2025 INSC 1128

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 187 OF 2020

NITIN AHLUWALIA … APPELLANT(S)

Versus

STATE OF PUNJAB & ANR. … RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

1. Questioned in this appeal by the appellant, is the rejection of his prayer to quash a First Information Report filed by the respondent, the former wife of the appellant namely, Tina Khanna Ahluwalia[1], under Section 498-A of the Indian Penal Code, 1860[2], before the Police Station, Women, SAS Nagar bearing particulars- FIR No. 65 of 2016, filed on 7th December 2016[3], by the High Court

[1] Respondent No. 2 herein. Referred to as respondent
[2] IPC
[3] FIR

of Punjab and Haryana in Criminal Misc. No. M-850 of 2017 (O&M), by judgment dated 23rd March 2017.

2. The facts and sequence of events, as are necessary to appreciate the context of the FIR, are as follows:

2.1. The appellant is an Australian citizen of Indian origin, and the respondent is an Austrian citizen. They were married per Hindu rites and rituals on 29th November 2010 at Panchkula in Haryana, since families of either party resided in India.

2.2 Life in matrimony began at Melbourne, Australia on 18th December 2010. A daughter was born from this union on 29th September 2012.

2.3 The respondent left the matrimonial company of the appellant, allegedly without any forewarning, on 30th June 2013, taking their daughter along with her, to Austria, her home country.

2.4 The appellant initiated proceedings under The Hague Convention on the Civil Aspects of International Child Abduction, 1980[4], in Austria seeking the return of his daughter, to Australia. The District Court of Vienna Inner City made an Order dated 8th January 2014 recording the

[4] 'Hague Convention, 1980'

factual circumstances that led to the application being preferred as differing ideas as to roles both the mother and father had to play in society. A further point of contention was the desire of the respondent to relocate to Austria for the purposes of child's education. It was held that neither the consent of the appellant, either immediate or ex-post facto; nor '*grave risk*' upon return - both factors which allowed the '*requested state*' to refuse the return of the child, could be established - the application had to be allowed. The daughter was directed to be returned to Australia.

2.5 On appeal, the Vienna District Civil Court refused intervention. The conclusions are as follows:

> "With regard to the mother's complaint regarding the legal position, the following considerations were made:
>
> Insofar as the mother refers to the fact that the father has not seen the minor since 2 July 2013 and therefore has "absolutely no connection with her anymore, it should be pointed out that the court of first instance has not ordered the return of the minor without the mother, and naturally, it is now up to the mother to return to Australia with the child.
>
> As outlined carrier, it cannot be derived under the given circumstances that father, in saying that she should leave the house, gave his conclusive consent to the minor travelling to Austria in order to remain there permanently.
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> With respect to the mother's argument that the minor has stayed in the country of refuge for some considerable time

> now and was socially integrated, it should be pointed out that the father has lodged the return application within the one-year period required by the HCCH, in fact five months after the removal of the child to Austria by the mother. Prior to that, he had repeatedly requested and asked the mother expressly to return to Australia with the child. There can be no mention of the minor already having her actual centre of life in Austria, particularly in view of the young age of the child.
>
> In this context the father correctly refers to the Judgment of the Supreme Court in his response to the appeal.
>
> Therefore, the appeal has succeeded in failing."

2.6 The Supreme Court of the Republic of Austria also rejected the respondent's appeal. It was held that it cannot be said that the appellant did not have custody of the daughter or in other words custody rights were not exercised by him, thereby justifying the removal, and she took care of the child on her own, since they resided in the same house. Further, it was observed that apprehensions as to the child's well-being, being jeopardised, particularly in the shape of psychological stress and possible economic issues, does not meet the standards of truly serious risks, or the case law sought to be relied on. A further contention to the effect that the consequence of the order of the Court of first instance would be her estrangement from the child, was rejected as being *de hors* the contents of the order. It was observed that

an unaccompanied return was not the order, instead it was a return to Australia, simpliciter. It was also not an order for the child to be sent to the appellant. Nothing stops her from returning to Australia with the child. It was also observed that the respondent had to deal with consequences of her actions should she return to Australia for it was her unilateral decision to remove the child from Australia. The last argument of social integration is Austria, was also deemed to have failed.

2.7 The respondent then filed an application seeking stay of enforcement proceedings on the ground that talks with the aim of settling the matter with the appellant are underway. The District Court, Vienna Inner City, rejected the application, *vide* order dated 5th May 2014. It was observed that orders passed in relation to matters governed by the Hague Convention, 1980 can be executed by the concerned Court "*by means of immediate force*". The only scenario where the Court may refrain from doing so, is, if it jeopardises the well-being of the minor. It was then concluded as under:-

> "The enforcement of the legally binding return order, as requested by the father, by means of handover of the minor from the mother to the father, which is factually like a regular changeover after contact, seems like an appropriate

> method to implement the return of the minor and is a significantly softer intervention than the child being removed by the Courts enforcement authorities accompanied by employees of the youth and Family Welfare Office, Family Court Assistance or organs of public security. The settlement discussions proposed by the mother are not sufficient to justify a stay of enforcement proceedings. On one hand, the terms voluntary seems inappropriate in view of the legally binding decision, on the other hand, the mother is not serious about her return, as it becomes apparent from the conditions attached with the return. In response to the mother's argumentation that minor's well being at risk, it shall be noted that the described detriments to the minor can be avoided if the mother was to return to Australia with the minor. Consequently, the enforcement proceedings had to be commenced and the return order implemented as requested by the father. The time of handover had to be specified and set for the date of the scheduled return flights, in order to limit the irritations of the return for the minor to a shorter period…"

2.8 The appellant filed for divorce under the Family Laws Act, 1975 on the ground of irretrievable breakdown of marriage, which was granted by the Federal Circuit Court of Australia on 1st April 2016, with effect from 4th April 2016. This order was made after due service to the respondent, in India, and having heard the parties.

2.9 A month after the grant of divorce, on 4th May 2016 the respondent lodged a complaint with the Senior Superintendent of Police, SAS Nagar alleging demands of dowry and torture, both physical and emotional. It is on this

basis that the FIR subject matter of these proceedings, came to be filed. The period of the alleged offence subsisting is from 29th November 2010 till 4th May 2016.

3. Aggrieved by the registration of the FIR, which we already have noticed, took place finally on 7th December 2016, the appellant approached the High Court, seeking quashing thereof. Certain grounds were agitated before the Court, but they were ultimately rejected by the Learned Single Judge. It was observed:

> "Detailed and specific allegations have been raised in this First Information Report registered at the instance of respondent No.2 who is stated to be residing with her parents at Silver City Greens, Ambala-Zirakpur Highway. The matter is at the very initial stage of investigation. The petitioner is admittedly in Australia at this point of time and has not joined investigation. It is clearly too premature a stage for this Court to return a finding in respect to the sustainability of this petition and consequently quash the abovesaid FIR on the grounds sought to be raised by the petitioner…
>
> Keeping in view the facts and circumstances of the case, no ground is made out for interference by this Court in exercise of jurisdiction under Section 482 Cr.P.C. at this stage. The present petition is clearly premature. Disposed of accordingly..."

4. As such, the appellant is before us. Notice was issued on 4th December 2017, and by the same order it was directed that there would be a stay on the investigation in the subject FIR.

5. We notice that two attempts were made towards a mediated settlement of the disputes. The first was by order dated 4th January

2019 and the second by order dated 27th February 2025. Both attempts did not yield the desired result. Suffice it to say we are disappointed in the lack of foresight shown by both parties, particularly when it comes to the well-acknowledged ill effects of continued, strained and hostile relationship between the parents, on a young child. In this case, the child was born in September 2012, and the parents have been in litigation from the time when she was not even a year old to the day this judgment is delivered.

6. We have heard the learned counsel for the parties and perused the record. The sum of the appellant's case is that the FIR does not disclose any offence; despite orders of the concerned Court, the respondent did not return the child to Australia and instead has brought her to India and filed the FIR to harass him; no allegations of this nature were ever made in the proceedings in both the foreign countries; the FIR has been maliciously filed with an intent of taking advantage of the Indian legal position and to vent out her grudge against the appellant. Per contra, the respondent denies the FIR being a retaliatory measure, and submits that only after attempts at mediation failed, did she take recourse to criminal law. She also submits that India is not a signatory to the Hague Convention and, therefore, the decree passed by the Courts in Austria need not be considered by the Court. That apart, child custody is a civil matter

whereas cruelty, is criminal. They are separate and distinct from each other.

7. The law on the exercise of the High Court's inherent powers under Section 482 of the Code of Criminal Procedure, have been repeatedly expounded and reiterated - to the point that they ought not to require restatement, and hence, we will not go down that route. The scope of the exercise to be carried out by the Court while adjudicating such an application for quashing is also well established. The Court is only to look to the *prima facie* possibility of the offence having been committed. In this regard reference can be made to ***CBI v. Aryan Singh***[5] and ***Rajeev Kourav v. Baisahab***[6].

8. If the complaint is seen in isolation, then the approach of the learned Single Judge appears, entirely to be in consonance with the established position of law - allegations have been made, and so they have to be investigated. In certain cases, though, it is not as straight-cut as that. While it is true that elaborate defences and evidence brought on record is not to be considered at this stage, it is equally true that a mechanical approach cannot be countenanced. What renders a judicial mind distinct is its application to the given facts in accordance with law. Therefore, the Court ought to have

[5] (2023) 18 SCC 399
[6] (2020) 3 SCC 317

appreciated, at least to some extent, the background in which the respondent filed the subject FIR.

9. Here, the respondent filed the complaint after the grant of divorce, a month later. Granted that the same is not expressly prohibited by law, it certainly begs the question as to why despite having been separated from the appellant for almost three years to the date, did the respondent consider filing an application with the police at that relevant time. To entertain the possibility that the same is nothing but a counterblast to the fact that the appellant has two orders in his favour, one by the Courts in Austria ordering the respondent to bring the child back to Australia and the other, by the Courts in Australia, accepting the appellant's prayer for grant of divorce, does not appear far-fetched.

10. That apart, on our own analysis, we find the conduct of the respondent to be questionable. Despite there being orders of the concerned Courts in Austria, the child, as alleged by the appellant, is yet to be returned to Australia, either with or without her mother accompanying her. This position of the appellant has not been controverted by the respondent. Further, we find that when service was to be effected for the papers of divorce proceedings initiated by the appellant, the same was made in India. This, to our mind casts doubt on the genuineness of the respondent for the reason that one

of the arguments she made in favour of her position of wanting to keep the child in Austria, was that she had been integrated in the society there. Well, if that was the case, the child ought to have been in Austria even today, if we, *arguendo*, keep aside the decree of the Courts there, asking the respondent to do quite the opposite. Still further, one of the allegations made/apprehensions listed in her complaint is that there is a possibility that the appellant may abduct her child. Even though in the eventual FIR such allegation does not translate into a charge, the mere presence of the statement makes us believe that a picture far from the truth has tried to be painted. In fact, it was against the respondent that the charge of unilaterally removing her child from the joint custody of both the parents was proved in the Court of law, and she was directed to remedy the situation.

11. Additionally, we may note that the period of the alleged cruelty meted out by the appellant, extends to a period beyond the time that they were married. We may only wonder how that can be. We may also observe that while it may be true that India is not a signatory to the Hague Convention, 1980 and that the criterion may allegedly differ, it does not give us reason to interfere with orders passed by Courts of competent jurisdiction in other countries. It cannot be disputed that the Courts in Austria had jurisdiction. They decided a

dispute as per the applicable law. No occasion whatsoever arises for India to apply its standard. The limited consideration given to the findings of the Courts in Austria is that a decree to take the child back to Australia had been passed and, as it appears, the same has not been followed.

12. Recently, this Court speaking through B.R. Gavai, J. (*as the learned Chief Justice of India presently, then was*) quashed similar proceedings in ***Digambar v. State of Maharashtra***[7], observing as follows:

> "...it was lodged after the legal notice for Divorce was sent by the complainant therein. It was therefore concluded that the FIR came to be lodged as a retaliatory measure intended to settle score with the husband and his relatives.
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> **22.** In another recent judgment of this Court titled *Jayedeepsinh Pravinsinh Chavda* v. *State of Gujarat*[5], the guilt of the appellant therein under Section 498-A of IPC was maintained, however, the ingredients of 498-A of IPC were discussed. It was observed thus:
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> > "**11.** From the above understanding of the provision, it is evident that, 'cruelty' simpliciter is not enough to constitute the offence, rather it must be done either with the intention to cause grave injury or to drive her to commit suicide or with intention to coercing her or her relatives to meet unlawful demands."
>
> **23.** Hence, it was clear that 'cruelty' is not enough to constitute the offence. It must be done with the intention to cause grave injury or drive the victim to commit suicide or inflict grave injury to herself. In the present case, the allegations levelled in the FIR do not reveal the existence of any such allegations.

[7] 2024 SCC OnLine SC 3836

13. Placing reliance on the above, and as a consequence of the discussion made *supra*, it is clear that the instant facts attract parameter 7 of those laid down in ***State of Haryana v. Bhajan Lal***[8] and as such, it can be said that if the FIR proceeds further, it would be an abuse of the process of law. Hence, the impugned judgment and the FIR subject matter of these proceedings, the particulars whereof are given in paragraph 1 of this judgment, stand quashed and set aside.

14. The appeal is allowed. Applications pending, if any, shall be closed.

…….J.
(SANJAY KAROL)

…….J.
(PRASHANT KUMAR MISHRA)

September 18, 2025
New Delhi.

[8] 1992 Supp (1) 335