

(2018) 10 P&H CK 0147

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous (M) No. 29022 of 2015 (O&M)

Dharam Pal Singh and others

APPELLANT

Vs

State of Haryana and another

RESPONDENT

Date of Decision : 17-10-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 156 (3), 482
Indian Penal Code, 1860 — Section 120B, 323, 406, 498A, 506
Hindu Marriage Act, 1955 — Section 9

Citation : (2018) 10 P&H CK 0147

Hon'ble Judges : Jaishree Thakur, J

Bench : Single Bench

Advocate : Divyadeep Walia, Gaganpreet Kaur, H.P.S. Chopra

Final Decision : Allowed

Judgement

1. This petition has been filed under Section 482 of the Code of Criminal Procedure seeking for quashing of FIR No. 312 dated 31.10.2013 (Annexure

P/1) registered under Sections 498-A, 406, 323, 506 and 120-B IPC at Police Station Naraingarh, District Ambala, and all subsequent proceedings

arising therefrom.

2. The facts in brief are that the marriage of the complainant respondent No.2 was solemnized with Harwinder Singh son of petitioners No.1 and 2, as

per Sikh rites and ceremony, on 23.4.2006 and a son and a daughter were born out of this wedlock. Since differences arose between complainant,

Harwinder Singh and his family members, therefore, the complainant and Harwinder Singh started living separately, in terms of the compromise

arrived between them on 30.8.2007. It is alleged that despite the fact that the complainant and her husband were living separately still she left her

matrimonial home on the instigation of her parents. Fed up with the attitude of the complainant, her husband made a complaint (ANNEXURE P/5) to the Incharge Women Cell, Mohali, detailing the matrimonial problems being faced by him. On his complaint, the complainant and her parents were asked to join the proceedings but they did not join despite service of notice and consequently a report was submitted by the Incharge Women Cell, Mohali to the higher authority, vide ANNEXURE P/6. So much so even the husband of the complainant filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. It is alleged that as soon as the complainant and her parents came to know of the complaint filed by the husband, referred to above, they got lodged FIR 209 dated 30.10.2009 under Sections 406 and 498-A IPC at Police Station Narainah, District Ambala, as a counter-blast to the said complaint. It is averred that though the petitioners (No. 1 and 2) were living separately from the complainant and her husband, still they were falsely implicated in FIR No. 209. After completion of the investigation in FIR 209, the petitioners were challaned, charges were framed and after due trial, they were acquitted of the charges, vide judgment dated 31.10.2011 (ANNEXURE P/9). It is averred that during the trial, complainant Manpreet Kaur, her mother Sukhwinder Kaur and her father Paramjit Singh were examined as PW1, PW2 and PW3 respectively and all these witnesses resiled from their statements made against the petitioners and the husband of the complainant.

3. After acquittal, both the complainant and her husband started living separately. Since the complainant was not ready to join the company of her husband, as such, her husband requested the complainant to part ways by seeking divorce by mutual consent so that they could start life afresh. On this, the complainant demanded `10 lakhs as permanent alimony which her husband refused as he was not capable of paying such huge amount. Instead of reconciling the matter amicably, the complainant filed an application dated 4.10.2013 under Section 156 (3) of the Code of Criminal Procedure for registration of FIR against the entire family of the husband, including the petitioners, which was allowed and this how the second FIR in the instant case came to be registered.

4. Learned counsel appearing on behalf of the petitioners contends that the instant FIR is nothing but a sheer abuse of process of law. It is argued that

the petitioners (No.1 and 2), earlier also on the registration of the FIR No. 209 dated 30.10.2009 under Sections 406 and 498-A IPC, stood trial and

were acquitted under the said FIR, after charges had been framed. It is also argued that the petitioners cannot be punished twice for the same offence

on the same set of facts and it will attract the principle of double jeopardy. It is argued that so far petitioners No. 3 and 4 are concerned, they are

brothers-in-law of the complainant, who have nothing to do with the married life of the complainant and her husband and the Supreme Court in a

catena of judgments have deprecated the tendency to implicate the immediate relations of the husband. It is also argued that the complainant has

mislead the the court below, while filing an application under Section 156 (3) of the Code of Criminal Procedure, as she did not disclose the fact that

petitioners No.1 and 2 were acquitted in the FIR lodged by her earlier under Section 406/498-A IPC.

5. Reply has been filed on behalf of the respondent State stating the FIR has been lodged in due compliance with the order passed by the Illaqa

Magistrate passed under Section 156 (3) of the Code of Criminal Procedure and after independent and impartial investigation conducted, the

allegations against the petitioners were found to be correct one.

6. Reply on behalf of respondent No.2 has also been filed, wherein it has been averred that respondent No.2 had never pressurized her husband to

leave the matrimonial home and live separately from his parents. Rather the complainant was being harassed by her husband and her in laws. The

complainant in order to save her matrimonial house and future of her minor children entered into the compromise (Annexure P/2).

7. I have heard learned counsel for the parties and with their able assistance have gone through the pleadings.

8. There is no dispute that the marriage was solemnized between the parties and thereafter FIR No. 209 dated 30.10.2009 came to be registered

against petitioners No.1 and 2 and other family members under Sections 406 and 498-A IPC. The said FIR was investigated, a challan was presented,

petitioners No. 1 and 2 and others faced trial. Learned trial court, after appreciating the evidence brought on record, came to hold that there is not

even an iota of evidence against the petitioners (No.1 and 2) and others to convict them for the alleged offences and acquitted them. Thereafter after

a long gap of about 2 years, another FIR came to be registered on the allegations that respondent No.2 has been harassed by her husband, mother-in-law and brothers-in-law for bringing less dowry. In the said FIR there is no mention of the fact that the petitioners (No. 1 and 2) had already been

acquitted on the same allegations under Sections 406 and 498-A IPC that have been made in the FIR, which was registered as far back as in 2009.

9. In this case, a specific allegation has been made by the petitioners (in para 16) that the complainant instead of filing a complaint for registration of

an FIR before the local police adopted a method of filing an application under Section 156 (3) of the Code of Criminal Procedure because in case she

had made a complaint to the local police, then the fact that the petitioners (No.1 and 2) have already been acquitted would have to be revealed, but

she chose to procure an order for registration of the FIR from the local court so that the local police is bound to investigate the matter upon receipt of

the order of the court for registration of FIR. So much so she even concealed the fact from the court that she had earlier resiled from her statement in

the court, leading to acquittal of the petitioners (No.1 and 2) and others. The complainant, in reply to this para, has not rebutted averments made

therein and has merely stated that the petition is totally wrong and denied.

10. In SUBHKARAN LUHARUKA VS. STATE ILR (2010) IV DELHI 495, after going through a catena of judgments of the Apex Court and

other superior Courts, the High Court of Delhi laid down the guidelines for the subordinate Courts when to resort to Section 156(3) of the Code of

Criminal Procedure, which are as under :-

â??(i) Whenever a Magistrate is called upon to pass orders under Section 156(3) of the Code, at the outset, the Magistrate should ensure that before

coming to the Court, the Complainant did approach the police officer in charge of the Police Station having jurisdiction over the area for recording the

information available with him disclosing the commission of a cognizable offence by the person/persons arrayed as an accused in the Complainant. It

should also be examined what action was taken by the SHO, or even by the senior officer of the Police, when approached by the Complainant under

Section 154(3) of the Code.

(ii) The Magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of cognizable offences by the

accused persons arrayed in the Complaint which can be tried in his jurisdiction. He should also satisfy himself about the need for investigation by the

Police in the matter. A preliminary enquiry as this is permissible even by an SHO and if no such enquiry has been done by the SHO, then it is all the

more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind

should be reflected in the Order passed by him. Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing`,

a status report by the police is to be called for before passing final orders.

iii) The Magistrate, when approached with a Complaint under Section 200 of the Code, should invariably proceed under Chapter XV by taking

cognizance of the Complaint, recording evidence and then deciding the question of issuance of process to the accused. In that case also, the

Magistrate is fully entitled to postpone the process if it is felt that there is a necessity to call for a police report under Section 202 of the Code.

(iv) Of course, it is open to the Magistrate to proceed under Chapter XII of the Code when an application under Section 156(3) of the Code is also

filed along with a Complaint under Section 200 of the Code if the Magistrate decides not to take cognizance of the Complaint. However, in that case,

the Magistrate, before passing any order to proceed under Chapter XII, should not only satisfy himself about the pre-requisite as aforesaid, but,

additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for collection of evidence which is neither in the

possession of the complainant nor can be produced by the witnesses on being summoned by the Court at the instance of complainant, and the matter is

such which calls for investigation by a State agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under

Chapter XII instead of Chapter XV of the Code.

10. Thus, the Magistrate is not supposed to act mechanically and direct registration of an FIR in each and every case in a routine and casual manner.

Criminal law is not expected to be set into motion on the mere asking of a party. The power under Section 156(3) of Cr.P.C. has to be exercised with

care and caution and not mechanically on the mere filing of a complaint alleging that the police has failed to register an FIR.â??

11. Furthermore, in a judgment rendered in State of Haryana Vs Bhajan Lal 1992

AIR SC 604, guidelines have been laid down as to when the courts can exercise extra-ordinary power under Section 482 of the Code of Criminal Procedure to interfere and quash a FIR. Primarily, such power should be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The Supreme Court in the case of State of Maharashtra through CBI v. Vikram Anatrai Doshi and Ors., (2014) 15 SCC 29 similarly observed that powers under Section 482 of the Code of Criminal Procedure must be exercised sparingly, carefully and with great caution. It is only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, should the Courts exercise power to quash the proceedings. In a latest pronouncement in the case of Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others vs. State of Gujarat and another, (2017) 9 Supreme Court Cases 641, while discussing the various decisions of the Apex Court, the broad principles which emerge from the precedents on the subject, have been summarized in the following propositions:

â??(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice.

The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence.

While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the

dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due

regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity

cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in

nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public

interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They

stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil

flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a

conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and clause.

(ix) Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute

between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or

economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.â??

12. In view of the facts that the petitioners (No. 1 and 2) have already been acquitted on the same set of facts and it will be a sheer abuse of process

of law if the petitioners are to stand trial for the offences they already stood trial and acquitted. In so far petitioners No. 3 and 4, who are brothers-in-

law, are concerned, there is no specific allegations qua them and a casual reference has been made against them. In *Geeta Mehrotra and another*

Versus State of U.P. And another 2013 AIR (SC) (Cri) 21, the Supreme Court held that there is a tendency to involve the entire family members of

the household in the domestic quarrel taking place in a matrimonial dispute.

13. Under these circumstances, this petition is allowed and the FIR No. 312 dated 31.10.2013 (Annexure P/1) registered under Sections 498-A, 406,

323, 506 and 120-B IPC at Police Station Naraingarh, District Ambala, and all subsequent proceedings arising therefrom are quashed qua the

petitioners.