

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Misc. No. M-15398 of 2010 (O&M)
Date of Decision: 2.3.2013.**

Sunil Goel

.....Petitioner

Vs.

U.T., Chandigarh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Kapil Aggarwal, Advocate
for the petitioner.

Mr. G.S.Chahal, Advocate
for respondent No. 1.

Mr. S.S.Rangi, Advocate for
respondent No. 2.

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SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the FIR No. 54 dated 12.3.2010, under Section 406, 498-A, 120-B of the Indian Penal Code ('IPC' for short) (Section 109 IPC added later on), registered at Police Sector-19, Chandigarh (Annexure P-3) and all the subsequent proceedings arising therefrom.

Learned counsel for the petitioner has submitted that the petitioner was not related to the family of the husband of the complainant. Petitioner was admittedly *guru* of the husband of the complainant. A perusal of the FIR itself reveals that no criminal offence could be said to have been committed by the petitioner.

Learned counsel for the Administration, on the other hand, has opposed the petition.

Learned counsel for respondent No. 2, on the other hand, has opposed the petition and has placed reliance on Annexure R-2, statement of the petitioner, recorded under Section 161 Cr.P.C. during the investigation of the case to support his argument that the petitioner had abetted his other co-accused to commit the offence and due to this reason, offence punishable under Section 109 IPC was added in the FIR.

After hearing the learned counsel for the parties and the learned counsel for the Administration, I am of the opinion that the instant petition deserves to be allowed.

Annexure P-3 is the copy of the FIR in question. The only allegation levelled against the petitioner in the said FIR reads as under:-

“My husband, my in-laws and his co called Guru, Mr. Sunil Goel (Ferozepur) influenced and consoled me and by saying that you should go to your parents house (Chandigarh) for some days as the situation is very hot at this moment and we will make everything right in the meantime and my husband (Mr. Barjesh Hasish's) parents will take back disownment and then we will live happily”

In the case of **State of Haryana** vs. **Bhajan Lal.,** **1992 Supp(1) Supreme Court Cases 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 under Section 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 chennelised 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 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 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 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 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.”

Thus, in the present case, petitioner is the *guru* of the family of the husband of the complainant. A perusal of the FIR reveals that the petitioner had intervened and had tried to sort out the matrimonial dispute between the parties and had also assured the complainant that he would make an effort for withdrawal of disownment of the husband of the complainant by his parents. The said fact does not lead to the inference that the petitioner had abetted the offence under Section 406, 498-A IPC committed by the husband of the complainant and his family members. A perusal of Annexure P-2 also does not lead to the inference that petitioner at any instance had abetted the commission of offence punishable under Section 406, 498-A IPC by the husband of the complainant and his family members.

Section 107, 108, 109 IPC read as under:-

107. Abetment of a thing.

A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or,

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—*Intentionally aids, by any act or illegal omission, the doing of that thing.*

Explanation 1.—A person who, by wilful

misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

108. Abettor.

A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in

consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Thus, a person is said to be an abetter if he abets for the commission of offence or the commission of an act which would be an offence. The said offence is punishable under Section 109 IPC.

However, in the present case, a perusal of the FIR or the statement of the petitioner Annexure R-2 do not lead to the inference that the petitioner had at any time abetted the commission of offence punishable under Section 406, 498-A IPC by the husband of the complainant or his family members. Rather the petitioner had tried to sort out the matrimonial dispute between respondent No. 2 and her husband. Rather the petitioner had helped the case of respondent No. 2.

Accordingly, this petition is allowed. FIR No. 54 dated 12.3.2010, under Section 406, 498-A, 120-B IPC, (Section 109 IPC added later on), registered at Police Sector-19, Chandigarh (Annexure P-3) and all the consequential proceedings, arising therefrom, qua the petitioner, are quashed.

**(SABINA)
JUDGE**

March 02, 2013
Gurpreet