
(2011) 03 P&H CK 0443

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M- 14867 of 2009

Gurjant Singh and Another

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Hindu Marriage Act, 1955 — Section 9
Penal Code, 1860 (IPC) — Section 313, 34, 406, 498(A)
Protection of Women From Domestic Violence Act, 2005 — Section 12

Citation : (2011) 03 P&H CK 0443

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Daya Chaudhary, J.—The present petition has been filed u/s 482 Code of Criminal Procedure on behalf of Petitioners Gurjant Singh and Balwant Kaur (who are father-in-law and mother-in-law of complainant Kamalpreet Kaur) for quashing of FIR No. 57 dated 17.4.2008 under Sections 498-A, 406, 313, 34 IPC registered at Police Station Kalanwali, District Sirsa and all subsequent proceedings arising there from.

Notice of motion was issued on 30th May, 2009.

2. Learned Counsel for the Petitioners submits that Petitioners have been implicated falsely in the case on the basis of vague and false allegations. A complaint was also made by the complainant before the "Women Cell, Sirsa" which was enquired and report in this regard was submitted. As per report, the allegations were found to be false. The allegation with regard to demand of Rs. 2 lacs was also found to be baseless. Learned Counsel for the Petitioners also submits that complainant Kamalpreet Kaur remained with her in-laws only for a short period as she was residing separately. The allegations in the FIR are that husband of complainant was having illicit relation with his maternal aunt and the

same were also found to be false in the inquiry. It was also found in the inquiry that the dispute was between complainant and her husband and a petition u/s 9 of the Hindu Marriage Act for Restitution of Conjugal Right was also filed by the complainant on 25th September, 2007 and the present FIR was registered on 17th April, 2008. An application u/s 12 of Protection of Women from Domestic Violence Act was also filed at Talwandi Sabo against the Petitioners and others and a petition u/s 125 Code of Criminal Procedure was also filed in the Court at Dabwali for maintenance.

3. It was also argued by the learned Counsel for the Petitioners that a threat was given by the complainant to the Petitioners as well as other family members to falsely implicate them in the case and keeping in view this attitude of the complainant, her husband in order to save himself, filed a suit for mandatory injunction against the complainant at Bathinda. During the pendency of the investigation of the said FIR, certain dowry articles were recovered from the family members of the Petitioners. Learned Counsel for the Petitioners also submits that since marriage was solemnized on 3rd March, 2006 and immediately thereafter both complainant as well as her husband started living separately which is clear from the fact that they were having separate ration-card and harassment due to demand of dowry does not arise as they were residing at Bathinda whereas the Petitioners were residing at Talwandi Sabo.

4. Learned Counsel for the State as well as complainant submit that allegations against the present Petitioners are specific with regard to demand of dowry as well as harassment on account of not fulfilling the demand of dowry.

5. Heard arguments of learned Counsel for the parties and have also gone through the contents of FIR and other documents available on the file.

6. Admittedly, Petitioners No. 1 and 2 are father-in-law and mother-in-law of the complainant. An inquiry into the allegations was conducted by "Women Cell, Sirsa" and allegations were found false. The relevant extract from the inquiry report with regard to allegations of demand of dowry and harassment is reproduced as under:

..... Kamalpreet Kaur has levelled allegations against her husband Mandeep Singh, father-in-law Gurjant Singh, mother-in-law Balwant Kaur, Nand Sandeep Kaur, Mami Gobinder Kaur and Mama Jagroop Singh son of Ajaib Singh, resident of Model Town Bathinda regarding demand of Rs. 50,000/- and Rs. 2 lacs and also allegations of illicit relations of Mandeep Singh with his Mami Gobinder Kaur and also levelled allegations of forcible abortion of pregnancy. According to my enquiry and statements, the allegations of demand of Rs. 2 lacs as dowry have been found to be baseless. During the period when complainant Kamalpreet Kaur remained with her father-in-law Gurjant Singh and mother-in-law Balwant Kaur and Nand Sandeep Kaur in her in-laws house, the allegations of demand of dowry have not come in the inquiry and illicit relations of Mandeep Singh with his Mami has also not been proved in the inquiry and allegations of demand of dowry

by Gobinder Kaur and Jagoop Singh have also been found to be false during my enquiry because both are residing separately with their families in Model Town Bathinda and allegations levelled by Kamalpreet Kaur regarding her abortion has also not been proved in my inquiry and both Mandeep Singh and his wife Kamalpreet Kaur were residing in Bathinda and there was a dispute between both of them on domestic trifles. I hereby recommend for registration of FIR under Sections 498-A, 406 IPC against husband Mandeep Singh.

It is also an admitted fact that the complainant filed a petition under Section 9 of the Hindu Marriage Act for Restitution of Conjugal Rights on 25th September, 2007. The husband of the complainant filed a suit for Mandatory Injunction against her wife at Bathinda seeking direction to the complainant-wife to take her articles / marriage gifts from the husband as he was aware that he could be involved in some case of demand of dowry. During pendency of investigation of the said FIR, all dowry articles were recovered from the husband of the complainant. Complainant has also filed an application u/s 12 of Protection of Women from Domestic Violence Act, 2005 at Talwandi Sabo. She also filed a petition u/s 125 Code of Criminal Procedure in the Court at Dabwali for maintenance. All these petitions were filed just to harass the Petitioners and other family members. Although allegations of forcible abortion were there which were found to be false in the inquiry report conducted by Incharge "Women Cell" but the same have not been supported by any medical evidence. Married sister-in-law was also implicated in the case whereas she was not involved in any manner for demand of dowry or any harassment caused to the complainant in any manner. She was residing separately. The allegations regarding demand of dowry and harassment were found to be false in the investigation conducted by "Women Cell" and allegations with regard to abortion could not be proved and the "Women Cell" only recommended for registration of case under Sections 498-A/406 IPC against husband only.

7. Time and again it has been held by Hon'ble the Apex Court as well as various High Courts that there is always a tendency to implicate all the family members of her in-laws and even the distant relation whenever there is a matrimonial discord either out of vengeance or with a view to create pressure to achieve a suitable settlement. In the present case also, all the three Petitioners have falsely been implicated in the case by the complainant who are close relatives of husband of the complainant and false allegations have been levelled which could not be proved in the investigation conducted by the "Women Cell". This view has been supported in *Saritha v.R. Ramachandra* 2003(1) R.C.R 481 as under:

It is for the Law Commission and the Parliament either to continue with provisions (Section 498-A IPC) in the same form or to make the offence a non-cognizable one and a bailable one so that the ill-educated women of this country and their parents do not misuse the provisions to harass innocent people for the sin of conducting marriage with egoistic women. We have no hesitation to hold that if this situation is continued in this manner, the institution of marriage and

the principle of one man for woman will vanish into the air.

This view has further been supported in the judgment reported as *Kamaljit Singh v. State of Punjab* 2004(1) RCR 321 wherein the allegations were against the married sisters of the husband and other relatives who were residing separately and they were unnecessarily dragged into litigation whereas the dispute was between the complainant and her husband and FIR was quashed. Similarly, FIR was also quashed with regard to married sister-in-law in judgment reported as *Ms. Anu Gill v. State* 2002(1) R.C.R 82 on the ground that sister-in-law was married and was residing separately and it was not believed that dowry articles were entrusted to her. It was also held that there is always a tendency on the part of the complainant to involve all the relations of the in-laws family. This view has also been supported by the judgment of Hon''ble the Supreme Court in *Kans Raj Vs. State of Punjab and Others*, .

8. Now the question for consideration in the case is whether this Court can exercise its power u/s 482 Code of Criminal Procedure in the facts and circumstances of the case or not ? The scope and ambit of Courts'' powers u/s 482 Code of Criminal Procedure have been discussed in a number of cases. No-doubt, High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the Court. Inherent power u/s 482 Code of Criminal Procedure can be exercised to give effect to an order under the Code or to prevent abuse of the process of the Court or to otherwise secure the ends of justice. This power u/s 482 Code of Criminal Procedure is wide but the same is to be exercised with great care and caution. The power is to be exercised for advancement of justice or to prevent abuse of the process of the Court. Although no hard and fast rule can be laid down in regard to cases where the High Court should exercise its extraordinary jurisdiction of quashing the proceedings at any stage but the Hon''ble Supreme Court has summarised some categories of cases where inherent power can and should be exercised to quash the proceedings. In *R.P. Kapur Vs. The State of Punjab*, , Hon''ble the Supreme Court has summarised some categories of cases as under:

- (i)Where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;
- (ii)where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;and
- (iii)where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

Similarly in *State of Karnataka Vs. L. Muniswamy and Others*, it has been held that power u/s 482 Code of Criminal Procedure can be exercised when the Court comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the Court or that ends of justice require that proceedings should be quashed. In *Madhu Limaye Vs. The State of Maharashtra*, a three-

Judge Bench of Hon''ble the Apex Court held as under:

... In case the impugned order clearly brings out a situation which is an abuse of the process of the Court, or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. Such cases would necessarily be few and far between. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. The present case would undoubtedly fall for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, that the invoking of the revisional power of the High Court is impermissible.

In *Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandojirao Angre and Ors.* 1988(1) R.C.R.565 the Hon''ble Apex Court observed in para No. 7 as under:

7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court, chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

In *State of Haryana and Ors. v. Bhajan Lal and Ors.* 1991(1) R.C.R.383 Hon''ble the Apex Court in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure (for short, Cr.P.C.) under Chapter XIV and of the principles of law enunciated by the Supreme Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers u/s 482 Cr.P.C., gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice. The Hon''ble Supreme Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

(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 made in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 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 u/s 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.

The Hon"ble Supreme Court in *Jandu Pharmaceutical Works Limited and Ors. v. Mohd. Sharaful Haque and Anr.* 2004 (4) R.C.R. 937 observed thus:

It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, Court would be justified to quash any proceeding if it finds that initiation / continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. All the allegations are general in nature and no specific allegations are there against the present Petitioners. No date and time with regard to demand of dowry articles has been mentioned. Even it has not been mentioned as to what and when the demand was made by the present Petitioners. The allegations in the complaint are that much amount was spent on the marriage and certain dowry articles were given but nowhere it has been said as to what and when those articles were demanded by the present Petitioners. Even no entrustment of dowry articles was there to the present Petitioners. The Petitioners have been implicated only on the basis of general allegations. The question of demand of dowry and harassment does not arise as the Petitioners were residing separately. It appears that the names of the Petitioners have been mentioned in the

complaint just to falsely implicate them whereas as per case of the Petitioners, there were temperamental differences between complainant and her husband and the complainant could not adjust with her husband. All family members including the present Petitioners, their unmarried daughter, maternal uncle, maternal aunt etc. have been implicated which in itself shows that the complaint is motivated just to harass the family members and relations of the Petitioners.

10. In view of the facts of the present case and the law position as explained above, I am of the considered view that keeping in view general and vague allegations, the present Petitioners cannot be held liable as they were not having any role with regard to demand of dowry or in harassing thereof as they were residing separately and there was no occasion for them to demand any dowry or harassing the complainant in any manner. It is also clear that all family members including remote relations like maternal uncle and maternal aunt of the husband of the complainant have been implicated.

11. Accordingly, the petition is allowed and FIR No. 57 dated 17.4.2008 under Sections 498-A, 406, 313, 34 IPC registered at Police Station Kalanwali, District Sirsa as well as all subsequent proceedings arising therefrom are quashed qua the present Petitioners.