

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No. M-8742 of 2015(O&M)
Date of decision : 03.10.2016**

Daljit Singh & Ors.

... Petitioners

versus

Sukhwinder Kaur & Anr.

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment?
Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

**Present: Mr. Parminder Singh, Advocate
for the petitioners.**

**Mr. J.B.S. Gill, Advocate
for respondent No.1.**

Mr. K.S. Aulakh, AAG Punjab.

ANITA CHAUDHRY, J.

The petitioners are seeking quashing of complaint titled as Sukhwinder Kaur Vs. Harjit Singh and consequent proceedings conducted therein.

Sukhwinder Kaur-respondent No.1 was married to Harjit Singh 07.05.2011 at village Motian. Petitioner Daljit Singh is the father-in-law, Jang Singh is grand-father-in-law and Ranbir Singh is the brother-in-law of the complainant. The complaint was filed in the Court against the petitioners, husband Harjit Singh and Sher Kaur, sister of father-in-law

alleging that sufficient dowry was given in the marriage but the accused were not satisfied and maltreated her. The accused in connivance with each other started demanding a motor cycle. A sum of Rs.80,000/- was given to Harjit Singh. The complainant was beaten in the month of November, 2011. She gave birth to a stillborn child on 24.01.2012 at her parental home. A panchayat was convened, but accused demanded a car to rehabilitate her. On 15.06.2012 she came to know that her *istridhan* had been set on fire by the accused. An application was given to the police, but no action was taken.

By way of preliminary evidence, the complainant appeared as CW1 and examined Joga Singh, Balkrishan and Dr. Renu Kumari as PWs2 to 4 respectively.

Learned trial Court vide order dated 09.04.2014 summoned the petitioner and Harjit Singh under Sections 406 and 498-A IPC. The complaint qua Sher Kaur was dismissed.

Dis-satisfied, petitioner Jang Singh preferred a revision petition challenging the issuance of process and vide order dated 22.01.2015 revision petition was partly allowed and offence under Section 406 IPC was dropped.

The petitioners have sought quashing of complaint and subsequent proceedings conducted therein.

In the reply filed by respondent No.1, an objection regarding maintainability was raised. A plea was raised that petitioners Daljit Singh and Ranbir Singh did not avail the remedy of a revision before the Court below and allegations have been made that all the accused in connivance with each other harassed and maltreated the complainant and burnt her *istridhan*.

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

Learned counsel for the petitioners had impugned the summoning order. He had urged that the complainant had involved three generations and did not even spare Jang Singh, grand-father of the husband who was more than 80 years of age and the petitioners were living separately and did not interfere in the married life of the couple nor were beneficiaries of the demand of motorcycle or car. He submitted that there are no specific allegations against the petitioners and they have been implicated in the case just to wreak vengeance being the relatives of the husband and there is a general tendency of involve all the family members of the husband in matrimonial dispute. According to the him, there is no prosecution but persecution. He had further submitted that no part of cause of action arose within the jurisdiction of Hoshiapur(Punjab) and the matrimonial home of the complainant was at Ambala(Haryana) and the offence under Sections 406 and 498-A IPC were not continuing offence. Reliance was placed on **Y. Abraham Ajith & Ors. Vs. Inspector of Police, Chennai & Anr. 2004(3) RCR(Crl.) 988** and **Harmanpreet Singh Ahluwalia & Ors. Vs. State of Punjab & Ors. 200992) RCR(Crl.) 956**. He had further urged that the summoning order was passed by the trial Court without resorting to the provisions of Section 202 Cr.P.C. and the same was not sustainable and the entire proceedings stand vitiated. He had referred to **Savera Sidhu Vs. Harleen Sidhu & Anr. 2011(2) RCR(Crl.) 442**.

Learned counsel for the complainant supported the summoning order, according to him, after taking into account the statements, the

Magistrate had issued process. He had further urged that petitioners Daljit Singh and Ranbir Singh had not availed the statutory remedy of filing the revision against the summoning order, therefore, the petition should be dismissed.

The question that arises is whether the impugned complaint and the subsequent proceedings can be quashed in exercise of the powers under Section 482 Cr.P.C.

Broad guidelines have been framed by the Hon'ble Apex Court for exercise of powers under Section 482 Cr.P.C. in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, AIR 1992 SC 604, which read as under:-

“105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though 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 of 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 in the First Information Report and other materials, if any, accompanying the F.I.R. Do not disclose a cognizable offence, justifying an investigation by police officers Under Section 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 F.I.R. 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 Under Section 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.”

Jurisdiction under Section 482 Cr.P.C. has to be exercised with

great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

In the case of *Dhariwal Tobacco Products Ltd. and others Vs. State of Maharashtra and another, 2009 (1) SCC (Cri) 806* the Hon'ble Apex Court elaborately dealt with the issue and concluded that only because a revision petition was maintainable, would not constitute a bar for entertaining a petition under Section 482 Cr.P.C. Similar view has been reiterated by Hon'ble Apex Court recently in **Prabhu Chawla Vs. State of Rajasthan, arising out of SLP(Crl.) No. 3314 of 2009, decided on 05.09.2016.**

No doubt remains as to the maintainability of the instant petition.

Adverting to the facts of the instant case, which are required to be analyzed in view of legal position enumerated above, a perusal of impugned complaint reveals that there are no specific allegations against the petitioners, who are father-in-law, grandfather-in-law and brother-in-law of the complainant. No specific overt act had been assigned to them in the complaint. The allegations are general in nature that all the accused in connivance with each other started demanding a motor-cycle. It is the case of the complainant that she handed a sum of Rs.80,000/- to her husband Harjit Singh for the motor-cycle. The complainant had alleged that in the month of November, 2011 she was given beatings by the accused and was

turned out of the matrimonial home. But it was not specified as to who had given beatings to her. A perusal of ration card, Annexure P-4 reveals that petitioner Jang Singh had been living with his other son Shamsheer Singh. They cannot be said to be beneficiaries of the demand of motor-cycle or a car. The allegations in the complaint are absurd and wild. As per complaint, Rs.2100/- were handed to the petitioner Jang Singh(grandfather-in-law), eleven bedding, iron, 201 utensils, one gold ring and 1100/- in cash were given to petitioner Ranbir Singh(brother-in-law) and a watch to petitioner Daljit Singh(father-in-law). It cannot be expected that they being the relatives of the accused were individually given the items. In the considered opinion of the Court the same would fall within the definition of customary gifts given at the time of marriage and cannot be said to be the *istridhan* of the complainant.

Hon'ble the Supreme Court in the case of *M/s Pepsi Foods Ltd. vs. Special Judicial Magistrate* reported as 1998 AIR (SC) 128 in para 26 held that the order of the Magistrate summoning the accused should reflect application of his mind and that mere examination of two witnesses of the complainant was not enough. The Magistrate was required to scrutinize the evidence and should have put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise. The allegations against the petitioners are vague, omnibus and general in nature and appear to have been made out of frustration just to widen the net and continuation of proceedings against the petitioners on the basis of such bald and baseless allegations is nothing but an abuse of process of law. It cannot be forgotten that there is a tendency to rope in the relatives of the husband in a matrimonial dispute. In the considered opinion

of this Court, by mere conjectures and implications, the petitioners, who are relatives of the husband, cannot be said to be involved for the offence of demand or misappropriation of dowry articles.

In the case of *Anguri Devi etc. v. State of Punjab etc. 2011(2) RCR (Criminal) 431*, this Court has quashed the FIR on the ground that a tendency has developed for roping in all the relatives in dowry cases in order to browbeat and pressurize the immediate family of the husband.

This Court in *Divya alias Babli and others v. State of Haryana and another* reported as *2006 (4) RCR (Criminal) 322*, while relying on the judgement of the Apex Court rendered in the case of *Kans Raj v. State of Punjab and others* reported as *2000(2) RCR (Crl.) 695*, reiterated the view that a tendency has developed for roping in all the relations in dowry cases which ultimately weakens the case of the prosecution even against the real accused.

The Apex Court in *Sushil Kumar Sharma vs. Union of India and others, 2005 (3) R.C.R.(Criminal) 745* where the question of striking down of Section 498-A IPC was raised, their Lordships observed that in such type of cases the “action” and not the “section” may be vulnerable and the Court by upholding the provisions of law may still set aside the action, order or decision and grant appropriate relief to the persons aggrieved. Their Lordships observed as under:-

“The object of the provision is prevention of the dowry menace. But as he has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused

does not in all cases wipe out the ignominy (ignominy?) suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not an assassin's weapon. If cry of "wolf" is made too often as a prank, assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre-conceived notion or view. It is

strenuously argued by the petitioner that the investigating agencies and the Courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the Courts is that of watch dog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally indisputable that in many cases no direct evidence is available and the Courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.”

12. Lately, a tendency has developed for roping in all the relations in dowry cases in order to browbeat and pressurize the immediate family of the husband. Accordingly, sometimes inflated and exaggerated allegations are made. In the present case, the petitioners are the relatives who are admittedly residing separately. No specific allegation is alleged. The allegation, if at all, do not satisfy the definition of cruelty or misappropriation. No offence under Section 406 or 498-A is made out .”

No fetters can be put on the powers of the Court from exercising powers under Section 482 Cr.P.C. once the Court finds that the proceedings against the petitioners are smeared with malafides then continuation thereof would be an abuse of the process of the Court. Once this Court has concluded that continuation of prosecution against the petitioners is an abuse of process of law, there is no need to delve into the questions of jurisdiction or to the recourse to the provisions of Section 202 Cr.P.C.

As a sequel to the above discussion and applying the principles, referred to above, this Court is of the opinion that impugned orders and consequent proceedings are not sustainable and are set aside qua the petitioners. The petition is allowed.

It is made clear that this Court has analyzed the material only qua the present petitioners alone.

October 03,2016

Jiten

(ANITA CHAUDHRY)

JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No