

Payal Sharma vs State Of Punjab on 26 November, 2024

Author: C.T. Ravikumar

Bench: C.T. Ravikumar, Sanjay Karol

2024 INSC 896

Non-Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. _____ of 2024
(@ SLP (Crl.) No. 3995 of 2022)

Payal SharmaAppellant(s)

Versus

State of Punjab & Anr.Respondent(s)

With

Criminal Appeal No. _____ of 2024
(@ SLP (Crl.) No. 13579 of 2023)

Subhash Chander KapilaAppellant(s)

Versus

State of Punjab & Ors.Respondent(s)

JUDGMENT

C.T. RAVIKUMAR, J.

Leave granted.

1. The captioned appeals are directed against the order dated 11.03.2022 in C.R.M.-M. No.42226 of 2021 passed by the High Court of Punjab and Haryana at 13:43:35 IST Reason:

Chandigarh. The said petition was jointly filed by the appellant in the former appeal and her husband, the second respondent in the latter appeal, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') as petitioner Nos.2 and 1 respectively, seeking quashment of FIR No.0080/2020 dated 03.12.2020 registered for offences punishable under Sections 406, 498-A of the Indian Penal Code, 1860 (for short, 'IPC') at Police Station, District Police Commissionerate, Women,

Jalandhar and all subsequent proceedings arising therefrom. In fact, after the registration of FIR No.0080/2020 at the instance of Subhash Chander Kapila, the second respondent in the former appeal, offences under Sections 420 and 120-B, IPC were also added. The appellant in the former appeal is accused No.5 and her husband, the second respondent in the latter appeal, was accused No.6 in the said FIR. The appellant in the latter appeal viz., the second respondent in the former appeal is the complainant. For convenient sake, the parties are therefore, referred to hereafter in this judgment in accordance with their status and rank in the subject FIR and subsequently filed final report, unless otherwise specifically mentioned. In other words, the appellant in the former appeal is described as 'accused No.5', her husband who is the second respondent in the latter appeal is referred to as 'accused No.6' and the appellant in the latter appeal, who is respondent No.2 in the former appeal is referred to as 'the complainant', in this judgment.

2. As per the impugned judgment dated 11.03.2022, the High Court allowed CRM-M No.42226 of 2021 qua accused No.6, the husband of accused No.5 and quashed FIR No.0080 dated 03.12.2020 and all proceedings subsequent thereto qua him and at the same time, dismissed the said petition qua accused No.5, the second petitioner therein. The former appeal is filed by accused No.5 against CRM-M No.42226 of 2021 to the extent it rejected her prayer for quashment of subject FIR and all further proceedings and the latter appeal is filed by the complainant against the quashment of the subject FIR and all further proceedings therefrom qua accused No.6.
3. Heard learned counsel appearing for accused Nos.5 and 6 and the learned counsel appearing for the respondent State and also for the complainant.
4. Before advertng to the rival contentions, it is appropriate to look into the relationship between the parties involved in the matter. The couple involved (now divorced) is the first accused-Amit Sharma and Vandana Sharma, who is the daughter of the complainant. Accused No.6 is the cousin brother of the first accused and as already noted, accused No.5 is his wife.
5. The undisputed and indisputable facts, in succinct, that led to the filing of CRM-M No.42226 of 2021 before the High Court are as under: -

The marriage between the first accused-Amit Sharma and Vandana Sharma was solemnized on 23.02.2019. On 07.03.2019, the first accused-Amit Sharma left for Canada and Vandana Sharma stayed back in her matrimonial home at Jalandhar in Punjab with her in-laws. On 02.12.2019, Vandana Sharma also left for Canada. On 22.09.2020, Amit Sharma approached the Family Court, Canada seeking divorce from his wife Vandana Sharma. The lodgement of the subject FIR No.0080/2020 dated 03.12.2020 by the complainant who is the father of Vandana Sharma, alleging commission of the aforementioned offences under the IPC against all the accused including accused Nos.5 and 6, was later to initiation of the said proceedings. It was in the said circumstances that accused Nos.5 and 6 filed CRM-M No.42226 of 2021 before the High Court raising various grounds, which culminated in the impugned

order.

6. The contention of accused No.5 is that she is only the wife of the cousin brother of the first accused, who was the husband of the daughter of the complainant. Accused No.5 has been residing with her husband at Mohali in Punjab whereas the daughter of the complainant Smt. Vandana was residing in her matrimonial home at Jalandhar in Punjab and in other words that they were residing in different cities. The subject FIR carries only allegations of general, ominous and omnibus character against herself, and her husband and they were arraigned as accused only with mala fide intention to pressurise to yield to the illegal demands. It is submitted that though the High Court has rightly quashed the FIR and all consequential and subsequential proceedings against accused No.6, the fact that accused No.5 is related to the first accused, the husband of the complainant's daughter only through accused No.6 and except the exaggerated versions, as in the case of her husband, no specific and separate allegation with supporting materials are available against her and as such the High Court ought not to have dismissed the petition especially after allowing the very same petition as relates her husband. Contentions, unsuccessful raised before the High Court were also, thus raised.

7. The learned counsel for the complainant has reiterated the contentions raised before the High Court, to support the impugned order. The impugned order would reveal that while resisting the prayer of accused No.5 for quashing the FIR and all subsequent proceedings therefrom, it was contended before the High Court that specific allegations were raised against her and challan was submitted and the matter was listed for framing charges and hence, all the pleas could be raised by her before the trial Court. Evidently, the said contention is untaken, but the High Court held, as relates her, in paragraph 7 of the impugned judgment, thus: -

“7. Having heard Ld. Counsel for the parties and after carefully perusing the record, this Court finds that there are specific allegations qua petitioner No.2 and thus, at this stage it will not be a case to quash the FIR qua her. Resultantly, the present petition qua petitioner No.2 stands dismissed.”

8. In view of the aforementioned rival contentions, we bestowed an analytical consideration and found that besides the afore-extracted paragraph 7 there is absolutely no consideration of the contentions of the appellant in the impugned judgment. We have already noticed that the accused No.5 is only the wife of the cousin brother of the husband of the complainant's daughter, and she was living in another city along with her husband. In view of the aforesaid undisputed position, it is relevant to refer to certain decisions of this Court.

9. In the decision in *Preeti Gupta & Anr. v. State of Jharkhand & Anr.*¹, this Court observed that it is a matter of common knowledge that in matrimonial disputes exaggerated versions of the incident are reflected in a large number of complaints and the tendency of over implication is also reflected in a 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 sufferings of ignominy, it was further held therein. We have no hesitation to hold that the said observation of this Court is in fact, sounding of a caution, against non-discharge of the duty to see whether implication

of a person who is not a close relative of the family of the husband is over implication or whether allegation against any such (2010) 7 SCC 667 person is an exaggerated version, in matrimonial disputes of this nature. In this context, it is to be noted that the term 'relative' has not been defined in the statute and, therefore, it must be assigned a meaning as is commonly understood. Hence, normally, it can be taken to include, father, mother, husband or wife, son, daughter, brother, sister, nephew, niece, grandson or granddaughter of any individual or the spouse of any person. To put it shortly, it includes a person related by blood, marriage or adoption. In paragraph 35 of Preeti Gupta's case (supra) it was furthermore held thus: -

“...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 by husband's close relatives 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 complainant are required to be scrutinized with great care and circumspection.”

10. In such circumstances, normally against a person who is not falling under any of the aforesaid categories when allegations are raised, in the light of the observations made in Preeti Gupta's case (supra), the Court concerned owes an irrecusable duty to see whether such implication is over implication and/or whether the allegations against such a person is an exaggerated version. We have already taken note of the fact that except the observation made in paragraph 7 there is no consideration at all of the contentions of accused No.5 in the impugned order.

11. In the decision in Geeta Mehrotra and Anr. v. State of U.P. and Anr.², this Court held that mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the tendency of over implication viz., to draw the entire members of the household in the domestic quarrel resulting in matrimonial dispute, especially when it happens soon after the wedding. In the decision in Kakhshan Kausar @ Sonam and Others v. State of Bihar & Ors.³, this Court quashed proceedings in so far as family members of the husband on the ground that the allegations against them are general and ominous in nature. In matters like the (2012) 10 SCC 741 (2022) 6 SCC 599 one at hand when relatives not residing in the same house where the alleged victim resides, the courts shall not stop consideration by merely looking into the question where the accused is a person falling within the ambit of the expression 'relative' for the purpose of Section 498-A, IPC, but should also consider whether it is a case of over implication or exaggerated version solely to implicate such person(s) to pressurise the main accused. It is also relevant to refer to the decision of this Court in State of Haryana v. Bhajan Lal⁴, wherein after considering the statutory provisions and the earlier decisions, this Court referred to various categories of cases where the inherent powers under Section 482, Cr. P.C. could be exercised by High Court to prevent abuse of process of Court or otherwise to secure ends of justice. One among such categories is where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent man could ever reach a just conclusion that there is sufficient ground for proceeding against an accused.

12. We will proceed to consider the case in respect of accused No.5 a little later and now, will consider the 1992 Supp. (1) SCC 335 challenge of complainant against quashment of the subject FIR and all consequential proceedings based thereon, qua accused No.6 bearing in mind the above conclusions and decisions. It is to be noted that the impugned order itself would reveal that the learned counsel who appeared for the complainant admitted before the High Court regarding the absence of allegations against accused No.6 as relates offences under Sections 406 and 498-A, IPC. This is discernible from paragraph 6 of the impugned order and it reads thus: -

“6. Qua Petitioner No.1, Ld. Counsel admits that so far as Sections 406 and 498-A are concerned, there are no specific allegations. He asserts that offences punishable under Sections 420 and 120- B of the IPC have been added later on and the allegations levelled against petitioner No.1 shall well fall within the ambit of Sections 420 IPC and 417 of the IPC.”

13. Thus, it can be seen that what was left to be considered by the High Court in C.R.M.-M No.42226 of 2021, as relates accused No.6 was whether the allegations satisfied the ingredients to attract Sections 420 and 417, IPC.

14. Cheating simpliciter is punishable under Section 417, IPC. To bring home an offence under Section 415 punishable under Section 417, IPC, there must be (1) deception of any person; (2) that person must have been fraudulently or dishonestly induced – (i) to deliver any property to any person, or (ii) to consent with any person relating to any property; or (2)(a) that person must have been induced intentionally to do or omit to do anything which he would not do or omit, if he were not so deceived, and which act or omission causes or likely to cause damage or harm to that person in body, mind, reputation or property.

15. The difference between Section 417 and Section 420, IPC, is that where in pursuance of the deception, no property passes, the offence is one of cheating punishable under Section 417, IPC, but where, in pursuance of the deception, property is delivered, the offence is punishable under Section 420, IPC. It is to be noted that the High Court in respect of accused No.6 held that the allegations in the FIR would not satisfy the ingredients to attract the offence punishable under Section 417, IPC. There cannot be any doubt with respect to the position that when the ingredients to attract the offence punishable under Section 417, IPC are not satisfied there cannot be any question of such allegations/accusations attracting Section 420, IPC, for the simple reason that to bring a case within the ambit of Section 420, IPC, not only cheating is simpliciter but also by dishonest inducement of that person sought to be deceived to deliver any property must have delivered that property or made alteration or destruction of any valuable security. In view of the aforesaid position obtained with respect to applicability Sections 417 and 420, IPC, and in view of the lack of allegations/ accusations to satisfy the ingredients to constitute such offences in the subject FIR and also in the subsequently filed final report the question is whether the contention that the High Court had done an error or illegality in quashing the FIR and also all further proceedings in pursuance thereof, can be sustained. The said question can be answered only in the negative. We will dilate on the same along with consideration of the case of accused No.5. A scanning of the impugned order would also reveal the factum of subsequent filing of final report was also within the knowledge of the trial Court.

16. In view of the relationship between accused No.5 and the complainant and also the fact that accused No.5 got related to the husband of complainant's daughter only through her marriage with accused No.6, we are at a loss to understand as to how the offences under Sections 406 and 498-A, IPC, could be raised against accused No.5 in the light of the allegations in the subject FIR especially when the complainant himself admitted lack of specific allegations to connect accused No.6 with the said offences and if similar are the allegations raised against appellant Nos.5 and 6 qua the aforesaid offences.

17. A bare perusal of the FIR would reveal that such allegations against the accused No.5 and 6 are general and omnibus in nature and that apart they are nothing but exaggerated versions invariably suggesting over implication of accused No.5 and 6.

18. It is true that the contention of the complainant is that even before the High Court took up the matter for consideration the challan was filed and the said fact skipped the attention of the High Court and, in fact, in such circumstances, the High Court ought not have quashed the FIR and all further proceedings qua respondent No.6. A mere glance of the impugned order would reveal that the High Court had actually taken note of the fact of filing of challan before the trial Court. In this context, it is relevant to note the decision in *Umesh Kumar v. State of Andhra Pradesh & Anr.*⁵, this Court held that a petition could be filed under Section 482, Cr.P.C., for quashing the chargesheet even before framing of the charges and that it would not be in the interest of justice to reject the application merely on the ground that the accused concerned could argue legal and factual issues at the time of framing of charges. We have no doubt with respect to the scope and amplitude of the inherent powers under Section 482, Cr.P.C., which virtually saves inherent powers of the High Court that the said power could be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. In such circumstances if the High Court feels that ends of justice requires that an order should be made in the application, technicality shall not deter the court from passing necessary orders to secure ends of justice.

19. In the said circumstances, the question is whether the factum of filing of final report prior to filing of the petition under Section 482, Cr.P.C., should be a ground for interfering with the impugned judgment whereunder (2013) 10 SCC 591 the subject FIR and all further proceedings therefore, were quashed qua accused No.6 and declined to do so in the case of accused No.5. The fact that the High Court was appraised of the factum of filing of final report is evident from the fact that the said position was specifically mentioned in the impugned order itself. In the contextual situation, while considering the aforesaid question it is relevant to refer to the so-called specific allegations made against the accused Nos.5 and 6 in the FIR. It is alleged that accused Nos.2 and 3 who are respectively the father-in-law and mother-in-law of the complainant's daughter demanded Rs.15 lakhs from her daughter for the purpose of enabling to obtain visa and ticket for her travel to join her husband in Canada and told her to hand over the same to accused Nos.5 and 6 who had been consulting the travel agent for that purpose. Furthermore, it was alleged therein that in pursuance the same amount of Rs.2 lakhs was given to accused Nos.2 and 3. In the final report also the same accusation has been made. In this context, it is relevant to note that both the FIR and the final report would reveal that the husband of the complainant's daughter subsequently left for Canada on 02.10.2020. Now it is to be noted that the very contention of accused Nos.5 and 6 is that

they were residing in a different city viz., at Mohali in Punjab and that the complainant's daughter was residing in her matrimonial home at Jalandhar in Punjab. The said fact is indisputable as it is evident from the materials on record. Taking note of the nature of their relation with husband of the complainant's daughter and the fact that both the families were residing in different cities and in the conspicuous absence of allegation/ accusation that they came to the place where complainant's daughter was residing and committed cognizable offence as alleged on any particular date or dates, we are at a loss to understand how the complainant could contend that the quashment of the proceedings based on subject FIR against the accused No.6 warrants appellate interference and how they could justify the disinclination to interfere with and qua the FIR and all subsequent proceedings qua accused No.5. Another allegation/ accusation against the accused Nos.5 and 6 is that he along with other accused made complainant's daughter to believe that house at 6, Gurunagar, near Goal Market, Mithapur Road, Jalandhar belongs to the husband of the complainant's daughter viz., the first accused which later came to the knowledge of the complainant and her daughter to be incorrect. In short, a careful scanning of the FIR and the subsequently filed final report would show that the latter contains only reiteration of the allegations in the FIR qua accused Nos.5 and 6. Evidently in the final report based on such bald assertions different sections were put against them.

20. The decisions referred above on the subject of exercise of power under Section 482, Cr.P.C., would undoubtedly cast a duty on the Courts to consider the contentions that there is lack of specific allegations against the accused concerned to constitute the offence(s) alleged against a relative or that the implication was nothing but an over implication to pressurise the family of the husband to yield to the demands. The Courts cannot refrain from discharging the obligation to consider such contentions. It appears that in the case on hand despite raising of specific contentions which require deeper consideration, may be taking note of the submissions made on behalf of the complainant that the challan was presented and the matter stood listed for framing charges and hence, it would be open to accused No.5 to raise all plea at the time of framing of the charges, the Court refrained itself from considering the contentions raised against accused No.5.

21. As noticed hereinbefore except what was observed in paragraph 7, as extracted above, there is total non-consideration of the serious contentions of accused No.5. In the context of the case, it is worthwhile to note that such accusations have actually come not from the horse's mouth and only from the father of the wife of the first accused. That apart, except making vague allegations against accused Nos.5 and 6, the complainant did not make specific allegation with details against them with details. A scanning of the materials on record would reveal that the complainant was fully aware of the fact that accused Nos.5 and 6 were living in Mohali in Punjab whereas his daughter was living in Jalandhar. Even then he did not state when the appellant visited the place where his daughter was living. As noted above, the marriage of the daughter of the complainant with the first accused-Amit Sharma was solemnised on 23.02.2019 and Amit Sharma left for Canada on 07.03.2019. The daughter of the second respondent-claimant stayed back in her matrimonial home at Jalandhar and later on 02.12.2019 she also left for Canada.

22. The fact that the present complaint which ultimately culminated in the impugned order was filed by the complainant subsequent to the grant of divorce between the first accused and the

complainant's daughter, is a fact discernible and indisputable. This had occurred in Canada. A perusal of the final report would reveal that even after the investigation no material whatsoever worthy to connect the appellant with the offences was seen collected. Therefore, the question is whether the vague, and at the same time, highly exaggerated versions of FIR and the proceedings subsequent thereto can be permitted to be proceeded against accused Nos.5 and 6. In short, on a careful consideration of FIR and the final report and materials we have no hesitation to hold that there is nothing on record to suggest, even prima facie that they would constitute the alleged offences against the accused No.6. In the aforesaid circumstances and based on the decisions of this Court as referred supra viz., Preeti Gupta's case, Geeta Mehrotra's case and Kahkashan Kausar @ Sonam's case, the subject FIR and all further proceedings therefrom against accused No.5 are liable to be quashed and rightly they were quashed by the High Court. We do not find any reason to interfere with the impugned order to that effect qua accused No.6. In other words, Criminal Appeal arising from SLP(Crl.) No.13579 of 2024 is liable to be dismissed.

23. A scanning of the FIR and the subsequently filed final report would reveal that the allegation against accused No.5, who is the wife of accused No.6, are also of the same nature. It is relevant to note that she is related to the husband of complainant's daughter only through her marriage with cousin brother of the first accused viz., accused No.6. When the subject FIR and all further proceedings pursuant therefrom were quashed against the said cousin brother viz., accused No.6, the same reasons must apply to the case of accused No.5 as well. We are of the considered view that the High Court ought to have interfered and quashed the subject FIR and all other proceedings therefrom in relation to accused No.5 viz., the wife of accused No.6 as well. To secure interest of justice in the circumstances obtained, we are of the considered view that filing of the chargesheet cannot be a reason for interfering with impugned order in respect of accused No.6 or rejecting the prayer of accused No.5 to quash the proceedings and to make them to argue or to raise the legal and factual issues at the stage of framing of the charges. It is evident that making them to face the trial based on the allegations or accusation as referred above would be nothing but an abuse of process of court.

24. For all the reasons given as above, Criminal Appeal arising out from SLP (Crl.) No.3995 of 2022 is allowed and the impugned order qua the accused No.5 is liable to be set aside. As a necessary sequel, the subject FIR and all further proceedings therefrom including the chargesheet qua accused No.5 are quashed and set aside. Criminal Appeal arising out from SLP (Crl.) No.13579 of 2023 filed by the complainant is dismissed confirming the impugned order qua accused No.6.

25. Pending application(s), if any, stands disposed of.

....., J.

(C.T. Ravikumar), J.

(Rajesh Bindal) New Delhi;

November 26, 2024