
(1996) 05 P&H CK 0022

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 7260-M of 1995

Ram Singh and Others

APPELLANT

Vs

State of Punjab and
Another

RESPONDENT

Date of Decision: May 24, 1996

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Hindu Marriage Act, 1955 - Section 11
- Penal Code, 1860 (IPC) - Section 109, 114, 149, 406, 494

Citation: (1997) CriLJ 1406 : (1996) 2 RCR(Criminal) 784

Hon'ble Judges: P.K. Jain, J

Bench: Single Bench

Advocate: R.S. Cheema and D.L. Singh, for the Appellant; Ramanjit Singh, A.A.C., Jasbir Singh and Ladher, (for No. 2), for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.K. Jain, J.

This petition has been filed u/s 482 of the Code of Criminal Procedure (for short "the Code"), for quashing the complaint (Annexure P. 1) filed under Sections 494/495/114/149, Indian Penal Code, and the summoning order (Annexure P.6), passed by the Sub-Divisional Judicial Magistrate, Mansa, and all subsequent proceedings arising therefrom.

2. The facts necessary for the disposal of this petition are that Smt. Satinder Kaur (Respondent No. 2 herein) was married with Dr. Satinder Singh on 14-12-1987 according to Sikh Anand Karai rites at Mensa. Out of this wedlock a son Kamal Preet Singh was

born. Petitioner No. 1 is the father, Petitioners Nos. 2 and 3 are the brothers, petitioner No. 4 is the sister and petitioner No. 5 is the brother-in-law of said Dr. Satinder Singh.

3. Smt. Satinder Kaur-respondent No. 2 filed a complaint (Annexure P.1) against her husband Dr. Satinder Singh and the present petitioners for the offences under Sections 494/495/114/149, Indian Penal Code, on the allegations that the accused-persons are of greedy nature, that they took dowry worth Rs. 2,76,950/- from her parents at the time of her marriage and after the birth of her son Rs. 10,000/- and 2 tolas gold was also given to them but they kept on asking for more dowry. In December 1991, her mother-in-law expired. On 12-1-1992, the accused persons turned out the complainant from the matrimonial home after giving her beatings and kept the dowry articles with them. At the intervention of Panchayat a compromise was effected. According to the compromise, the complainant and her husband Dr. Satinder Singh started living separately at Mansa and the gold ornaments were also returned to the complainant. In September 1992, Dr. Satinder Singh got admission in M. D. in Rajindra Hospital, Patiala. It has been alleged that some time there after her husband Satinder Singh told her to ask her father to build a house at Patiala, and on her refusal he had given beatings to her and told that if his demand was not met, he would marry again. On 19-12-1993, Dr. Satinder Singh left the complainant taking all the gold ornaments and the National Savings Certificates with him with the warning that he would not take the complainant until her parents would construct a house for him. In spite of all efforts made by her parents Dr. Satinder Singh refused to return the articles. FIR No. 7 dated 8-1-1994 for the offences under Sections 406/498A, I.P.C. was registered against Dr. Satinder Singh and petitioners Nos. 1 to 4 herein.

4. It has been further stated that all the accused, having connived to spoil the life of the complainant, started inciting Dr. Satinder Singh to marry elsewhere. With their support, Dr. Satinder Singh married with Dr. Amarbir Kaur, resident of Mechta Chowk, as per Sikh Anand Karaj on 27-9-1993 in Hotel Amritsar International Near Bus Stand, Amritsar. All the necessary Sikh Anand Karaj ceremonies were performed at this marriage. It has been alleged that Dr. Satinder Singh purposely did not take the petitioners with him since he had already represented to the mother of Amarbir Kaur and her relations that his family was a small one, that his parents were living in America and that he was still a bachelor. It has been alleged that he cheated Dr. Amarbir Kaur and started living with her as husband and wife. It has been further stated that Dr. Satinder Singh was arrested on 16-1-1994 in F.I.R. No. 7 dated 8-1-1994 and was bailed out on 21-1-1994, that thereafter he wrote a letter dated 24-1-1994 which was received by the complainant on 2-2-1994 and in that letter Dr. Satinder Singh admitted having committed a mistake. When the father of the complainant met Dr. Satinder Singh at Patiala on 13-2-1994, it was disclosed to him that Dr. Satinder Singh had committed the mistake of second marriage with Dr. Amarbir Kaur who had filed a case against him. Matter was reported to the Police at Amritsar as well as Mansa but no action was taken. Hence the complaint.

5. After recording preliminary evidence in support of the aforesaid complaint, the Sub-Divisional Judicial Magistrate, Mansa, by his order dated 26-4-1994 (Annexure P. 6)

summoned Dr. Satinder Singh to face trial u/s 498, I.P.C. and the petitioner to face trial for the offence of abetment u/s 109, I.P.C. The petitioners, feeling aggrieved, have approached this Court, as stated above.

6. It has been stated in the present petition that the petitioners have been roped in with an oblique motive to harass them, that no case of abetment is made out against the petitioners on the basis of the allegations contained in the complaint, that the petitioners Nos. 2 to 4 were discharged in FIR No. 7 dated 8- 1-1994 by this Court in Crl. Misc. No. 8890-M of 1994 (Annexure R.1) decided on 28 2-1994, and that there is no material whatsoever to show any knowledge or design on the part of the petitioners either to arrange the alleged second marriage or to negotiate the same or to participate therein and that the petitioners had no role to play in the so-called second marriage of Dr. Satinder Singh.

7. Notice of the petitioner was issued to the respondents.

8. In a reply filed by respondent No, 2, it is re-interated that her husband married with one Amarbir Kaur on 27-9-1993, without disclosing to her that he was already married to this respondent and the present petitioners were summoned for having connived with the complainant's husband in arranging his marriage with Amavbit Kaur. It is also alleged that Dr. Satinder Singh and the petitioners arc hand in glove with each other and after turning out this respondent from the matrimonial home they incited Dr. Satinder Singh to enter into his second marriage with Dr. Amarbir Kaur. It is, thus, stated that a prima facie case u/s 109, I.P.C. is made out against the petitioners and they have been rightly summoned by the trial Court.

9. I have heard the learned counsel for the parties and have perused the record.

10. Shri R. S. Cheema, Sr. Advocate, while appearing on behalf of the petitioners, has argued that even if all the averments and the allegations in the complaint (Annexure P. 1) are assumed to be correct for the sake of argument, no offence of abetment on the part of the petitioners is made out. It has been argued by the learned counsel that the petitioners did not come into picture at the time when the so-called second marriage of Dr. Satinder Singh was negotiated, nor they were present at the time of the so-called performance of the second marriage. It has been pointed out by the learned counsel that the petitioners are being roped in with an oblique motive by respondent No. 2 merely to harass them which fact is evident from the fact that petitioners Nos. 2 and 4 were discharged by this Court in the earlier case registered at her statement for the offence under Sections 406/498-A I.P.C. The learned counsel has placed reliance upon a judgment of this Court in Partap Singh v. Surjit 1995 (5) ALJ 156.

11. On the other hand Shri Jasbir Singh, Advocate, while appearing on behalf of respondent No. 2, has argued that this Court should not. exercise its inherent powers to quash the complaint and the petitioners should be relegated to their remedy before the

trial Magistrate. In support of this plea reliance has been placed by the learned counsel upon a judgment of the apex Court in [K.M. Mathew Vs. State of Kerala and another](#), , and a judgment of this Court rendered in Bachan Singh v. Smt. Harpreet Kaur 1996 (2) RCC 6. It has been further argued by the learned counsel that with the active connivance and incitement of the petitioners., Dr. Satinder Singh contracted a second marriage with Dr. Amarbir Kaur according to Sikh Anand Karaj rites, and as such while Dr. Satinder Singh is guilty of an offence u/s 494, I.P.C. the petitioners are guilty u/s 109, I.P.C.

12. I have considered the respective arguments advanced at the Bar.

13. In [Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others](#), , the apex Court expounded the law regarding the exercise of the inherent jurisdiction u/s 482 of the Code by the High Court in such like matter as under (Para 7): -

"The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration by special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and whether in the opinion of the Court chances of an ultimate conviction is bleak, and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage."

After review of the entire case law available on the subject and examining the various provisions of the Code and the Constitution of India, their Lordships of the Supreme Court of India in a well-known judgment rendered in [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), , illustrated certain categories of cases wherein a Court in exercise of its powers u/s 482 of the Code or in exercise of their extra-ordinary powers under Article 226 of the Constitution of India can quash a first information report or a complaint. Categories Nos. 1 and 3 read as under (Para 108) :--

"1. Where the allegations made in the First Information Report or the complaint, 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.

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."

Thus, where the allegations made in a complaint, even if they are taken at their face value and accepted in entirety, do not constitute prima facie an offence or make out a case against the accused which the Court is well within its powers to quash the complaint.

14. Turning to the case in hand, it is the admitted case of the complainant respondent No. 2 that at the time of the so-called second marriage of Dr. Satinder Singh with Dr. Amarbit Kaur at Amritsar, none of the petitioners was present. There is no averment, in the complaint that the petitioners in the presence of the complainant even incited Dr. Satinder Singh to remarry or threatened the complainant that they would get Dr. Satinder Singh remarried. Further, there is no averment in the complaint nor there is anything in the impugned order to show that the petitioners were instrumental in arranging the so-called second marriage of Dr. Satinder Singh with Dr. Amarbir Kaur. Rather, it is prima facie shown by the statement of Amarjit Kaur mother of Dr. Amarbir Kaur (Annexure P. 4) and copy of the petition filed u/s 11 of the Hindu Marriage Act by said Amarbir Kaur Dhaliwal (Annexure P. 5) that Dr. Satinder Singh himself had arranged his so-called second marriage with Dr. Amarbir Kaur by making a representation that his parents were living in America. This fact is reiterated by the complainant also. Therefore, the necessary inference is that the petitioners were in no way concerned with negotiation or in the arrangement of the so-called second marriage of Dr. Satinder Singh.

15. The only allegation contained in para 5 of the complaint is that these petitioners along with Dr. Satinder Singh connived at spoiling the life of Dr. Satinder Kaur, that the petitioners started inciting Dr. Satinder Singh to marry elsewhere and they would support him in this respect and with the support of the petitioners Dr. Satinder Singh entered into a marriage with Dr. Amarbir Kaur. This allegation is absolutely vague and indefinite, having no legs to stand upon. There is nothing to show as to when and how the petitioners incited Dr. Satinder Singh to re-marry or when and how they gave assurance to Dr. Satinder Singh to support him on this count. There are no particulars of the so-called connivance or conspiracy between Dr. Satinder Singh and the petitioners, - vague allegation of connivance would not be enough to constitute an offence of abetment u/s 109, Indian Penal Code.

16. A somewhat similar question arose before this Court in the case of Chander Parkash Nagpal v. Hari Singh (1991) 2 CLR 262. In paragraph 8, the Court observed as under:-

"In so far as the other accused excluding Chander Parkash, his second wife Gita and his parents are concerned, they cannot be said to have abetted the commission of the offence u/s 494, I.P.C. by Chander Parkash,(accused), even if it may be assumed for the sake of argument that they were aware of his first marriage with Veena. The mere fact that they participated in the marriage or they accepted some Shagun in the form of Milni etc. during the ceremonies of the marriage, cannot lead to the conclusion that they had abetted the commission of the offence by Chander Parkash, accused. In the circumstances the impugned order, whereby the accused, other than Chander Parkash, Geeta, Ram Baksh and Shiolo, have been charged u/s 494 read with Section 109, I.P.C. is held to be improper and unsustainable. However, nothing could be seriously urged by the learned counsel for the petitioners regarding the impugned order in so far as the framing of the Charge-sheet against Chander Parkash and Geeta accused u/s 494, I.P.C. and against Ram Baksh and Shiolo u/s 494, I.P.C. is concerned. Hence this part of the

order is maintained."

The apex Court also examined this question in the case of [Smt. Chand Dhawan Vs. Jawahar Lal and others](#), . While considering the effect of mere presence at the time of the so-called marriage, the Supreme Court observed at p. 1959 of Cri.L.J.-:

"So far as other respondents are concerned it may be said that they had been unnecessarily and vexatiously roped in, the allegations in the complaint so far as these respondents are concerned are vague. It cannot be assumed that they had by their presence or otherwise facilitated the solemnisation of a second marriage with the knowledge that the earlier marriage was subsisting."

17. In other words the vague allegations are not enough in constituting an offence of abetment. As already stated in the present case the allegations of connivance or conspiracy or incitement are totally vague for want of particulars. There is nothing either in the complaint or in the summoning order that the petitioners ever negotiated or arranged the so-called marriage of Dr. Satinder Singh nor there is any allegation that they were ever present at the time of the performance of the second marriage. In these circumstances, the necessary conclusion is that no case of abetment u/s 109, I.P.C. is made out against the petitioners.

18. As a result of the above discussion, I accept this petition and quash the complaint (Annexure P. 1), the summoning order (Annexure P. 6) passed by the Sub Divisional Judicial Magistrate, Mansa, and the consequent proceedings thereon, qua the petitioners.