

(2022) 09 SHI CK 0050

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 660 Of 2019

Virender Kumar And Others

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 147, 148, 149, 323, 329, 386, 406, 498A, 506
Code Of Criminal Procedure, 1973 — Section 125, 173, 482

Citation : (2022) 09 SHI CK 0050

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : C.N. Singh, Neeraj K.Sharma

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. By way of instant petition, a prayer has been made to quash FIR No.37/2019, dated 09.9.2019, under Sections 498-A, 323 and 506 read with Section 34 of IPC, registered at Women Police Station at Bhiuli, District Mandi, H.P. and all subsequent criminal proceedings.
2. Petitioner No. 1 and respondent No. 2 are husband and wife. Petitioners No. 2 and 3 are father and mother of petitioner No. 1, respectively. Petitioner No. 4 is his married sister.
3. The marriage between petitioner and respondent No. 2 was solemnized on 08.05.2018. Petitioner was employed in Merchant Navy. On 11.06.2018, petitioner left his native village to join his duties. Petitioner came back on 19.08.2019 after availing leave. In the meantime, on 11.02.2019, a son was born to respondent No.2.
4. On 05.09.2019, respondent No. 2 filed a complaint before the Gram Panchayat alleging harassment at the hands of petitioners No.1 to 4 for dowry. It was also

alleged that on 29.08.2019, respondent was beaten by petitioner No.1. On 06.09.2019, a compromise was recorded between petitioner No. 1 and respondent No. 2 before Gram Panchayat.

5. On 09.09.2019, respondent No. 2 made a complaint to the police, on the basis of which, FIR No. 37/2019 was recorded on the same day at Women Police Station Bhiuli, District Mandi, H.P., under Sections 498-A, 323 and 506 read with Section 34 of IPC. It was alleged in the FIR that petitioner No. 1 and his family members had started making demands of dowry from the parents of the complainant. At the time of marriage, a scooty was given to petitioner No. 1. As per complainant, her parents were not in a position to meet the demands of petitioner No.1 and his family members. It was further alleged that on 07.09.2019, petitioner No. 1 had given beatings to complainant. She was medically examined at Civil Hospital, Baldwara. She reported the matter to the police, but no cognizance was taken. Finally, the FIR No. 37/2019 was registered, when complainant approached the Superintendent of Police, Mandi.

6. The case set-up by the petitioners is that the allegations levelled by respondent No.2 in FIR No. 37/2019 are wrong, false and baseless. Respondent No. 2 is stated to have filed an application for maintenance under Section 125 of Cr.P.C for herself as well as minor child. It is alleged that FIR No. 37/2019 is actuated with malice in order to humiliate and harass the petitioners. The purpose of respondent No. 2 was to stop petitioner No.1 from attending his duties. The allegations regarding demand of dowry were stated to be vague. No details and particulars were mentioned regarding such demand. It is further alleged that from the bare reading of the contents of FIR, basic ingredients of Sections 498-A, 323 and 506 read with Section 34 of IPC, were not made out. The action of respondent No. 2 has been mentioned as abuse of process of law.

7. Respondent No. 1 filed reply and submitted the factual details which led to the registration of FIR No. 37/2019. It was further submitted that investigation was carried out. As per MLC issued by Civil Hospital Baldwara, simple injuries were found on the person of respondent No. 2. The investigation was stated to be complete and challan was also stated to be pending for scrutiny before Law Officer. As per respondent No. 1, a prima facie case, was made out against petitioners after investigation.

8. Respondent No. 2 also filed her separate reply. She reiterated the allegations of dowry demand as well as harassment and physical assault against the petitioners. It was also submitted that petitioner No.1 wanted to get divorce and to leave the country thereafter. It was further submitted that the police had filed the report under Section 173 of Cr.P.C before the Court of competent jurisdiction, on this score also, dismissal of petition was sought.

9. I have heard learned counsel for the parties and have also gone through the status report.

10. The entire thrust of learned counsel for the petitioners was to contend that

FIR No. 37/2019, dated 09.09.2019 was nothing but abuse of process of law. The allegations therein were vague. No specific instance or particular was provided in respect of alleged demand for dowry. It was further contended that from the bare perusal of the contents of FIR, no case was made out against the petitioners and the same is required to be quashed.

11. From the replies filed on behalf of the respondents, it is abundantly clear that the investigation was conducted in FIR No. 37/2019 and challan has been filed in the Court. This fact has not been denied or rebutted by the petitioners.

12. It is evident that petitioners have not placed on record any material collected by the investigating agency. Thus, it is not known as to on what material the investigating agency has based its findings and filed the challan. As per respondent No.2, the challan filed by the police is pending before the Court. That being so, the cognizance must have been taken by the Court of competent jurisdiction. There is no whisper in the petition regarding such development. There is no challenge to the findings recorded by the police in its challan presented before the Court. No challenge has been made even to the cognizance order passed by the Court of competent jurisdiction.

13. Though, a prayer has been made to quash FIR No. 37/2019 and subsequent proceedings, but the petition is completely silent, as to what are the subsequent proceedings. As noticed above, it has become clear from the response of the respondents that the investigation has been completed and challan has been filed in the Court and the Court is seized of the matter.

14. In above noted circumstances, the contents of FIR No. 37/2019 loses much significance. The FIR is not meant to have all the details. It is only recording of information in respect of commission of cognizable offence. In case, a cognizable offence is made out from the facts disclosed to the police, it has no option but to register the FIR. Thus, the contents of FIR can be only skeleton narration of facts. It is only after the investigation that the police arrives at some conclusion as to existence of a case against the accused or otherwise.

15. Since, investigation record and cognizance order are neither before this Court nor has been challenged, the petitioners cannot succeed in the petition. In *Kaptain Singh Vs. State of Uttar Pradesh and Others* (2021)9 SCC 35, the Apex Court has held as under:-

"9.1 At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 Cr.P.C. has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 Cr.P.C. quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the Learned Magistrate for

the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 Cr.P.C. was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of Dineshbhai Chandubhai Patel (Supra) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

9.2 In the case of Dhruvaram Murlidhar Sonar (Supra) after considering the decisions of this Court in Bhajan Lal (Supra), it is held by this Court that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C. Similar view has been expressed by this Court in the case of Arvind Khanna (Supra), Managipet (Supra) and in the case of XYZ (Supra), referred to hereinabove.

9.3 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C.

10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and

considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarized affidavit of Mamta Gupta – Accused No.2 and Munni Devi under which according to Accused no.2 – Ms. Mamta Gupta, Rs.25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27.10.2010, the sale consideration is stated to be Rs.25 lakhs and with no reference to payment of Rs.25 lakhs to Ms. Munni Devi and no reference to handing over the possession. However, in the joint notarized affidavit of the same date i.e., 27.10.2010 sale consideration is stated to be Rs.35 lakhs out of which Rs.25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused No.2. Whether Rs.25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs.25 lakhs as mentioned in the joint notarized affidavit dated 27.10.2010. It is also required to be considered that the first agreement to sell in which Rs.25 lakhs is stated to be sale consideration and there is reference to the payment of Rs.10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation.”

16. In light of the above noted dictum the FIR in question cannot be quashed at this stage especially in absence of any material collected by investigating agency and also in absence of any challenge to the cognizance order. Further, the filing of challan suggests that serious triable issues have arisen and are required to be gone into and considered at the time of trial.

17. In view of above discussion, there is no merit in the petition and the same is accordingly dismissed.

Pending miscellaneous application(s), if any, shall also stand disposed of.