(2013) 03 P&H CK 0054

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1249 of 2010 and 1282 of 2010 (O and M)

Aloka Chhabra	APPELLANT
Vs	
Mani Chhabra	RESPONDENT

Date of Decision: March 1, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Evidence Act, 1872 - Section 148, 151, 152, 24
- Penal Code, 1860 (IPC) - Section 302, 306

Citation: (2013) 170 PLR 243

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Munisha Gandhi in CR No. 1249 of 2010 and Mr. Karambir Singh Nalwa in CR No. 1282 of 2012, for the Appellant; Munisha Gandhi in CR No. 1282 of 2012 and Mr. Karambir Singh Nalwa in CR No. 1249 of 2010, for the Respondent

Final Decision: Dismissed

Judgement

K. Kannan, J.

Both the civil revisions are connected. Civil Revision No. 1282 of 2012 is by the husband for matrimonial proceedings challenging the order passed staying matrimonial proceedings till the final conclusion of a criminal case. Civil Revision No. 1249 of 2010 is by the wife against the dismissal of her claim for interim maintenance. The order granting stay was passed at a time when the husband"s evidence was concluded and it was posted for the respondent-wife"s evidence. The petition for divorce had been sought on the ground of cruelty which sets out several instances, among which a ground urged was that his wife was herself responsible for the death of his mother. It appears a charge u/s 306 IPC has been laid against the wife for abetment to suicide and the wife therefore moved an application contending that her defence, which is yet to come in the criminal case, cannot be forced to be disclosed in the civil case. Both the counsel relied on

substantially a large volume of case law, but it all boils down to a formula that there cannot be a hard and fast rule of whether the pendency of a criminal case will dictate the progress of a civil case or not. The issue is not one of admissibility of judgment of civil court judgment in another criminal court case or vice-versa. Since the petition has been filed for stay of trial of criminal proceeding, the issue is whether an earlier conduct of matrimonial proceeding will cause embarrassment at the trial or would force self incriminating statements on the accused in the criminal case. There shall be no reason for the wife to suspect that the pendency of the criminal case is likely to put her to any difficulty. In the first place, the petition for divorce is founded on ground of cruelty and there are definite instances of cruelty set out in the petition which have no bearing to the criminal case. To illustrate, the following are some of the episodes narrated in the petition:-

a) The house was owned by the mother of the respondent. Soon after the marriage, Aloka started misbehaving and insisted on having a separate residence. Aloka and her father B.R. Syal used to harass and threaten the respondent and his mother that they will have to face dire consequences if they did not accede to the demand of Aloka.

b) Within 4-1/2 months of marriage, mental harassment inflicted by rude and humiliating conduct of Aloka and her father B.R. Syal became unbearable and the respondent was forced to lodge two separate complaints at DLF Police Station on 24.6.04 and 1.8.04. Subsequently Aloka went to her parental house and stayed there for 7 1/4 months and returned to the house of respondent on 7.2.2005.

c) When Atoka returned, a memo of understanding dated 7.2.2005 was signed between the family of petitioner and respondent wherein Atoka apologized for the misdemeanors and threats extended by her and her father. Even after return, Aloka continued to misbehave and harass the respondent and his mother.

d) It was further submitted that the petitioner made a false complaint to National Commission for Women around 26.10.05 alleging that she was being harassed by the respondent and his family members for dowry and that it was the respondent and his brother, who had murdered Manmohan Kaur. Upon getting the notice of National Commission for Women, Gurgaon Police filed a reply that the complaint filed by Aloka was false. Subsequently, the complaint of accused Aloka before National Commission for Women was rejected.

2. Further a right against self-incrimination is a constitutional guarantee and the wife shall be at perfect liberty to choose not to answer any question which is in any way connected to the incident of death of the husband''s mother. There are statutory protections to even maintaining silence, without being visited with consequence of adverse inference. It will be wrong to assume that the fundamental right against self-incrimination extends immunity against being examined as a witness in a civil, proceeding and for being cross examined. This has been explained by the Supreme Court in the judgment in Capt.

Dushyant Somal Vs. Smt. Sushma Somal and Another, . The Supreme Court was considering the relative scope of a criminal proceeding complaining of abduction of a child in a writ proceeding relating to the production of a child by habeas corpus. The Supreme Court has observed as follows:-

..... There was no question at all of compelling the appellant-petitioner to be a witness against himself. He was free to examine himself as a witness or not. If he examined himself he could still refuse to answer questions, answers to which might incriminate him in pending prosecutions. He was also free to examine or not other witnesses on his behalf and to cross examine or not, witnesses examined by the opposite party.

"Protection against testimonial compulsion" did not convert the position of a person accused of an offence into a position of privilege, with, immunity from any other action contemplated by law. A criminal prosecution was not a fortress against all other actions in law.

3. If the respondent could be examined in matrimonial Court, the extent of protection the wife will enjoy could be discerned by reference to Sections 148, 151 and 152 of the Evidence Act. u/s 148, the Court has a power to warn the witness not to answer any question, except in so far as it affects the credit of the witness. Section 151 and 152 bar asking any scandalous or insulting question and describes instances, when even if a witness answers questions, how contradiction can not be elicited on answers relating to questions asked to shake the credit or character of witness. All this is only to drive home the point that the wife is not likely to be prejudiced if the matrimonial case is proceeded with.

4. The application itself is not bona fide in resorting to a prayer for stay of the criminal case after the husband''s side was closed for evidence and it was posted for the evidence of the wife. The wife has been supported through appropriate legal assistance at all times and she cannot allow the commencement of the trial and seek for stalling the same when it is her turn to give evidence. The trial Court ought not to have fettered its own jurisdiction and allowed for the stay of the civil case till the conclusion of the criminal court proceedings. Indeed I find it even not feasible or exigent since the trial of the criminal case itself has been stayed in proceedings before this Court u/s 482 Cr.P.C. It is submitted by both the counsel that the husband has sought this Court''s intervention for modification of the charge and for further investigation in proceedings against the wife for prosecuting the wife u/s 302 IPC. With such uncertainties for earlier conclusion of criminal trial itself looming large, the stay of the matrimonial proceedings which has commenced where one side has concluded his evidence would be grossly unjust and inappropriate. The order passed by the matrimonial Court is, therefore, erroneous and it is set aside. The civil revision filed by the husband in Civil Revision No. 1282 of 2012 is allowed.

5. As regards the claim for maintenance, the trial Court rejected the wife''s claim on the ground that she had been guilty of suppression of facts of not informing the Court of her

own employment status. The counsel for the husband states that her earlier petition for maintenance before the Magistrate under the provisions of the Protection of Women from Domestic Violence Act was dismissed and when the revision was pending before this Court, the wife did not even apprise the Court about the fact that her own petition filed u/s 24 was also dismissed. The counsel for the wife argues that although she was employed earlier upto the period 14.05.2008, on the date of her application, namely, on 21.07.2008, she was not employed. I would not have taken the issue of nondisclosure as relevant, if she was not employed at the time of filing of the petition and she had no means to support herself. Even that contention does not appear to be true, for, parties are not prepared to make a full disclosure of their respective employment status. The husband states that even during the pendency of the proceedings before this Court, she obtained employment and produces before me a certificate issued by a private company to say that she was employed with them. The husband states that he himself has not been working anywhere and defies the wife to show that he was employed at any place. The husband is, however, prepared to state that he has recently taken some consultancy work that assures him of a monthly salary of Rs. 15,000/-. It is a case where both parties are educated and well qualified and both parties had been in employment. I find there is an utter lack of bona fides of the wife not disclosing her own means and her recurrent acts of resignation and securing fresh employment, but at the same time, not giving the details of such employment. I do not feel therefore inclined to make any intervention on behalf of the wife in this revision petition for grant of interim maintenance. The civil revision filed by the wife against the dismissal of the petition for interim maintenance in Civil Revision No. 1249 of 2010 is consequently dismissed.