



CRM-M-62374-2024 (O&M)

-1-

118 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-62374-2024 (O&M)
Date of Decision: 13.12.2024

Surmit Sahota and another

...Petitioners

versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Pranav Handa, Advocate
for the petitioners.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed under Section 528 Bharatiya
Nagarik Suraksha Sanhita, 2023 (hereinafter 'BNSS') seeking quashing of FIR
No. 84 dated 04.07.2021 registered under Sections 406, 498-A IPC at Police
Station Women, Jalandhar, District Police Commissionerate Jalandhar and all
subsequent proceedings arising therefrom.

2. The facts, as alleged by the prosecution, are that the marriage between
Prince Sahota, son of petitioners, and respondent No.2 was solemnised on
23.01.2019, in accordance with Sikh rites and rituals. Soon after marriage, the
in-laws of respondent No.2 started harassing her for bringing inadequate dowry.
The petitioners and their family abused respondent No.2 in an inebriated
condition. The petitioners demanded Rs. 25,00,000/- from respondent No.2 in
order to take her to the USA. When respondent No.2 got pregnant, the
petitioners and their family pressurised her to abort the foetus as they wanted to

marry Prince Sahota to someone else. Before moving back to the USA, both the petitioners beat respondent No.2 and threw her out of her matrimonial home. Once the petitioners and their family moved to the USA, they stopped talking to respondent No.2. Respondent No.2 was not allowed to re-enter the matrimonial home in Jalandhar either. Subsequently, a divorce petition was filed.

3. Learned counsel for the petitioners *inter alia* contends that the petitioners are senior citizens and permanent residents of the USA. Petitioner No.1 is about 70 years old and is suffering from prolonged, chronic ailments. Unfortunately, his condition worsened and he had to undergo eye surgery in the first week of November, 2024. Further, the petitioners only came to India in the year 2019 for the wedding. Petitioner No.1 stayed for 1 month and 7 days in India while petitioner No.2 stayed here for 2 months and 8 days in total. Petitioner No.2 made two more visits to India in the year 2019, which lasted 19 days each. Vague, general allegations have been levelled against the petitioner. In fact, respondent No.2 has moved to Canada and initiation of criminal prosecution, after two years of marriage, was an attempt at grabbing property of the family of the petitioners.

4. Learned State counsel, at the outset, informs the Court that the petitioners are not entitled to any relief as they were declared Proclaimed Offenders by the learned trial Court vide order dated 25.01.2022 (hereinafter 'PO order'). They had previously approached this Court by means of petition bearing No. CRM-M-50320 of 2024, seeking the abovementioned order to be quashed. Vide order dated 14.10.2024, the prayer was allowed subject to the petitioners paying a cost of Rs. 10,000/- each and appearing before the learned

CRM-M-62374-2024 (O&M)

-3-

trial Court within eight weeks. However, the petitioners did not appear. He further submits that the present petition is premature and totally misconceived as the investigation qua the petitioners is still pending. Further, the dowry articles already stand recovered, as such, the ingredients of the offence punishable Section 406 IPC are clearly made out. Further still, all the pleas raised by the petitioners are disputed questions of facts, which are matter of trial. The probable defence of the petitioners cannot be appreciated by this Court at this stage and therefore, no case is made out for this Court to exercise its extraordinary powers under Section 482 Cr.P.C. and quash the FIR(supra) qua the petitioners.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it appears that the following order was passed by this Court on 14.10.2024 in CRM-M-50320 of 2024:

“ xxx xxx xxx
 9. Keeping in view the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 25.01.2022 (Annexure P-1), vide which the petitioners were declared proclaimed offenders as well as all the consequential proceedings emanating therefrom, are hereby set aside.

10. The petitioners are directed to appear before learned trial Court within a period of eight weeks from today and on their doing so, they will be admitted to bail on their furnishing bail/surety bonds to the satisfaction of learned trial Court, along with costs of Rs.10,000/- each to be deposited with All India Pingalwara Charitable Society, Jalandhar Branch, Makdoom Pura Dhobi Mohalla, Jalandhar, for wasting precious time of the Court.

11. The receipt of payment of costs imposed upon the petitioners must be presented before learned trial Court. Learned Court below is directed to grant bail to the petitioners only upon verification of the payment of said costs.”

6. In spite of themselves seeking the indulgence of the Court to have the

CRM-M-62374-2024 (O&M)

-4-

PO order quashed, the petitioners did not appear before the learned trial Court. The petitioners also moved an application seeking extension of time to appear before the Court but the same was dismissed by this Court vide order dated 13.12.2024. It is evident that the petitioners have no regard for the process of law and have failed to prove their *bona fide*. The conduct of the petitioners does not inspire any confidence and as such, this Court is of the considered opinion that they do not deserve any further concessions.

7. Further, a perusal of FIR (supra) indicates that specific roles have been attributed to the petitioners as they not only demanded Rs. 25,00,000/- from respondent No.2 but also physically harassed her under the influence of alcohol. It has been admitted that the petitioners stayed in India for a considerable period, with respondent No.2, before moving back to the USA. Be that as it may, this Court does not find it proper to adjudicate upon disputed questions of facts while the matter is pending consideration before the learned Court below. The matter requires to be adjudicated by the learned trial Court on the basis of the evidence adduced by the parties and the probable defence as set up by the petitioners cannot be gone into at this stage. A two Judge bench of the Hon'ble Supreme Court in *HMT Watches Limited vs. M.A. Abida (2015) 11 SCC 776* has held that inherent powers under Section 482 of the Cr.P.C. cannot be extended to determining question of facts. It is only for the trial Court to determine the disputed questions of fact after examining the evidence on record and interference by this Court with regards to factual questions is impermissible in law.

8. A two Judge bench of the Hon'ble Supreme Court in the ***Rathish Babu Unnikrishnan Vs. State (Govt. of NCT) 2022 SCC Online SC 513***, speaking through Justice Hrishikesh Roy, observed as under:

“17. The consequences of scuttling the criminal process at a pre-trial 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.”

Furthermore, in ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458***, a two Judge bench of the Hon'ble Supreme Court, 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. Moreover, the matter is still under investigation. Recently, in ***M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra AIR 2021 SC 1918***, a three Judge bench of the Hon'ble Supreme Court reiterated the guiding principles to quash proceedings under Section 482 of Cr.P.C. Speaking through Justice M.R. Shah, the following was held:

“80. In view of the above and for the reasons stated above, our final conclusions on the, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition

under Section 482 Cr.P.C , 1973 and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., 1973 while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C., 1973 and/or under Article 226 of the Constitution of India, our final conclusions are as under:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*
- ii) Courts would not thwart any investigation into the cognizable offences;*
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the `rarest of rare cases (not to be confused with the formation in the context of death penalty).*
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*
- vi) Criminal proceedings ought not to be scuttled at the initial stage;*
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;*
- ix) The functions of the judiciary and the police are complementary, not overlapping;*
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*
- xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the*

complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C., 1973 is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., 1973 only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C., 1973 and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C., 1973 before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., 1973 while dismissing/disposing of the quashing petition under Section 482 Cr.P.C., 1973 and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C., 1973 and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate



the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

It is a well settled legal position that the Courts should not normally interfere with an investigation and permit the same to be completed. Such intervention would amount to encroachment upon the lawful power of the police to investigate into cognizable offences, which would undermine the due process of law. The same was also reiterated by the Hon’ble Supreme Court in ***Satvinder Kaur vs. State (Govt. of NCT of Delhi) 1999(8) SCC 728.***

10. Accordingly, the present petition is dismissed. Pending miscellaneous application(s), if any, also stand disposed of.
11. However, nothing observed herein shall be construed as expression of an opinion by this Court lest it may prejudice the case of either party.

13.12.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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