



133 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-64448-2023 (O&M)
Date of Decision: 07.08.2024

SONU

.....PETITIONER

Vs.

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present:- Mr. Ajay Kumar Kansal, Advocate,
for the petitioner.

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

HARPREET KAUR JEEWAN J.

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No. 49, dated 02.10.2019, registered at Women Police Station, District Hisar, under Sections 323, 354, 377, 406, 498-A and 506 of the IPC read with Section 34 thereof and all other consequential proceedings arising therefrom.

2. Learned counsel for the petitioner contends that no offence is alleged to have taken place at Hisar. After the marriage, the parties resided together at matrimonial house in District Jind, as such, registration of the FIR at Hisar is a misuse of process of law. Reliance has been placed upon the decision given by the Hon'ble Apex Court in Amarendu Jyoti vs. State of Chattisgarh 2014 LawSuit (SC)764.



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2.1 It is further contended on behalf of the petitioner that the petitioner is serving in Indian Army and presently posted at Delhi. It is also contended that as per the FIR, the first informant has alleged that after one year of the marriage, she came to know that her husband-petitioner was already married and was having a daughter out of the previous marriage, who was living in the matrimonial house and was being introduced as daughter of her sister-in-law. It is contended that in view of the said allegations the marriage between the petitioner and respondent No. 2 is null and void and no offence under Section 498-A IPC is made out. Reliance has been placed upon the decision given by the Hon'ble Apex Court in Shivcharan Lal Verma vs. State of Madhya Pradesh 2007 (15) SCC 369.

3. Notice of motion.

4. Having received advance copy of the petition, Mr. Amrik Singh Narwal, D.A.G. Haryana, accepts notice on behalf of the respondent-State and has opposed the aforesaid contentions and submitted that after completion of the investigation final report ('*challan*') has been presented before the trial Court and charges have been framed under Sections 406, 498-A and 506 IPC and two out of seven prosecution witnesses have already been examined.

5. It is further contended that the marriage was solemnized in Hisar and FIR was also registered at Hisar.

6. I have considered the aforesaid contentions.

7. Hon'ble the 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:-



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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.”

20. 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.”

8. The said principles were also reiterated by Hon’ble the Apex Court in Supriya Jain vs. State of Haryana, 2023 (7) SCC 711.

9. As per the facts of the present case, after the registration of the FIR, the investigation was conducted and final report (‘*challan*’), dated 30.11.2019 (Annexure P-2) under the provisions of Section 173 Cr.P.C. has been presented before the trial Court. As per the allegations in the FIR at the time of solemnization of the marriage of respondent No. 2 with the petitioner, the parents of respondent No. 2 have spent about Rs. 12,00,000/- and they had given sufficient dowry. At the time of fixation of the marriage, the elders had assured that the petitioner is not having any bad habit and persuaded the father of respondent No. 2, who hurriedly solemnized the marriage within a period of 10 days.

10. It is alleged by the complainant that after the marriage, she noticed that a girl is residing in the house and she was told that the girl is the daughter of Nahni-sister-in-law of the complainant, who has been brought up by them. It is further alleged that after a period of one year of the marriage, the complainant came to know that the said girl is actually the daughter of the petitioner from his previous marriage.

11. There are allegations that the complainant was persuaded and the marriage was hurriedly solemnized and thereafter, the complainant was



turned out of her matrimonial home and even there are allegations of further demand of dowry. As such, in view of such facts, it cannot be said that it is a case where no *prima facie* offence is established even if the allegations are uncontroverted.

12. The decision relied upon by learned counsel for the petitioner in Shivcharan Lal Verma (*supra*), is distinguishable. In the said case, two appellants were convicted under Sections 306 and 498-A IPC, wherein one of the question for adjudication was as to whether the prosecution under Section 498-A IPC at all be attracted since the marriage itself was null and void as the same having been performed during the lifetime of the previous wife.

13. However, in the present case though there are allegations that the petitioner is alleged to have a daughter from the previous marriage but there is no declaration at this stage by any Court of competent jurisdiction that the marriage of the petitioner with respondent No. 2 is null and void, on the ground that previous marriage was subsisting at the time when the marriage of the petitioner was solemnized with respondent No. 2. The petitioner has not admitted this fact in the present petition that he was previously married to someone else at the time of his marriage with respondent No. 2.

14. In view of the circumstances of the present case, the ratio in Shivcharan Lal Verma's case (*supra*), is not applicable to the facts of the present case.

15. I have also considered the second contention raised on behalf of the petitioner, i.e. with regard to the jurisdiction of Police Station District Hisar in registration of the FIR.



16. It is not disputed that the marriage of the parties was solemnized at Hisar where the petitioner is alleged to have been entrusted with the dowry articles. The ratio of the decision in Amarendu Jyoti's case (*supra*) is not applicable to the facts of the present case as in that case, the alleged incident of cruelty took place at Delhi where the couple resided. The FIR was lodged at a place where the parents of the complainant were residing, whereas the marriage took place at a 3rd place, i.e. Patna. The FIR was lodged neither at the place where the marriage was solemnized nor at the place where the parties live together, however, it was lodged at Ambikapur in the State of Chhattisgarh where subsequently the complainant was residing along with her parents. In such circumstances, it was observed by the Hon'ble Apex Court that no cause of action can be set to have arisen in Ambikapur and the offence cannot be considered to be a continuing offence.

17. Keeping in view the fact that in the present case, the entrustment of the dowry articles was at the place where the marriage was solemnized and the FIR having been registered at the same place, as such, the proceedings cannot be quashed merely on the ground that the FIR has been registered at Hisar.

18. In view of the aforesaid facts and circumstances, the present case does not fit to any of the parameters in terms of the judgment of the Honb'le Apex Court in Amit Kapoor's case (*supra*). The investigation is complete. Charges have already been framed. The matter is put to trial. No ground is made out for quashing of the present FIR.

19. Consequently, the present petition stands dismissed.



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

August 07, 2024

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(HARPREET KAUR JEEWAN)

JUDGE

Whether Speaking	Yes
Whether reportable	No