

Kamaljit Singh Vs State of Punjab

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 18, 2003

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 482
Penal Code, 1860 (IPC) â€” Section 498A

Citation: (2003) 8 CriminalCC 523 : (2004) 1 RCR(Criminal) 321

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: Yogesh Goel Mr. S.P.S. Sidhu, for the Appellant; B.K. Mann, D.A.G., Punjab, for the Respondent

Final Decision: Allowed

Judgement

M.M. Kumar, J.

This petition filed u/s 482 of the Code of Criminal Procedure, 1973 prays for quashing of FIR No.69 dated 14.3.2001

registered under Sections 406/498-A IPC at P.S. Focal Point, Ludhiana. When the notice of motion was issued on 6.1.2002, petition on behalf of

the petitioners No. 1 to 3 was not pressed and was dismissed as such. However, petition on behalf of petitioners No.4 to 8 was entertained. The

complaint Savinder Pal Kaur filed a complaint in writing to Senior Superintendent of Police, Ludhiana, which is the subject matter of the FIR and

the allegations levelled against various accused including the accused-petitioners 4 to 8 read as under:-

Subject: Application against Kamaljit Singh S/o Jasvir Singh, Jasvir Singh S/o Kartar Singh, Rajinder Kaur W/o Jasvir Singh, Harbhajan Kaur @

Baby D/o Jasvir Singh, Manjit Kaur D/o Jasvir Singh, Rupinder Kaur D/o Jasvir Singh, Manmohan Singh (son-in-law) of Jasvir Singh, Inderjeet

Kaur W/o late Ajit Singh regarding the demand of money dowry and for maltreatment. Sir, With reference to aforesaid, I Ravinder Kaur W/ o

Kamlajit Singh R/o H.No.393,Baba Fateh Singh Nagar, Daba Lohara Road Ludhiana submit as under: That I was got married to Kamaljit Singh

S/o Jasvir Singh, H.No.393, Baba Fateh Singh Nagar, Daba Lohara Road Ludhiana about 10 years ago and we have two children namely Jasbir

Singh aged about 9 years and Kamaldeep Singh aged about 6 years. (2) That the aforesaid persons are harassing me illegally after the marriage.

My husband Kamaljit Singh is not residing with me for the last about 4/5 months. I am residing in my laws house at H.No.393, Baba Fateh Singh

Nagar, Daba Lohara Road Ludhiana and my husband is not paying any household expenses. The aforesaid persons are harassing me illegally after

every 2-3 months and in this regard the compromise was also effected number of times in the police station. The photo copies are enclosed to the

effect that they will neither harass me nor make any demand of money (3) I am maintaining my children with great difficulty. My father has already

expired and children are studying in the Army School. (4) That on 12.3.2001 at about 7 am I went to fetch water from tap then my father in law

and mother in law started abusing and beating me without any reasons and said that you have no concern with us and you get out of our home. Our

son has already remarried. My father in law who sat over me and started beating me, my mother in law caught hold of my hair and mercilessly

beaten me. (5) That the aforesaid relatives have also joined hands with my father in law, mother in law and husband Kamaljit Singh and are

harassing me. My husband Kamaljit Singh while leaving the house asked me to bring a sum of Rs.3 lacs from mother and brothers then only I will

be allowed to stay in home. I don't know where my husband is. If you do not bring this money he will kill you and your children. (6) That our

neighbours are also aware of this dispute but they do not come forward because of the fear of my mother in law, father in law and other family

members. If any body talk in my favour then they abused them. Now I request you to take legal action against the aforesaid persons to give justice

to me and my children and the accused persons be arrested at the earliest. I shall be thankful to you. Note : Manmohan Singh (son in law) of Jasvir

Singh also tried to molest me some time back and legal action be also taken against him. Thanking you, Yours sincerely Sd/- Savinder Pal Kaur

W/o Kamaljit Singh, H.No.393, Baba Fateh Singh Nagar, Daba Lohara Road Ludhiana.

2. Notice of the petition was issued to the A.G. Punjab as well as to the complainant and learned counsel for the parties have been heard.

3. Mr. Yogesh Goel, learned counsel for the petitioners No.4 to 8 has argued that petitioner No.4 is the sister of the husband of the complainant

and petitioner No.5 is the husband of petitioner No.4 Similarly, petitioner Nos.6 and 7 are also the sister of the husband of the complainant.

Petitioner No.8 is mother's sister (Massi) of the husband of the complainant. It has further been pointed out that petitioners No.4 and 5, 6 and 7

are living either at Delhi or Gurgaon and they were married in year 1994. Petitioner No.4 was married in the year 1984, petitioner No.6 was

married in the year 1979 and petitioner No.7 was married in the year 1976. Therefore, they have hardly any role to play in the commission of

offences u/s 406 IPC. It has further been pointed out that the complainant herself is residing at matrimonial home, who was married in the year

1990. Therefore, it is sought to be projected that the petitioners No.4, 6 and 7 have married much earlier than the marriage of the complainant in

the year 1990 and, therefore, they have no role to play in the commission of offences under Sections 406/498-A IPC and they are the victim of

general tendency of roping in every member of the family. Similar is the position with regard to mother's sister (Massi) of the husband of the

complainant. In support of his submission, the learned counsel for the petitioners has placed reliance on Smt. Nirmala v. State of Haryana, 2002

(2) RCR (Cri) 504, Gurdit Singh v. Smt. Jeeto, 2002 (3) RCR(Cri) 249, Ravinder Kumar v. State of Haryana, 2002 (3) RCR(Cri) 249, Ravinder

Kumar v. State of Haryana, 2002 (2) RCR(Cri) 505, Mukesh Rani v. State of Haryana, 2002(1) RCR(Cri) 163, Ramandeep Kaur v. State of

Punjab, 2001 (4) RCR(Cri) 394, Rajpal Singh v. State of Haryana, 2002 (3) RCR(Cri) 133, Maya v. Sudesh, 2001(1) RCR(Cri) 356), Harsh

Vardhan Arora v. State of Haryana, 2002(2) RCR(Cri) 499. Ramesh Khullar v. Alka @ Dimple, 1997(3) RCR(Cri)284, Satinder Kumar v. Asha

Rani, 1995 (1) RCR(Cri) 551, Hira Lal v. State of Haryana, 1993 (2) RCR (Cri) 85, Sudhir Kumar v. State of Punjab, 1992(3) RCR 588, Nanak

Chand v. State of Haryana, 1992(1) RCR(Cri)363 and Kulwinder and others v. Asha Rani, 2002 (2) RCR(Cri) 358. Ms. Baljit K. Mann, Sr.

DAG, Punjab, has pointed out that the case is now fixed for framing of charges on 29.11.2003 and that after the presentation of challan, all these

arguments of the petitioners would be considered by the trial Court at that stage.

4. Mr. S.P.S. Sidhu, learned counsel for the complainant has argued that the police after investigation is likely to present the challan against the

petitioners and there is evidence in the form of statements recorded u/s 161 Cr. P.C. against the petitioners. The arguments that the petitioners

have no role to play could be addressed by them at the stage of framing of charges on 29.11.2003 for which purpose the case is posted before the

trial Court. In support of his submission, the learned counsel has placed reliance on a judgment of the Supreme Court in the case of State of Bihar

v. P.P. Sharma, 1992 Suppl.(1) SCC 222 and argued that this Court should be hesitant to scrutinize the application u/s 161 Cr.P.C. and other

evidence collected by the investigating agency in order to reach a conclusion that no case is made out for quashing of an FIR.

5. After hearing the learned counsel for the parties and perusing the record, I am of the considered view that the petitioners have been

unnecessarily dragged in this litigation, which is basically a dispute between the complainant and her husband on her husband's parents. A perusal

of the complaint filed by the complainant Savinder Pal Kaur would reveal that after naming the petitioner No.4 Manjit Kaur, petitioner No.

Manmohan Singh, petitioner No.6 Harbhajan Kaur, petitioner No.7 Rupinder Kaur and petitioner No.8 Inderjit Kaur, no allegations have been

levelled against any one of them except accusing father-in-law or the mother-in-law that they had given beating to her without any reason. The

name of the husband has also been mentioned in the allegation. There is virtually no allegations against the petitioners No.4 to 8 Moreover, the

complainant has been staying in the matrimonial home alongwith her children and the petitioners No.4, 5 are the residents of D-90, Fateh Nagar,

New Delhi and petitioner No.6 is resident of 7/33, Subhash Nagar, New Delhi. Petitioner No.7 is resident of H.No.6013, Mohalla Khwaza Bajju

Mori Gate, Jagraon. Petitioner No.8 who is mother's sister of the husband of the complainant although lives at Ludhiana but her residence for all

intents and purposes is separate as she lives at Gali No.4, Mohalla Shimlapuri, Ludhiana. There is no allegation of demand of dowry or

misappropriation of the same by any of the petitioners. The petitioners have been victimised on account of the prevalent syndrome of roping in

everyone in such type of matrimonial related criminal litigation. I am further of the view that the basic ingredients of Sections 406 and 498-A IPC

are not even prima facie satisfied on the perusal of the FIR. Both the aforementioned Sections read s under:-

406. Punishment for criminal breach of trust - Whoever commits criminal breach of trust shall be punished with imprisonment of either description

for a term which may extend to three years, or with fine, or with both.

498-A. Husband or relative of husband of a woman subjecting her to cruelty -Whoever, being the husband or the relative of the husband of a

woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to

fine.

A perusal of Sections 406 and 498-A IPC would make it evident that the allegations of breach of trust have to be made and criminal breach of

trust according to Section 405 requires that an accused has to be entrusted with some property or given dominion over such property, which he

might dishonestly misappropriate or converts to his own use or dispose it of. u/s 498-A, any other who is either being the husband or a relative of

the husband of a woman, if commits such cruel act against the woman then such a person could be accused of that offence. No such allegations are

forthcoming against any one of the petitioners. Even the allegations of molestation against petitioner No.5 Manmohan Singh has not been

substantiated either in the FIR or elsewhere. I am of the considered view that the basic ingredients of Sections 406 and 498-A IPC are not

satisfied and according to the law laid down in the case of State of West Bengal and Others Vs. Swapan Kumar Guha and Others, State of

Haryana v. Bhajan Lal, 1992 (Suppl)(1) SCC 335, and Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, the FIR

against petitioners No.4 to 8 is liable to be quashed. The argument of the learned counsel for the complainant-respondent based on the judgment

of the Supreme Court in P.P. Sharma's case (supra) would be of no assistance to him because in that case, the High Court has dealt with merits of

the case by taking into consideration the facts and documents, which could have only been produced during trial. Therefore, it was held by their

Lordships that such a course is not permissible u/s 482 or Articles 226 and 227 of the Constitution. Obviously no such argument have been

advanced by the counsel for the accused-petitioners. The case disclosed in the FIR is not being touched on merit.

For the reasons stated above, this petition succeeds and the FIR against petitioners No.4 to 8 is quashed. However, it is made clear that any

observation made in this order shall not constitute an expression of opinion on the merit of the FIR in respect of petitioners No. 1 to 3.