

SUPREME COURT OF INDIA

Harmanpreet Singh Ahluwalia

Vs.

State of Punjab

Crl.A.No.908 of 2009

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

05.05.2009

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

2. Appellants are before us aggrieved by and dissatisfied with a judgment and order dated 13.12.2007 passed by a learned single judge of the Punjab and Haryana High Court in Criminal Miscellaneous No. M-40020 of 2007 dismissing an application praying for quashing FIR No. 141 dated 30.5.2006 under Section 406/420 of the Indian Penal Code (for short, "IPC") in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure (for short, "the Code")

3. The basic fact of the matter is not in dispute. Appellant No.1 is the husband of the respondent No.3. The other appellants are his parents. Respondent No. 3 was married with one Ravinder Singh Jaspal in Canada in the year 1995. A son was born out of the said wedlock on or about 25.8.1996. As disputes and differences arose between them, respondent No. 3 filed an affidavit for grant of divorce on or about 30.9.1998. In the said proceedings, a decree for divorce was granted by a Canadian court on or about 22.4.2000. Almost immediately thereafter, that is, on 21.5.2000, respondent No.3 and appellant No.1 got married at Jalandhar as per Sikh rites. After a month's stay in India, respondent No. 3 left for Canada. On or about 6.3.2001, respondent No.3 gave birth to a female child in Canada. Appellant No.1 went to Canada on the sponsorship of respondent No.3 on 14.4.2001. He got an employment there as a driver. Disputes and differences arose between the appellant No.1 and the respondent No.3 in the year 2003. Allegedly, she left with all her belongings and withdrew Canadian \$ 24500 from the joint account of the parties. It is neither denied nor disputed that she had been contacting lawyers with regard to her matrimonial disputes and even cancelled the sponsorship of the application for grant of permanent residence of appellant No.1 as also his family. In those circumstances, Appellant No.1 initiated a divorce proceedings before the Ontario Court of Justice, inter alia, stating:

"On 28th August, 2003, when the applicant had gone to work, the respondent left the matrimonial home to live with her parents. She took with her all her personal effects, jewellery and withdrew \$23,000.00 from their joint bank account. The respondent is threatening to hurt herself and get the applicant involved with the police to deport him from Canada. The applicant is afraid and believes, that if she is allowed to come back to his home, she may hurt herself or may hurt the applicant. The respondent wants the applicant to be deported and may do anything to cause physical violence.

Inderpal Singh is the father of the respondent, Paramjit Kaur and the father in law of the applicant. Surinder Singh is the brother of the respondent, Paramjit Kaur and the brother-in-law of the applicant." However, differences between them were sorted out and respondent No.3 affirmed an affidavit on or about 30.9.2003 admitting her mistake, stating:

"On September 20, 2003, I decided to return to the house of my husband without advising him that I was coming back. My husband is reluctant and fearful to have me back in the house. I have promised my husband that I would not harass him any more and that I am very sorry for all the problems that I have created for him. I am making this affidavit to satisfy the concerns and fear of my husband, Harmanpreet Singh Ahluwalia with respect to my motive of returning to his house. Harmanpreet Singh Ahluwalia fears that I have voluntarily returned to him cause more damage and problems for him. I have, however, returned to my husband because I have realized that I had made a big mistake by taking the steps mentioned above and I am truly remorseful for my actions." On or about 5.2.2006, parents of appellant No.1 visited Canada as appellant No.2 developed a heart problem. Disputes and differences again arose between the parties in the year 2006 as a result whereof they started living separately with effect from 29.3.2006. It is only thereafter, the father of the respondent No. 3, namely Inter Pal Singh, a retired Police Inspector and permanent resident of Canada, while on a trip to India, lodged a complaint against the appellants under Section 406/420 IPC on or about 21.4.2006 along with an affidavit of respondent No.3 inter alia alleging that the appellants demanded dowry and misappropriated the dowry articles. It was furthermore alleged:

"11. That the marriage of Harmanpreet Singh was conducted with my daughter with preplanned ulterior and malafide motive in order to deceive and misappropriate and misuse the dowry articles which were entrusted to the accused as mentioned above and had got pre-planned, ulterior and malafide motive. At the time of living home, the aforesaid Harmanpreet Singh also withdrawn the amount from the bank from the joint account." In view of separation between appellant No.1 and respondent No.3, appellant filed a second divorce petition on or about 1.5.2006 in the Superior Court of Brampton, Ontario seeking divorce and custody of the child. Indisputably, an FIR bearing No. 141 dated 30.5.2006 was registered under Section 406/420 IPC at Division No. 4, Jalandhar. The Superintendent of Police, Jalandhar made an enquiry with regard to the aforementioned matter. He submitted a report on or about 30.3.2007, the concluding portion whereof reads as under: "From the investigation conducted till now, I have reached to this conclusion that although the marriage of Paramjit Kaur daughter of Inderpal Singh and Harmanpreet Singh Ahluwalia son of Sh. Harbhajan Singh had been solemnized at Hotel Raj Mahal, Jalandhar, but the misunderstanding/ altercation between them had been developed after their reaching in Canada. This fact has also been proved/clarified here that during the period from the year 2000 upto the year 2005, both of them (husband-wife) had been living amicably but later on again misunderstanding developed between them due to calling of his parents by Harmanpreet Singh to Canada. But the allegations leveled by the plaintiff in the suit/case are baseless and devoid of facts which has not been proved and neither there are solid proof available in this regard." He made recommendations for cancellation of the said suit/case, stating: "From the enquiry till now made into the case registered under FIR No. 141 dated 30.5.2006 under Section 406/420 IPC at P.S. Division No. 4, Jalandhar, the allegations leveled by the plaintiff have not been proved and neither the offence has been found to be done. If approved, then S.H.O. P.S. Division No.4 Jalandhar may be advised to submit the cancellation report of this suit case."

4. However, despite the same, a charge-sheet was issued. In the mean time, divorce application filed by the appellant in Canada, were allowed by the Ontario Superior Court of Justice by its order dated 19.10.2007. On receipt of the summons, appellants filed an application under Section 482 of the

Code which by reason of the impugned judgment has been dismissed. 5. Mr. Rajiv K. Garg, learned counsel appearing on behalf of the appellants would submit: i. Having regard to the factual backdrop of the matter, it is evident that the Jalandhar Court had no territorial jurisdiction to make an investigation into the matter. ii. The proceedings initiated against the appellant amounts to an abuse of the process of law as the FIR was deliberately filed at Jalandhar although the offences, if any, had taken place only at Ontario in Canada.

6. Mr. Vineet Dhanda, learned counsel appearing on behalf of the respondent, on the other hand, urged: i. That the appellants have committed criminal breach of trust in respect of the articles which were given in dowry. ii. Appellant No.1 married respondent No.3 only for the purpose of going to Canada and, thus, an offence under Section 420 of IPC must also be held to have been committed.

7. The allegations made in the FIR show that the appellant Nos. 2 and 3 could go to Canada on joint sponsorship of the appellant No.1 as also the respondent No.3. It is only at Canada that alleged demand of a sum of Rs.5 lakhs was made on the premise that they intended to buy some property. In the FIR, it was alleged that she left her residence for attending her duties at about 0630 hrs in the morning on 29.3.2006 leaving behind her husband as also two kids aged 5 and 9 years. However, when she returned home around 1700 hrs, she found some articles missing. She was admittedly informed by the concerned police officers telephonically as regards the filing of divorce petition by the appellant and, thus, she should not bother him anymore. It is only thereafter the first informant Inder Pal Singh came to India and lodged the FIR. He is a retired police officer. In his report, he alleged:

"9. That at the time of departure, the accused were fully made aware of the fact that all the articles of dowry mentioned above constitutes the Streedhan of the daughter of the applicant namely Paramjit Kaur and are meant for the exclusive use and the same should be given to her for her personal use whenever she demands the same from them from time to time. After whole incident my daughter Smt. Paramjit Kaur is living under depression and cruelty.

10. That when I demanded the dowry articles and Streedhan property, the above mentioned persons refused to return the dowry articles." 8. Parties admittedly live at Ontario in Canada. Offence, if any, had been committed in Canada. FIR, however, has been lodged at Jalandhar only after the divorce application was filed. No allegation has been made in the FIR that appellants at the time of marriage or thereafter demanded any dowry. The demand of a sum of Rs.5 lakhs allegedly was made only in Canada and that too after the appellant Nos. 2 and 3 arrived in Canada in March 2006, i.e., almost after a period of five years from the date of marriage. We have noticed hereinbefore the opinion of the Superintendent of Police. He recommended 'cancellation' of the FIR for one reason or the other. However, the said recommendation had not been accepted. A charge- sheet has been filed.

9. Mr. Dhanda submits that the jurisdiction of a High Court under Section 482 of the Code should be used in exceptional cases and very sparingly. According to the learned counsel, allegation of mala fide against the first informant cannot be a ground for quashing a criminal proceeding after a charge-sheet has been filed. Strong reliance in this behalf has been placed on State of Karnataka v. M. Devendrappa [2002(3) SCC 89]. In the aforesaid judgment, this Court was considering a case of quashing of a criminal proceeding for commission of offence punishable under Section 465, 468, 471 and 420 read with Section 120B of the IPC. Respondents therein were excise officials. This Court held: "9. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The

inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. {See: Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305] and Raghbir Saran (Dr) v. State of Bihar [AIR 1964 SC 1]}. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings." Recently in R. Kalyani vs. Janak C. Mehta & Ors. [(2009) 1 SCC 516], this Court opined:

"15. Propositions of law which emerge from the said decisions are: (1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence. (2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence. (3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus. (4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

16. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by the Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint."

We must, however, also notice that in State of Haryana & Ors. vs. Bhajan Lal [1992 Supp (1) SCC

335], this Court *inter alia* laid down the law in the following terms:

"102. 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 extraordinary 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." Sub-Para (7) of the said Para reads as under:

"(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." Does this case come within the purview of the aforementioned dicta is the question.

10. Parties were married in May 2000. Disputes between the parties arose for the first time in the year 2003. Respondent No.3, however, on an application filed by the appellant No.1 apprehending danger to his life, categorically admitted her fault and guilt. Even at that point of time no allegations of cheating and/or non-return of the Stridhan were made. It is only after a period of three years when the disputes and differences between the parties wrecked up once again and on filing of an application for divorce, the father of the respondent No.3 came from Canada to Jalandhar to lodge FIR. The facts pleaded in the application for quashing of FIR before the High Court are not denied or disputed. In fact, most of the documents relied on by the appellant are annexed to the counter affidavit filed on behalf of the respondent No.3 herself. We, therefore, do not have to consider any document which the appellant intends to place before us by way of defence. It is also not a case where this court has to undertake a difficult task of appreciating the evidence brought on record by the parties. Mr. Dhanda's submission that the marriage between the appellant No.1 and respondent No.3 was solemnized only for the purpose of getting the family settled at Canada is far fetched. For the purpose of constituting an offence for criminal breach of trust and/or cheating, the ingredients thereof as contained in Section 405 and 415 respectively must be borne out from the records.

11. Criminal breach of trust is defined in Section 405 of IPC. The ingredients of an offence of the criminal breach of trust are: "1. Entrusting any person with property or with any dominion over property. 2. That person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation-- (i) of any direction of law prescribing the mode in which such trust is to be discharged, or (ii) of any legal contract made touching the discharge of such trust." Section 415 of the IPC defines cheating as under : "Section 415.--Cheating--Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived 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 is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'." An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied: "i) deception of a person either by making a false or misleading representation or by other action or omission; (ii) fraudulently or dishonestly inducing any person to deliver any property; or (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or

omit."

12. For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

13. We may reiterate that one of the ingredients of cheating as defined in Section 415 of the Indian Penal Code is existence of an intention of making initial promise or existence thereof from the very beginning of formation of contract. In *Ajay Mitra v. State of M.P.* (2003) 3 SCC 11, this Court held:
15. Section 420 IPC says that "whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person ... shall be punished with imprisonment ...". Cheating has been defined in Section 415 IPC and it says that: "

15. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived 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 is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'."

16. A guilty intention is an essential ingredient of the offence of cheating. In other words "mens rea" on the part of the accused must be established before he can be convicted of an offence of cheating. (See *Jaswantraji Manilal Akhaney v. State of Bombay* [AIR 1956 SC 574]. In *Mahadeo Prasad v. State of W.Bi* [AIR 1954 SC 724] it was held as follows: (AIR paras 4-5) Where the charge against the accused is under Section 420 in that he induced the complainant to part with his goods, on the understanding that the accused would pay for the same on delivery but did not pay, if the accused had at the time he promised to pay cash against delivery an intention to do so, the fact that he did not pay would not convert the transaction into one of cheating. But if on the other hand he had no intention whatsoever to pay but merely said that he would do so in order to induce the complainant to part with the goods then a case of cheating would be established."

In *Hira Lal Hari Lal Bhagwati v. CBI* [(2003) 5 SCC 257], this Court held :

"40. It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed. It is seen from the records that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since the GCS could not comply with it, therefore, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of the GCS clearly indicates that there was no fraudulent or dishonest intention of either the GCS or the appellants in their capacities as office-bearers right at the time of making application for exemption." {See also *Indian Oil Corporation v. NEPC India Ltd. & Ors.* [(2006) 6 SCC 736]} In *Vir Prakash Sharma v. Anil Kumar Agarwal* [(2007) 7 SCC 373], noticing, inter alia, the aforementioned decision, this Court held:

"8. The dispute between the parties herein is essentially a civil dispute. Non-payment or underpayment of the price of the goods by itself does not amount to commission of an offence of

cheating or criminal breach of trust. No offence, having regard to the definition of criminal breach of trust contained in Section 405 of the Penal Code can be said to have been made out in the instant case." It was furthermore opined:"

13. The ingredients of Section 420 of the Penal Code are as follows: (i) Deception of any persons; (ii) Fraudulently or dishonestly inducing any person to deliver any property; or (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit. No act of inducement on the part of the appellant has been alleged by the respondent. No allegation has been made that he had an intention to cheat the respondent from the very inception.

14. What has been alleged in the complaint petition as also the statement of the complainant and his witnesses relate to his subsequent conduct. The date when such statements were allegedly made by the appellant had not been disclosed by the witnesses of the complainant. It is really absurd to opine that any such statement would be made by the appellant before all of them at the same time and that too in his own district. They, thus, appear to be wholly unnatural.

15. In law, only because he had issued cheques which were dishonoured, the same by itself would not mean that he had cheated the complainant. Assuming that such a statement had been made, the same, in our opinion, does not exhibit that there had been any intention on the part of the appellant herein to commit an offence under Section 417 of the Penal Code.

16. Furthermore, admittedly, their residences are in different districts. Whereas the appellant is a resident of the district of Ajamgarh, the respondent is a resident of the district of Rampur. Cheques were admittedly issued by the appellant at his place. There is nothing on record to show that any part of the cause of action arose within the jurisdiction of the court concerned. Even if such statements had been made, the same admittedly have been made only at the place where the appellant resides. The learned Magistrate, therefore, had no jurisdiction to issue the summons." The said principle has been reiterated in *All Cargo Movers (I) Pvt. Ltd. v. Dhanesh Badarmal Jain & Anr.* [2007 (12) SCALE 391], stating: "For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie cannot notice the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the Court. Superior Courts while exercising this power should also strive to serve the ends of justice.

" (See also *Sharon Michael & ors. vs. State of Tamil Nadu & Anr.* [2009 (1) SCALE 627]

14. It is, therefore, evident that the element of wrongful intention should ordinarily exist from the inception of the contract. FIR does not satisfy the aforementioned test. So far as the allegation in regard to criminal breach of trust is concerned, it related to the dowry articles. No allegation has been made that the appellants are guilty of commission of offence punishable under Section 3 and/or 4 of the Dowry Prohibition Act. If any dowry has been given, the same would attract the provisions of the special act in preference to the general statute. Furthermore, if any article is given by way of dowry, the question of entrustment thereof for or on behalf of the bride would not arise.

Allegations made in the FIR merely disclose that at the time of leaving the house, appellants had taken with them certain articles. The said articles ought to be in lawful possession of the respondent No.3. The offence of theft might have been committed. But when they are in joint possession, even no offence of theft would also be made out. Furthermore, the larger part of offence, if any, has been committed only in Canada. Why the father of respondent No. 3 had to come from Canada to Jalandhar to lodge an FIR is difficult to comprehend. Respondent No.3 and the first informant do not say that the inquiry report submitted by the Superintendent of Police on the representation made by the appellant No.2 was incorrect. It has also not been stated that as to on what material, the charge-sheet had been submitted. We, in the peculiar facts and circumstances of this case, have absolutely no doubt in our mind that the allegations contained in the FIR had been made with an ulterior motive to harass the appellants. Continuance of the criminal proceeding against them would, therefore, amount to abuse of process of the court. In *All Carogo Movers (I) Pvt. Ltd. v. Dhanesh Badarmal Jain & Anr.* [2007 (12) SCALE 391], this Court held: "For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie cannot notice the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the Court. Superior Courts while exercising this power should also strive to serve the ends of justice." {See also *V.Y. Jose & Anr. vs. State of Gujarat & Anr.* [2008 (16) SCALE 167]} In *Hira Lal & Ors. vs. State of U.P. & Ors.* [2009 (5) SCALE 418], this Court held:

"10. The parameters of interference with a criminal proceeding by the High Court in exercise of its jurisdiction under Section 482 of the Code are well known. One of the grounds on which such interference is permissible is that the allegations contained in the complaint petition even if given face value and taken to be correct in their entirety, commission of an offence is not disclosed. The High Court may also interfere where the action on the part of the complainant is mala fide."

15. Upon taking a holistic view of the matter vis-à-vis the statutory provisions, we are of the opinion that the appellants had made out an exceptional case to invoke the inherent jurisdiction of the High Court under Section 482 of the Code. It was, in our opinion, obligatory on the part of the High Court to exercise its discretionary jurisdiction to prevent the abuse of process of the court.

16. For the aforementioned reasons, the impugned judgment and order of the High Court is set aside. The appeal is allowed.