
(2015) 10 P&H CK 0198
In the Punjab And Haryana At Chandigarh
Case No : Criminal Misc. No. M-22286 of 2014

Parveen and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 12-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 173, 406, 482
Hindu Marriage Act, 1955 — Section 13
Penal Code, 1860 (IPC) — Section 406, 498-A

Citation : (2015) 10 P&H CK 0198

Hon'ble Judges : Anita Chaudhry, J.

Bench : Single Bench

Advocate : B.S. Jaswal, Advocate, for the Appellant; K.S. Aulakh, AAG, for the Respondent

Final Decision : Allowed

Judgement

Anita Chaudhry, J.—At the outset, learned State counsel has pointed out that challan was not filed against petitioner No. 1 and she was found innocent during investigation. On this, the learned counsel for the petitioners had sought withdrawal of petition qua petitioner No. 1, with liberty to approach again, if need arose. Dismissed as withdrawn qua petitioner No. 1 with liberty aforesaid.

2. This is a petition under Section 482 Cr.P.C. seeking quashing of FIR No. 103 dated 04.12.2013, registered under Sections 406 and 498-A IPC at Police Station Fattu DHINGA, District Kapurthala and subsequent proceedings.

3. The facts, necessary for disposal of the instant petition are being noticed first.

4. Complainant-respondent No. 2 Manpreet Kaur was married to Balraj Singh on 12.05.2001. Two children were born out of this wedlock. The petitioners are the sisters of Balraj Singh.

5. Respondent No. 2 got the FIR registered against her husband, father-in-law Kashmir Singh, mother-in-law Dalbir Kaur and the present petitioners on the

allegations that sufficient dowry was given in the marriage but the accused were not satisfied. Her husband and parents-in-law demanded a motor-cycle. A sum of Rs. 20,000/- was given for the purpose to the accused. She had further alleged that the accused in connivance with each other used to beat her and made her life hell. It was also alleged that on the instigation of the petitioners, her husband used to harass and maltreat her. Her sister-in-law Ranjit Kaur and other accused took her jewellery on the assurance to return after marriage, it was misappropriated. Her sister-in-law Praveen and mother-in-law put pressure on her to bring money for purchase of plot and car and on refusal she was beaten up. A panchayat was convened, but the accused did not mend their ways.

6. On these broad allegations, a case was registered and investigated. Challan was filed.

7. Quashing was sought, inter alia, on the ground that petitioners No. 2 and 3 were married and were living separately from the couple.

8. In the reply filed on behalf of State, it was averred that after investigations, challan was filed and petitioners No. 2 and 3 had already been charge-sheeted and the petition was not maintainable. All other averments made in the petition were denied.

9. In the reply filed on behalf of complainant-respondent No. 2, it was pleaded that the petition was not maintainable as challan had been filed against petitioners No. 2 and 3 and they had been charge-sheeted along with other accused under Sections 406 and 498-A IPC and trial was going on. It was further averred that specific allegations had been levelled by the complainant and during investigations, their involvement was found and consequently challan was filed and charges were framed. It was denied that petitioner Ranjit Kaur was residing separately. It was averred that petitioner Kuldip Kaur was a frequent visitor in her matrimonial home and interfered in her life.

10. I have heard learned counsel for the parties and have gone through the paper-book carefully.

11. Learned counsel for petitioners No. 2 and 3 had urged that the petitioners are married and were living separately and they had no concern with the matrimonial life of the complainant, who along with her husband had been residing in a portion of property bearing No. 59, Phase-2, Rishi Vihar Majitha and the couple had been disowned by their father on 04.06.2005. He further urged that a civil suit was filed by mother of petitioners against the couple seeking their eviction from the said part of property, which was decreed on 16.05.2009. According to learned counsel, the marriage took place in 2001 and till December 2013 there were no allegations of harassment or mal-treatment concerning with dowry. He had further pointed out that in the year 2009 a petition under Section 125 Cr.P.C. was filed by the complainant against her husband, but that was later dismissed in default. At that time also, there were no allegations of harassment. He had contended that the petitioners being the sisters of the husband have

been roped in falsely to settle scores and to widen the net. He had further urged that the petitioners cannot be said to be beneficiary to the alleged demand of motor-cycle, plot or car. According to him, no specific instance of harassment had been given.

12. Learned State counsel assisted by counsel for the complainant had submitted that there were specific allegations against the petitioners who were found instrumental in the harassment and maltreatment of the complainant. It was submitted that charge had been framed and the petition was not maintainable.

13. The question that arises is whether the FIR and the subsequent report under Section 173 Cr.P.C. and subsequent charge sheet can be quashed in exercise of the powers under Section 482 Cr.P.C.

14. The Hon''ble Supreme Court in the case of *Kans Raj Vs. State of Punjab and Others*, , had observed that a tendency had developed for roping all the relations in dowry cases and if it was not discouraged, it was likely to affect the case of the prosecution even against the real culprits.

15. In *Anita & Ors. v. State of Punjab*, 2003 (4) RCR (Criminal) 313, when a first information report was lodged by the wife under Sections 498-A and 406 of the Indian Penal Code against the entire family members of the husband, this Court exercising its powers under Section 482 Cr.P.C. had quashed the FIR and had observed that there was a tendency to involve all the relatives of the husband when the relations between the husband and the wife become strained.

16. Similarly, in the case of *Harjinder Kaur & Ors. v. State of Punjab*, 2004 (4) RCR (Criminal) 332, a criminal complaint was filed under Sections 498-A and 406 IPC against the husband, his parents and 5 sisters. The proceedings qua sisters were quashed as the allegations against the sisters were found to be vague and exaggerated and made to rope in each and every relation of the husband.

17. In *Arnesh Kumar Vs. State of Bihar*, , the Hon''ble Apex Court observed that the fact that Section 498-A IPC is a cognizable and non-bailable offence had lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives and the simplest way to harass is to get the husband and his relatives arrested under this provision.

18. In the case of *Preeti Gupta and Another Vs. State of Jharkhand and Another*, the Hon''ble Apex Court observed that a serious relook of the entire provisions of Section 498-A IPC was warranted by the legislation. It was observed that exaggerated versions of the incident are reflected in a large number of complaints and the tendency of over implication is also reflected in a very large number of cases. In that case the Hon''ble Apex Court quashed the criminal proceedings against brother and sister of husband, living separately.

19. In the instant case, from a perusal of FIR, it is abundantly clear that there are no allegations of entrustment of dowry articles to the petitioners. There is not a whisper that any stridhan was handed to the petitioners, which they had

misappropriated. Rather, the FIR shows that according to the complainant, the same were allegedly misappropriated by her mother-in-law. The customary gifts which were allegedly given to petitioners No. 2 and 3 at the time of marriage, do not fall within the definition of dowry. It cannot be believed that petitioners No. 2 and 3 being ladies were given Rs. 20,000/- for purchase of motor-cycle. Entrustment is sine quo non for proving the offence under Section 406 IPC, which is conspicuously missing in the present case. Coming to the alleged offence under Section 498-A IPC, a perusal of FIR would reveal that no specific date or time was mentioned therein when the complainant was harassed, maltreated or beaten up by the husband for dowry, at the instance of petitioners No. 2 and 3. No MLR has been placed on record. Both are admittedly married. From the address of petitioner Ranjit Kaur given by the complainant while making complaint to the police, it is evident that she was residing separately, while there are no specific allegations against petitioner Kuldeep Kaur. The allegation against the petitioners is of instigation which is vague, omnibus and general in nature and appears to have been made out of frustration as she failed to maintain her matrimonial alliance. It cannot be believed that petitioners No. 2 and 3 would be a beneficiary from the alleged demand of motor cycle or plot or a car. No date or time of the said demand has been mentioned. A civil suit was filed by Dalbir Kaur against the complainant and her husband where relief of vacant possession of portion of property bearing No. 59, Phase-II, Rishi Vihar, Majitha Road, Amritsar was sought and was granted and the complainant and her husband had been directed to vacate the portion of disputed property. The reply filed in the suit by the complainant, makes it evident that she had filed a petition under Section 125 Cr.P.C. and her husband had filed a petition under Section 13 of Hindu Marriage Act. But no allegations with regard to harassment or maltreatment were levelled. Even otherwise, there is nothing to show that after the marriage in 2001 since December, 2013 the complainant had ever made any complaint against the accused regarding harassment and maltreatment.

20. The plea of respondents about the non-maintainability of the petition after framing of charge can very well be answered by referring to Satish Mehra Vs. State of N.C.T. of Delhi and Another, , wherein it has been observed thus:--

"15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even

accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused."

21. Furthermore, in the case of Preeti Gupta and Another Vs. State of Jharkhand and Another, , the Hon'ble Supreme Court had observed that where the proceeding is instituted with an ulterior motive or where the allegations made in the complaint are absurd and improbable, the Court would be within its power to quash the complaint/FIR.

22. In the considered opinion of this Court, the allegations made in the complaint are absurd and improbable and warrants interference by this Court for quashing all the proceedings against petitioners No. 2 and 3 with an object to meet the ends of justice and prevent abuse of the process of the Court.

23. In view of the discussion made above, the instant petition is allowed. The impugned FIR and consequent proceedings taken therein, against petitioners No. 2 and 3, are quashed.