, there are specific allegations against the petitioner that on 29.11.2022, the petitioner had unnatural sex with respondent No.2 against her wishes and such allegations

specific allegations dated 12.12.2022 with regard to pressurizing the respondent No.2 to make unnatural relations against her will. It is further alleged by respondent No.2 that even when she became pregnant, the petitioner forced her to have sex with her and when she refused, she was beaten up by the petitioner. There are specific allegations of beatings given by the petitioner few days after 08.01.2023. Apart from this, there are specific allegations of raising a demand of car and gold ornaments on various occasions including on 28.01.2023. All the jewellery and other dowry articles are alleged to be in possession of the petitioner and his family members.

8. The statement of respondent No.2 has also been recorded under Section 164 Cr.P.C. Though the co-accused of the petitioner, who are the relatives of the petitioner, have been found innocent during investigation, however, some of the dowry articles were recovered from the house of the petitioner and these items were given on *sapurdari*. Final report/challan under Section 173 Cr.P.C. has been presented only against the petitioner.

9. The Hon'ble Apex Court in "**State of Haryana and others vs. Ch. Bhajan Lal and Others**"; 1992 AIR SC 604, laid down the 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.”

10. 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) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and 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.”

11. The petitioner has sought quashing of the FIR firstly, on the ground of delay in lodging the FIR and secondly, on the ground that the relationship between the petitioner and respondent No.2 was cordial. However, there was a minor discussion at the occasion of naming the child at the time when respondent No.2 was pregnant. Thirdly, the FIR is sought to be quashed on the ground that the present FIR is a counter-blast to the complaint lodged by the petitioner against the respondent No.2/complainant and the doctor who conducted the termination of pregnancy of respondent No.2.

12. So far as the delay in lodging the FIR is concerned, in matrimonial matters, usually the parties make efforts for reconciliation at their family level before resorting to filing a complaint to Police. Moreover, the delay in each case is

to be seen on the basis of the facts and circumstances of the case, which are peculiar to each case.

13. Now, the investigation is complete. The effect of delay would be a matter of trial and the same would be scrutinized by the trial Court after considering and appreciating the evidence which would be recorded during the trial. Merely on the ground of delay in lodging the FIR, the same cannot be quashed.

14. I have also considered the contention raised on behalf of the petitioner that the FIR has been registered as a counter-blast to the complaint moved by him (Annexure P-3). It has been noticed that firstly, the complaint which is alleged to have been given by the petitioner against the respondent No.2 and the concerned doctor is not on record. Secondly, Annexure P-2 is alleged to be the statement of the petitioner recorded during the inquiry, which is alleged to have been initiated on the basis of the said complaint. However, a perusal of Annexure P-2 indicates that it is only a photocopy bearing the alleged signatures of the petitioner below a typed material. The name and signatures of the authority conducting the alleged inquiry is not mentioned in Annexure P-2. There is no reference in Annexure P-2 that this statement has been recorded during the inquiry having been conducted on the basis of any such complaint given by the petitioner. The date of recording of the said statement and the date of giving of a complaint to the Deputy Commissioner, Rohtak is also not mentioned. Without these particulars, Annexure P-2 cannot be made a basis to hold that the present FIR is a counter-blast to the said statement (Annexure P-2). Even otherwise, if the petitioner had given any such complaint against respondent No.2 or the doctor, the effect of the same would be seen by the trial Court and proof of the said complaint is a matter of evidence and its effect

15. Bare reading of the FIR *prima facie* makes out a cognizable case, as such, the FIR as well as the final report/challan presented under Section 173 Cr.P.C. is not liable to be quashed by invoking the provisions under Section 482 Cr.P.C., specially, when the case does not fall in any of the parameters/guidelines laid down by the Hon’ble Apex Court in the case of Ch. Bhajan Lal (supra) and Amit Kapoor (supra). As such, the present petition stands dismissed.

16. All the pending miscellaneous applications, if any, shall stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

19th April, 2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No