
(2015) 08 P&H CK 0113
In the Punjab And Haryana At Chandigarh
Case No : Criminal Misc. No. M-8495 of 2014

Rajiv Mehta and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 384, 406, 498A, 498-A

Citation : (2016) 1 DMC 465 : (2015) 4 RCR(Criminal) 340

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : R.S. Bajaj, for the Appellant; K.D. Sachdeva, A.A.G, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rameshwar Singh Malik, J—Petitioners, by way of instant petition under Section 482 of the Code of Criminal Procedure ("Cr.P.C." for short), seek quashing of FIR No. 78 dated 17.7.2010 under Sections 498-A, 406 and 384 of the Indian Penal Code ("IPC" for short), registered at Police Station Division No. 3, Jalandhar (Annexure P-1), alongwith all the consequential proceedings arising there from, including the order dated 11.3.2011 (Annexure P-4), whereby petitioners were declared proclaimed offenders by the learned Judicial Magistrate, Ist Class ("JMIC" for short), Jalandhar.

2. Notice of motion was issued and pursuant thereto, reply on behalf of respondent No. 1-State of Punjab was filed by way of affidavit dated 12.1.2015. A separate undated reply on behalf of respondent No. 2-complainant was filed. However, despite having been impleaded as party-respondent No. 3, no reply was filed on behalf of Ms. Savita Bansal-estranged wife of petitioner No. 1-Rajiv Mehta.

3. Shorn of detailed factual background, it would suffice to refer to the basic facts of the case, which are necessary for the disposal of the present petition.

Marriage between petitioner No. 1 and respondent No. 3 took place on 30.10.2003. The couple resided together at New Delhi for about a month and thereafter they left for Holland on 30.11.2003. Before marriage, petitioner No. 1 was already staying abroad. He sponsored respondent No. 3-his wife and she also went with her husband to Holland. Later on, couple shifted from Holland to England somewhere in the year 2005. Out of the wedlock, a daughter was born on 17.8.2006 in England. It seems that some temperamental differences arose between husband and wife, while they were staying in England. Wife-respondent No. 3 filed a petition for divorce on 12.7.2010 against petitioner No. 1-husband in the Family Court at Willesden County Court in England.

4. Simultaneously, respondent-wife, through her father-respondent No. 2 got the impugned FIR dated 17.7.2010 registered against four persons of her in-laws family, including relatives of the husband i.e. his sister and brother-in-law. Although respondent No. 2-complainant lodged the complaint against six persons, but Anil Walia, brother-in-law and Meenu Walia sister-in-law of respondent No. 3-wife were found innocent by the police during the course of enquiry and FIR was not registered against them.

5. Marriage between the parties already stood dissolved by a decree of divorce dated 7.4.2014 passed by the Family Court at Willesden County Court in England, as per the own pleadings of complainant-respondent No. 2. It is also pertinent to note that despite knowing fully well that the accused persons were staying abroad, complainant-respondent No. 2 gave their Indian address at the time of registration of the impugned FIR. This was the reason that no notice was issued to any of the accused at their residential address of England, because of which they came to be declared proclaimed offenders, vide order dated 11.3.2011 (Annexure P-4). Hence, this petition under Section 482 Cr.P.C., for quashing of the impugned FIR, impugned order Annexure P-4 declaring the petitioners as proclaimed offenders and all other consequential proceedings arising from the impugned FIR, at the hands of the accused-petitioners.

6. Learned counsel for the petitioners submits that the impugned FIR is nothing, but a blatant misuse of the process of law. Respondent-wife sought and had already been granted a decree of divorce by the court in England. She moved the first complaint before the police in England on 14.2.2010. Allegations levelled by the respondent-wife against both the petitioners herein were found false by the police in England, as stated in para 16 of the petition at page 12 of the paper book. He also refers to the averments taken by the respondent-wife in her pleadings before the court in England, reproduced in para 21 of the petition at page 22 of the paper book, to the effect that "no claim/complaint was made by me (wife) or on my behalf in respect of domestic violence or dowry in the FIR lodged in India." Thus, he submits that no offence was made out against the petitioners, even if the allegations levelled in the impugned FIR are taken to be true on their face value. He next contended that the respondent-wife is not coming forward to appear and depose before the learned trial court as PW-5,

despite having been summoned more than once for the said purpose, as she is staying in England. The reason is obvious that the respondent-wife is no more the wife of petitioner No. 1, as she had already secured divorce from the court in England and marriage already stood dissolved by a decree of divorce, however, she is bent upon to cause maximum harassment to the petitioners by misusing the process of court, only with a view to wreck vengeance. He also relies on the order dated 31.8.2012 passed by this court in CRM No. M-600 of 2011 (Renu Kapoor and another Vs. State of Punjab and another), whereby this very impugned FIR and proceedings arising there from were quashed by this court qua those two petitioners, who were co-accused of the present petitioners. He prays for quashing the impugned FIR as well as the consequential proceedings arising there from, including the impugned order Annexure P-4, by allowing the present petition.

7. Per contra, learned counsel for the State submits that petitioners are not entitled for the relief being claimed, because of their involvement in the case. Petitioner No. 1 is the main accused, being the husband, whereas petitioner No. 2, father-in-law of respondent-wife has also been found to have committed the offence in question. He further submits that since the petitioners had been declared proclaimed offenders by the learned trial court, they are not entitled for maintaining the present petition for quashing the impugned FIR and consequential proceedings arising there from. He prays for dismissal of the present petition.

8. Similarly, learned counsel for respondents No. 2 and 3 submits that a clear case has been made out against the petitioners for the commission of offences alleged against them. Case of the present petitioners, they being main accused, is distinguishable from the case of their co-accused namely; Renu Kapoor and her husband, because of which the order dated 31.8.2012 passed by this court in CRM No. M-600 of 2011 is of no help to the petitioners. The FIR and subsequent proceedings are not liable to be quashed. He also prays for dismissal of the present petition.

9. Having heard learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed herein above, instant one has been found to be a fit case warranting interference at the hands of this court, while exercising its inherent jurisdiction under Section 482 Cr.P.C., for twin purposes namely; to prevent the abuse of process of court and also to secure the ends of justice. To say so, reasons are more than one, which are being recorded hereinafter.

10. It is a matter of record and there is no dispute between the parties that when the impugned FIR came to be registered by respondent No. 2-complainant, respondent No. 3-wife of petitioner No. 1 was in England. It is also not in dispute that she is still residing in England. It is the own pleaded case of respondent No.

2 in his reply that the respondent-wife sought and was granted a decree of divorce against petitioner No. 1-husband by the court in England. Despite having been summoned for more than once, respondent-wife has not come to India to appear and depose before the learned trial court as PW-5 in the on going criminal trial arising out of the impugned FIR.

11. It is again a matter of record that this very FIR had been quashed by this court, vide its above said order dated 31.8.2012 passed in CRM No. M-600 of 2011 (Renu Kapoor and another Vs. State of Punjab and another), however, qua the petitioners of said criminal misc., who were co-accused of the present petitioners. Further, at the very initial stage, when the complaint was filed by respondent No. 2 against six persons, two persons namely; Meenu Walia, sister-in-law and Anil Walia, brother-in-law of respondent No. 3-wife were found innocent by the police itself in its enquiry conducted before registration of the FIR.

12. This action of the police declaring above said two persons as innocent even before registration of the FIR was never challenged by the complainant-respondent No. 2 or respondent No. 3 before any court of law. Thus, out of total six persons, two were found innocent by the police in its enquiry and two have been found innocent by this court, while quashing the present FIR qua them, vide its above said order dated 31.8.2012. On the basis of above said glaring and undisputed facts, this court feels no hesitation to conclude that continuation of the criminal proceedings arising out of the impugned FIR against the petitioners, would clearly amount to an abuse of the process of court and the same will result in serious miscarriage of justice.

13. It has again gone undisputed on record that the petitioners were staying abroad when the impugned FIR was registered against them. Despite knowing fully well that the accused were not residing in India, complainant-respondent No. 2 gave Indian addresses of the petitioners. Whenever any notice was issued to the petitioners, it was issued at their Indian address and they were never informed at their residential addresses of England, because of which they came to be declared proclaimed offenders by the learned Magistrate, by passing the impugned order dated 11.3.2011 (Annexure P-4).

14. In fact, impugned order dated 11.3.2011 (Annexure P-4) has been found to be the direct result of mala fide intention of the complainant-respondent No. 2, who kept the learned court of competent jurisdiction as well as the police authorities in dark, intentionally concealing the truth about the material fact that the accused, as a matter of fact, were not staying in India. Had the complainant come to the court with clean hands and petitioners would have been served at their residential addresses of England, there was no scope of declaring them proclaimed offenders nor the learned Magistrate would have passed the impugned order (Annexure P-4). Having said that, it can be safely concluded that respondents No. 2 and 3 proceeded on a common mala fide intention, with a view to wreck their vengeance against the petitioners, causing maximum

harassment to them, by misusing the process of law. Under these circumstances, continuation of the impugned criminal proceedings arising out of the impugned FIR, would be totally uncalled for and unwarranted, thus, liable to be quashed for this reason also.

15. The above said view taken by this court also finds support from a catena of judgments on the subject, including the following judgments of the Hon''ble Supreme Court as well as this court:-

1) G.V. Rao Vs. L.H.V. Prasad and Others, AIR 2000 SC 2474 : (2000) 2 JT 627 : (2000) 2 SCALE 234 : (2000) 3 SCC 693 : (2000) AIRSCW 2600 : (2000) 2 Supreme 165

2) Manjula Sinha Vs. State of U.P. and Others, (2007) 2 DMC 395 : (2007) 9 SCALE 161 : (2007) 8 SCR 301 : (2007) 2 UJ 903 ,

3) Sundar Babu and Others Vs. State of Tamil Nadu, (2009) 13 JT 666 : (2009) 5 SCALE 1 : (2009) 14 SCC 244 : (2009) 4 SCR 326

4) Preeti Gupta and Another Vs. State of Jharkhand and Another, AIR 2010 SC 3363 : (2010) CriLJ 4303 : (2010) 4 Crimes 19 : (2010) 2 DMC 387 : (2010) 8 JT 410 : (2010) 7 SCC 667 : (2010) 9 SCR 1168 : (2010) 8 UJ 3936 : (2010) AIRSCW 4975 : (2010) 6 Supreme 312

5) Geeta Mehrotra and Another Vs. State of U.P. and Another, AIR 2013 SC 181 : (2012) 10 SCALE 299 : (2012) 10 SCC 741 : (2012) AIRSCW 5692

6) K. Srinivas Rao Vs. D.A. Deepa, (2013) 3 AD 458 : AIR 2013 SC 2176 : (2013) 1 DMC 458 : (2013) 3 JT 97 : (2013) 171 PLR 149 : (2013) 2 RCR(Civil) 232 : (2013) 2 SCALE 735 : (2013) 5 SCC 226 : (2013) AIRSCW 1396 : (2013) 2 Supreme 80

7) Sushil Kumar Sharma Vs. Union of India (UOI) and Others, AIR 2005 SC 3100 : (2005) CriLJ 3439 : (2005) 2 DMC 325 : (2005) 6 JT 266 : (2005) 6 SCC 281 : (2005) 2 SCR 730 Supp : (2005) 2 UJ 1057 : (2005) AIRSCW 3569 : (2005) 5 Supreme 137

8) Madan Lal and others Vs. State of Punjab (P & H) 2012 (8) RCR (criminal) 428

9) Gurdial Singh and another Vs. State of Punjab and others decided by this court in CRM No. M-36189 of 2010.

16. The relevant observations made by the Hon''ble Supreme Court in para 20, 21 and 24 of its judgment in Geeta Mehrotra's case (supra), which can be gainfully followed in the present case, read as under:-

It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao vs. L.H.V. Prasad & Ors. reported in G.V. Rao Vs. L.H.V. Prasad and Others, AIR 2000 SC 2474 : (2000) 2 JT 627 : (2000) 2 SCALE 234 : (2000) 3 SCC 693 : (2000) AIRSCW 2600 : (2000) 2 Supreme 165 wherein also in a matrimonial dispute, this Court had held that the High Court

should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

"there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different courts." The view taken by the judges in this matter was that the courts would not encourage such disputes.

In yet another case reported in B.S. Joshi and Others Vs. State of Haryana and Another, AIR 2003 SC 1386 : (2003) CriLJ 2028 : (2003) 3 CTC 54 : (2003) 1 DMC 524 : (2003) 3 JT 277 : (2003) 3 SCALE 214 : (2003) 4 SCC 675 : (2003) 2 SCR 1104 : (2003) 2 UJ 953 : (2003) AIRSCW 1824 : (2003) 3 Supreme 227 in the matter of B.S. Joshi & Ors. vs. State of Haryana & Anr. it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife under Section 498A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power.

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However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out

of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognisance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.

17. Similarly, the observations made by the Hon"ble Supreme Court in para 28 and 30 to 35 of its judgment in Preeti Gupta's case (supra), which aptly apply to the facts of the present case, read as under:-

"It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

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It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

Before parting with this case, we would like to observe that a serious re-look of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society."

18. Revering back to the peculiar fact situation of the present case, it is held that the complainant-respondent No. 2, who is none-else, but father of respondent No. 3-estranged wife of petitioner No. 1-husband, put forth false and concocted story in the impugned FIR running into 12 long pages. Four out of six accused have already been found innocent. Two were found innocent by the police during the course of enquiry even before registration of FIR. Two more were found

innocent by this court, while quashing this very FIR qua them, vide its above said order dated 31.8.2012 passed in CRM No. M-600 of 2011.

19. Complainant-respondent No. 2 as well as his daughter respondent No. 3 did not challenge either the above said action of the police or the validity of above said order passed by this court, which had become final in favour of above said four persons, including two co-accused of the petitioners. In this view of the matter, present one has been found to be a motivated and false litigation initiated by the complainant-respondent No. 2 against the petitioners. It is so said because inspite of the fact that the respondent-wife has taken the above said averment before the court in England that she never put forth any claim or made any complaint nor any such claim or complaint was made on her behalf, in respect of any domestic violence or dowry against the petitioners, in the FIR lodged against them in India. In such a situation, continuation of criminal proceedings arising out of the impugned FIR, including the impugned order Annexure P-4 would be nothing, but sheer misuse of process of law and the same are liable to be quashed, for the reasons as well.

20. No other argument was raised.

21. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that instant petition deserves to be allowed. Consequently, the impugned FIR and also the impugned order dated 11.3.2011 (Annexure P-4), as well as other consequential proceedings arising from the impugned FIR are hereby quashed, however, only qua the petitioners.

22. Resultantly, with the above said observations made, instant petition stands allowed, however, with no order as to costs.