

Dalbir Singh & Anr vs Govt. Of Nct Of Delhi & Anr on 6 May, 2024

Author: Amit Sharma

Bench: Amit Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 2813/2019

DALBIR SINGH & ANR.

Through:

GOVT. OF NCT OF DELHI & ANR.

Through: Mr. Amol Sinha, A

the State with M

Ashvini Kumar an

Lazarus, Advocat

SI Sudeep Kumar,

Mr. Gaurav Sharm

Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

% 06.05.2024

1. The present petition under Article 226 and 227 of the Constitution of India read with Section 482 of the Cr.P.C. seeks the following prayers:-

"(a) Quash the FIR No. 0311 of 2018 in the present facts and circumstances in the interest of justice.

(b) Pass such other and further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case."

2. The case of the prosecution as per the status report dated 08.12.2019 authored by Station House Officer, P.S. Bindapur, New Delhi is as under:-

"1. That the present Writ Petition has been filed under Article 226 & 227 of Constitution of India read with Section 482 of CrPC praying this Hon'ble Court to quash FIR bearing No. 311/18, U/s 498A/406/354/354A/377/34 IPC registered at PS-

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 13/05/2024 at 20:34:12 Bindapur on dated-18.04.18 against the petitioners.

2. That the above said case FIR No. 311/18 U/s 498A/406/354/354A/377/34 IPC was registered on the complaint of Ms. Gumeet Kaur D/O S. Salwinder Singh R/o. H. No. RZ - 29A, Indra Park Extension, East Uttam Nagar, New Delhi at PS Bindapur, New Delhi.

3. That complainant alleged that on 29.01.2017, her marriage was solemnized with Harsimran Jot Singh S/o. Dalvir Singh R/o. House No. 902/, Village Kokhratal, Kashipur, Distt Udham Singh Nagar, Uttrakhand as per the Sikh rites and rituals and her father had spent more than his limits in her marriage. Her husband had work visa for new Zealand, who was working there.

4. That her marriage got registered with registrar office at Kapashera, New Delhi. Her parents gave handsome dowry to her husband and in-laws. In her Rokka ceremony also her parents spent Rs. 6 to 7 Lacs.

5. That after her Rokka , her husband used to talk with her on phone and always showed his dominating nature. On the demand of her mother-in-law cash and other gifts were given by her parents to the relatives of her in-laws.

6. That complainant further alleged that after her marriage, her husband and in-laws started taunting her that her parents didn't gave dowry up to their expectations. However, her father had spent more than one crore rupees in her marriage.

7. That after her marriage, her husband taken her to Goa for honeymoon, where he committed various mental and physical cruelties upon her. He used to treat her like slave/maid and even commit forceful unnatural sex with her.

8. That once she purchased two suits of rupees 5000/- from the debit card of her father-in-law, then her in-laws instigated her husband, who in the presence of her family members abused and slapped her and left her at her parental home.

9. That when she went to her matrimonial house along with her father nobody was ready to talk with them and her husband and in--laws taunted and insulted her father in front of her.

10. That when she checked her almirah she found that her gold chain and three heavy suits were not there and on asking her This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 13/05/2024 at 20:34:12 mother-in-law stated that she had taken the above said things for safe custody.

11. That when her husband went to New Zealand on 23.03.2017, the cruelties of her in-law increased. Her father-in-law used to keep bad eyes on her and her sister in-law took her valuable jewellery and gave the same to her mother-in-law on the pretext of safe custody.

12. That she went to New Zealand on tourist visa on 27.06.2017, she found that her husband was not working as Manager in any hotel but was a driver of courier van. She also found that her husband is ten years elder than her and above said fact were concealed by her in-laws at the time of her marriage.

13. That her husband and her brother-in-law treated her badly in New Zealand and committed mental and physical cruelties upon her.

14. That she registered various complaints with local New Zealand police regarding mental and physical cruelties by her husband and brother-in-law, due to which her husband refused to provide her basic necessities including food.

15. That she managed food etc. by her own and her father deposited money in her account for the same. During her stay in New Zealand on 22.07.2017, when she was sleeping in her room and her husband was not present at home, meanwhile her brother-in-law Param Jot Singh entered in her room in semi naked position and tried to outrage her modesty by sexually assaulting her.

16. That on her complaint to New Zealand Police regarding mental and physical cruelties upon her by her husband and brother-in-law, she was provided protection by way of police safety order by New Zealand Authorities and her husband was debarred from entering in the house for 3 days.

17. That her husband wrote to New Zealand authorities that he has no concern with her and he withdraw her visa sponsorship so that she could be forced to went back to India.

18. That she was deported by New Zealand Authority and she arrived India on 04.11.2017. Her in-laws refused to keep her in their house and also refused to return her istridhan. Therefore, This is a digitally signed order.

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parental house.

19. That thereafter on her complaint the above said case was registered and investigation taken up. During the investigation, statement of complainant Gurneet Kaur, U/S 164 Cr.PC regarding her allegation in respect of section 354/354A/377 IPC got recorded before the concerned court.

20. That notices U/S 41A Cr.PC were served to her - in-laws and her husband. Subsequently her father-in-law, mother- in- law and sister-in-law joined the investigation and were s interrogated. The father and mother-in-law of the complainant submitted that they are ready to return the istridhan articles whatever they have in their possession. However, the admitted list of istridhan articles submitted by both the parties did not match due to which complainant was not ready to receive her istridhan articles as per the admitted list of her in-laws. Moreover, complainant also stated that she will receive her istridhan articles from her in-laws as claimed by her through concerned court during the trial of the case.

21. That husband and brother-in-law of the complainant who have been residing in New Zealand did not joined the investigation despite service of repeated notices U/S 41A Cr.PC through their e-mails. Therefore, during the further course of investigation, NBWs against husband and brother - in-law of complainant got issued from concerned court. Subsequently accused Paramjot Singh (Brother-in-law), came back to India and join the investigation, therefore notice U/S 41A Cr.PC served to him.

22. That husband of complainant i.e. accused Harsimran Jot Singh did not join the investigation. Therefore, proceedings U/S 82 Cr.PC were got issued against him and subsequently he was declared proclaimed offender by concerned Dwarka Court on 18.10.2019.

23. That no settlement between the complainant and the alleged party has taken place so far.

24. That presently the charge sheet in this case is being drafted and the same will be sent to prosecution branch for scrutiny and final charge sheet will be filed thereafter in the concerned Dwarka court."

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3. During the pendency of the present petition, petitioner no.1, who is father-in-law of respondent no.2 passed away and therefore, the present petition is being contested by petitioner no. 2, i.e., Smt.

Ranjeet Kaur.

4. Learned counsel appearing on behalf of respondent no.2 submits that latter is the mother-in-law of respondent no.2 and that even if the averments and statements made by respondent no.2 in the FIR are taken on the face value and accepted in entirety, no case is made out against the present petitioner. It is submitted that the present petitioner was named in the FIR and has only been made an accused by virtue of being the mother of the husband of respondent no.2. It is further submitted that there is no specific allegation against the present petitioner which satisfies the ingredient of the offences for which the FIR has been registered. It is submitted that the FIR is a gross abuse of the process of law and the allegations made in the FIR are false. It is further submitted that the present petitioner is an old lady and suffering from various medical ailments and on account of the fact that a false case has been set up against her, the continued prosecution of the present petitioner would be gross abuse of process of law and therefore, the present petition may be allowed. It is further stated that the allegation of respondent no.2 herein with regard to alleged entrustment/dowry articles is again false as respondent no.2 alongwith her husband had stayed with petitioner and her late husband for a very short period of time and therefore, it is unreasonable to presume that such an entrustment would be made in such a short period of time.

5. Learned counsel appearing on behalf of the petitioner relies upon following judgments:-

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(i) Mahmood Ali & Ors. vs. State of UP & Ors., 2023 INSC (Para 15)

(ii) Mirza Iqbal @ Golu vs. The State of Uttar Pradesh, 2021 INSC 890

(iii) Abhishek vs. State of MP, 2023 INSC 779

(iv) Kahkashan Kausar @Sonam & Ors. vs. State of Bihar & Ors, 2022 INSC 163

6. Per contra, learned APP for the State assisted by learned counsel appearing on behalf of respondent no.2, appointed by Delhi High Court Legal Services Committee, submits that investigation in the present case stands complete and chargesheet has already been filed against the present petitioner and the other co-accused persons. It is submitted that the allegations made by respondent no.2 are specific qua the present petitioner and that the same have now been fortified by way of filing of the chargesheet. It is further submitted that the contentions raised on behalf of the petitioner is a matter of trial which shall be dealt by the Learned Trial Court during the course of the prosecution evidence.

7. It is further submitted that immediately after the marriage, respondent no.2 resided with the son of the petitioner at their matrimonial home before they went to New Zealand for about 5 months.

8. Heard the learned counsel for the parties and perused the records.

9. The present FIR was registered at the complaint of respondent no 2 on 18.04.2018. It is alleged in the said FIR that the marriage between respondent no.2 and son of the petitioner namely Harsimranjot Singh was solemnised on 29.01.2017. It is alleged in the said FIR that after marriage, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 13/05/2024 at 20:34:13 the husband and in-laws (including the present petitioner) started taunting her for insufficient dowry. Respondent no.2 has made other serious allegations against the husband of the petitioner. It is further stated in the FIR that the articles, i.e., her gold chain and three heavy suits were taken by the present petitioner for safe custody. Similarly, it is alleged that when her husband had gone to New Zealand on 23.03.2017, the cruelty of the in-laws increased and her sister-in-law took her valuable jewellery and gave them to the present petitioner on the pretext of safe custody. It is alleged in that the said FIR that respondent no.2 was deported by the New Zealand Authority on account of the fact that her husband had withdrawn her visa sponsorship and when she came back to India on 04.11.2017, her in-laws (including the present petitioner) refused to keep her in their house and also refused to return her istridhan.

10. In Mahmood Ali & Ors. (supra), the Hon'ble Supreme Court while quashing the proceedings observed that the FIR in question came to be lodged after a period of 14 years of the alleged acts. It was also observed that in the said FIR no specific date and time of the alleged offences had been disclosed.

11. In Mirza Iqbal @ Golu & Anr. (supra), there was no specific allegation disclosing the involvement of the appellants therein. It was further observed that one of the appellants was, in fact, working at a bank, which was 40 kilometres away from the alleged place of incident and material with respect to the same had been placed on record on the basis of which the proceedings qua the appellants therein were quashed.

12. In Abhishek (supra), the Hon'ble Supreme Court quashed the proceedings qua the appellants therein on account of noting discrepancy in This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 13/05/2024 at 20:34:13 the complaint filed by respondent no.2 and her cross-examination in a parallel proceeding under the Hindu Marriage Act. It was further observed that the allegations qua the appellant therein was general and omnibus in nature.

13. In *Kahkashan Kausar @Sonam* (supra), the Hon'ble Supreme Court quashed the proceedings therein. It was observed that the allegations made against the appellants were again general and omnibus in nature, which do not warrant prosecution. It was further observed that in absence of any specific role attributed to the appellant therein, it would be unjust for the appellants to face the trial.

14. It is alleged in the FIR that on the demand of the present petitioner many gifts were given by the parents of respondent no. 2 to the relatives of the petitioner. As pointed out hereinabove, there is a specific allegation against the present petitioner of taking a gold chain belonging to respondent no. 2 for safe custody; similarly, there is a specific averment made by respondent no. 2 with respect to the entrustment of istridhan to the present petitioner. Finally, there is a specific allegation by respondent no. 2 that when she arrived in India on 04.11.2017, her in-laws including the present petitioner refused to return her istridhan and therefore, commission of offence under Section 406 of the IPC was prima facie made out. The contention on behalf of the petitioner that respondent no. 2 stayed for a very short period with the petitioner and her late husband is a claim which is disputed by respondent no. 2. It is pertinent to note no document or any other circumstance has been shown in support of the said contention of the petitioner. The said contention on behalf of the petitioner cannot be examined by this Court under the present jurisdiction. Being a disputed This is a digitally signed order.

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15. In *Ramveer Upadhyay and Another v. State of U.P. and Another*, 2022 SCC OnLine SC 484, the Hon'ble Supreme Court held as under:

"39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Atrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No. 19/2018 is not such a case which should be quashed at the inception itself without further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C."

16. The Hon'ble Supreme Court, in *Mahendra K.C. v. State of Karnataka*, (2022) 2 SCC 129, held as under:

"19. The High Court has the power under Section 482 to issue such orders as are necessary to prevent the abuse of legal process or otherwise, to secure the ends of justice. The law on the exercise of power under Section 482 to quash an FIR is well-settled. In State of Orissa v. Saroj Kumar Sahoo [State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272] , a two-Judge Bench of this Court, observed that : (SCC pp. 547-48, para 8) "8. ... While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court This is a digitally signed order.

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(emphasis supplied)

17. In view of the above, the present petition is dismissed and disposed of.

18. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observation(s) made are only for the purpose of disposal of the present petition.

AMIT SHARMA, J MAY 06, 2024/nk Click here to check corrigendum, if any This is a digitally signed order.

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