

(2012) 07 P&H CK 0255

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M-14875 of 2011 (O and M)

Mohinder Singh and another

APPELLANT

Vs

State of Punjab and another

RESPONDENT

Date of Decision: July 18, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 155(2), 156(1), 482
- Penal Code, 1860 (IPC) - Section 120B, 406, 498A

Hon'ble Judges: Sabina, J

Bench: Single Bench

Advocate: Sanjay Gupta, for the Appellant; D.S. Paul, DAG, Punjab and Mr. Vikas Bahl, Advocate, for the Respondent

Judgement

Sabina, J.

Petitioners have preferred this petition u/s 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No. 91 dated 24.11.2010 u/s 406/ 498A/ 120B of the Indian Penal Code, 1860 (IPC for short) registered at Police Station Sadar, District S.B.S. Nagar (Nawanshahr and all the subsequent proceedings arising therefrom. The case of the complainant, as per the FIR, in brief, was that she was married to Amarjit Singh on 16.2.2006. After marriage, she stayed in her in-laws house for about 1 1/2 month. Thereafter, she left for America on 29.3.2006 without realising greed of her husband and his family members. Thereafter, her husband immigrated to America in June, 2006 and they lived together for one year in the house of her father. The relations between complainant and her husband started deteriorating. She was given beatings by her husband. Amarjit Singh started demanding money from her and when she raised objection, she was given severe beatings. Amarjit Singh told her that he would keep her only if she brought Rs. 8,00,000/- from her parents. On 12.10.2009, Amarjit Singh got citizenship of America and from then onwards he was threatened her that he would not keep her in the matrimonial home. Her husband

also raised a demand of 40,000 dollars from her parents. When she showed her inability to give the said amount, her husband and his family members insisted that she would be divorced and her husband would get re-married. On 14.9.2010 when she came to India to attend a function, her mother-in-law took 8,000 dollars and jewellery from her on the pretext that the same had to be kept in safe custody due to threat of thefts. Her mother-in-law and father-in-law instigating her to file a case seeking her share in the property of her father or she was asked to arrange for 40,000 dollars. She also received threatening calls from her husband that she should agree to the demand of his parents. She was thrown out of the house by her father-in-law after abusing her. A lot of dowry had been given to the parents of her husband at the time of marriage.

2. Learned counsel for the petitioners has submitted that the complainant had come from America for marriage purposes. After 1 1/2 month, complainant had returned back to America. The son of the petitioners i.e. husband of the complainant had also gone to America. Both the complainant as well as Amarjit Singh are residing in America. They have settled their disputes in the Court and have got a decree of divorce. The present proceedings against the petitioners, who are the parents of Amarjit Singh, are nothing but an abuse of process of law.

3. Learned counsel for respondent No. 2, on the other hand, has submitted that the criminal proceedings against the petitioners were liable to continue as specific allegations had been levelled against them in the FIR.

4. After hearing learned counsel for the parties, I am of the opinion that the present petition deserves to be allowed.

5. In the case of State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335, the Apex Court has held as under:-

The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers u/s 482, Cr.P.C. Can be exercised by the High Court 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 complainant/respondent No. 2, 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 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 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 specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings 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.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

6. In *Kans Raj vs. State of Punjab and others*, 2000 (2) RCR (Cri) 696 (SC), their Lordships of the Apex Court have observed that a tendency has developed for roping in all the relations in dowry cases and if it is not discouraged, it is likely to affect case of the prosecution even against the real culprits. The efforts for involving the other relations ultimately weaken the case of the prosecution even against the real accused.

7. In the present case, respondent No. 2 had come to India from America for marriage purposes. She had got married to Amarjit Singh, son of the petitioners. After 1 1/2 month, respondent No. 2 had returned back to America. Thereafter, Amarjit Singh reached America on the basis of sponsorship of respondent No. 2 and they both are residing in America. Respondent No. 2 came to India for a while and has lodged the criminal proceedings against the petitioners and their son. A perusal of Annexures P-9 and P-10 reveals that the divorce and maintenance proceedings were pending between the parties in the Court at New York. Thus, it appears that

some dispute arose between respondent No. 2 and her husband in America. They approached the Court at New York for settlement of their matrimonial dispute. It appears that the FIR in question has been lodged with a view to put pressure on Amarjit Singh. The petitioners are residing in India, whereas, respondent No. 2 and Amarjit Singh, son of the petitioners, are residing in America.

8. Hence, in the facts and circumstances of the present case, the continuation of criminal proceedings against the petitioners would be nothing but an abuse of process of law. Accordingly, the petition is allowed. FIR No. 91 dated 24.11.2010 u/s 406/498A/120B IPC registered at Police Station Sadar, District S.B.S. Nagar (Nawanshahr and all the subsequent proceedings arising therefrom are quashed.