

(2012) 01 P&H CK 0213

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 68462 of 2005

Davinder Singh and Others

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision: Jan. 16, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Dowry Prohibition Act, 1961 - Section 3, 4
- Hindu Marriage Act, 1955 - Section 13
- Penal Code, 1860 (IPC) - Section 323, 325, 34, 406, 498A

Citation: (2012) 1 DMC 621

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Advocate: B.R. Mahajan, for the Appellant; Palwinder Singh, Senior DAG, Punjab, For the Respondent No. 1 and Mr. Sarabjit Singh for Mr. Ashok Saini, Advocates, For the Respondent No. 2, for the Respondent

Final Decision: Allowed

Judgement

Mehinder Singh Sullar, J.

The contour of the facts, culminating in the commencement, relevant for the limited purpose of deciding the core controversy, involved in the instant petition and emanating from the record, is that the marriage of Davinder Singh (petitioner No. 1) son of Avtar Singh (petitioner No. 2) was solemnized with complainant (respondent No. 2) Paramjit Kaur daughter of Jagjit Singh on 23.9.1996, according to Sikh rites and ceremonies at Amritsar. After the solemnization of the marriage, they resided together, cohabited as husband and wife and a female child was born out of their wedlock on 27.3.1998. According to the petitioners that immediately after one month of the marriage, the complainant started putting undue pressure on petitioner No. 1, either to have a separate residence from his parents or to live as a

Ghar Jawai in her parental house. Petitioner No. 1 (husband) showed his inability to live separately from his parents on the ground that neither he was having any his own business nor a separate house to live. The husband and wife resided together till 1999. Ultimately, some dispute between the parties erupted and they parted their ways.

2. Thereafter, the petitioner-husband filed a divorce petition against the complainant-wife on 23.9.1999 for dissolution of their marriage u/s 13 of the Hindu Marriage Act (hereinafter to be referred as "the Act") on the ground of cruelty. It was claimed that as a counter-blast to the divorce petition, the complainant-respondent No. 2 lodged the present FIR, bearing No. 45 dated 22.2.2000 (Annexure P1) against Davinder Singh petitioner No. 1 (husband), Avtar Singh and Upkar Kaur-petitioner Nos. 2 and 3 (parents-in-law), Harpreet Singh petitioner No. 4 (brother-in-law) and Harpreet Kaur (since discharged) wife of Harpreet Singh (petitioner No. 4), on accusation of having committed the offences punishable under Sections 498A, 406, IPC and Sections 3 and 4 of the Dowry Prohibition Act in the Police Station Sadar, Amritsar, in which, they were accordingly charge-sheeted, by way of order dated 18.1.2001 (Annexure P2).

3. Aggrieved by the registration of a criminal case, the petitioners preferred the present petition, challenging the impugned FIR (Annexure P1), the order (Annexure P2) framing charges against them and all other subsequent proceedings arising therefrom, invoking the provisions of Section 482, Cr.P.C., inter alia on the ground that the lodging of FIR by the complainant is a counterblast to the divorce petition filed by petitioner No. 1, they have been falsely implicated. In fact, the complainant-wife has treated them with cruelty and decree of divorce was passed in his (husband) favour, through the medium of judgment dated 28.1.2005 (Annexure P4). On the basis of aforesaid allegations, the petitioners sought to quash the impugned FIR (Annexure P1), order (Annexure P2) framing the charges against them and all other subsequent proceedings arising therefrom, in the manner indicated hereinbefore.

4. The respondent-State refuted the prayer of the petitioners and filed the reply, taking certain preliminary objections of maintainability of the petition, cause of action and locus standi of the petitioners. The prosecution claimed that after the completion of the investigation, the final police report/challan has already been submitted against the petitioners. Instead of reproducing the entire contents of the reply and in order to avoid the repetition, suffice it to say that the State of Punjab has reiterated the allegations contained in the impugned FIR (Annexure P1). However, it will not be out of place to mention here that the State has stoutly denied all other allegations contained in the petition and prayed for its dismissal. It may be added here that the complainant-respondent No. 2 did not file any reply to rebut the allegations as depicted in the petition.

5. After hearing the learned Counsel for the parties, going through the record with their valuable help and after considering the entire matter deeply, to my mind, the instant petition deserves to be accepted in this context.
6. As is evident from the record, that the marriage of Davinder Singh (petitioner No. 1) was solemnized with complainant Paramjit Kaur (respondent No. 2) on 23.9.1996, according to Sikh rites and ceremonies at Amritsar. After the solemnization of marriage, they resided together, cohabited as husband and wife and a female child was born out of their wedlock on 27.3.1998. The petitioners alleged that immediately after one month of the marriage, the complainant started putting undue pressure on petitioner No. 1, either to have a separate residence from his parents or to live as a Ghar Jawai in her parental house. Petitioner No. 1 projected his inability to live separately from his parents, because neither he was having any his own business nor a separate house to live. Some dispute between the parties erupted. Ultimately, the husband and wife resided together till 1999 and thereafter the separation ensued.
7. Sequel, the petitioner-husband filed a divorce petition against the complainant-wife on 23.9.1999 for dissolution of their marriage u/s 13 of the Act on the ground of cruelty. On 14.2.1999, the parents of the complainant along with other relations visited her matrimonial home and were stated to have given beatings to the petitioners and also a false case was got registered against them (petitioners) at the instance and under the pressure of Surinder Singh HC, co-brother of Joginder Singh, maternal uncle of complainant, vide FIR, bearing No. 38 dated 15.2.1999 under Sections 323 and 325 read with Section 34, IPC.
8. What cannot possibly be disputed here is that after a prolonged agony of trial, the petitioners were ultimately acquitted in the earlier criminal case registered against them by the Additional Sessions Judge, Amritsar, by way of judgment dated 5.8.2005 (Annexure P5), which has already attained the finality. Admittedly, the petitioner-husband filed a divorce petition against the complainant-wife on 23.9.1999 and the present 2nd case was registered against the petitioners on 22.2.2000, by virtue of FIR (Annexure P1). This fact prima facie proves that the complainant has lodged the instant FIR as a counter blast to the divorce petition and to wreak vengeance of earlier acquittal of the petitioners.
9. Not only that, the petitioner-husband filed a divorce petition against the complainant-wife on 23.9.1999, inter alia on the ground that she has treated him with cruelty. On the contrary, the complainant has lodged a criminal case on 22.2.2000 and has alleged in the FIR (Annexure P1) that she was treated with cruelty by the petitioners and their other co-accused Harpreet Kaur, in connection with and on account of demand of dowry. It is not a matter of dispute that disbelieving the allegations, the order framing the charges against Harpreet Kaur wife of Harpreet Singh (petitioner No. 4), co-accused of the petitioners was quashed by a Coordinate Bench of this Court (M.M. Aggarwal, J.), by way of order dated 4.10.2005 (Annexure

P3).

10. Likewise, after taking into consideration the respective evidence of the parties, the matrimonial Court has recorded a finding of fact that the cause of estrangement between the parties was that the wife had been forcing the husband to live separately from his family members. She used to withdraw from his society because he did not agree to live separately from his family members as desired by her. The cause of dispute between the parties was not demand of dowry. It was also held that it was the wife, who used to torture the husband and compel him to reside separately and this conduct and behaviour of the wife amount to cruelty towards the husband on her part. She used to misbehave with her husband and had no regard for his parents and other family members as well. She was very head strong. It has been specifically concluded by the Matrimonial Court that "it is proved by very cogent and strong evidence that the respondent had been dealing with the petitioner and his parents with cruelty and she often used to leave her matrimonial home and despite efforts made by the petitioner, she failed to settle down in the family life. It is also proved that not only the respondent but also her parents had been using invectives of their choices to the petitioner and his parents and false complaints were made by them to the police and they were got harassed. As such, it is proved that the respondent treated the petitioner with cruelty and accordingly issue is decided in his favour."

11. Consequently, the Matrimonial Court accepted the version of the husband, negated the story set up by the wife, accepted the divorce petition filed by the husband and dissolved their marriage, by means of judgment and decree dated 28.1.2005 (Annexure P4).

12. The FAO, bearing No. 114-M of 2005 filed by the complainant-wife has also been dismissed by this Court, through the medium of order dated 21.7.2006 (Annexure P6), which, in substance, is as under:

The appellant-wife had filed the present appeal against the divorce decree passed in favour of the respondent-husband by the learned Trial Court vide judgment and decree dated 28.1.2005. The respondent filed this application alleging that after passing of the divorce decree and before the filing of the appeal, the respondent had re-married with Gurpreet Kaur. Similarly, the appellant has also re-married with one Shabeg Singh on 21.1.2006. These facts have been admitted in the affidavit filed by the appellant that she has also re-married and the respondent has also re-married.

In view of the fact that the appellant has re-married with another person and respondent has also re-married with another girl, this application is accepted.

In these circumstances, the appeal is dismissed on merits and the divorce decree dated 28.1.2005 is upheld.

13. As strange as it may appear but strictly speaking, the tendency and frequency of the wives of involving and roping in all the relations of her in-laws in the matter of demand of dowry have been tremendously increasing day-by-day, which is adversely affecting social fabric of the society and leaving the Courts in lurch to decide such criminal prosecution. This tendency needs to be curbed and if not discouraged, it is likely to affect and weaken the case of the prosecution even against the real culprits in future in this relevant direction.

14. An identical question came to be decided by this Court in Harjinder Kaur and Others v. State of Punjab, 2004 (4) RCR (Criminal) 332; Labh Singh and Others v. State of Haryana, 2006 (2) RCR (Criminal) 296; Mohinder Kaur & Others v. State of Punjab & Another, III (2008) SLT 361=I (2008) DMC 489 (SC)=II (2008) CCR 122 (SC)=2010 (2) RCR (Criminal) 597; wherein it was ruled that "the allegations against the relatives of the husband were vague and there is growing tendency to come out with inflated and exaggerated allegations roping in each and every relation of the husband, things have now taken a reverse trend and the women are abusing beneficial provisions of Section 498A, IPC". The law laid down in the aforesaid judgments "mutatis mutandis" is applicable to the facts of this case and is the complete answer to the problem in hand. Therefore, to me, this petition deserves to be accepted, under the present set of circumstances.

15. Meaning thereby, if the crux of the material on record is clubbed together and is perused, then, the conclusion is inescapable that the allegations and the story set up by the complainant-wife in the FIR that the petitioners had treated her with cruelty in connection with and on account of demand of dowry, have already been disbelieved by the civil Court, by virtue of divorce decree (Annexure P4). The petitioners involved in another false criminal case by the relatives of the wife, were already acquitted by the Additional Sessions Judge, vide judgment (Annexure P5). Therefore, the argument of learned Counsel for respondent-wife that the allegations contained in the FIR constitute an offence against the petitioners, pales into insignificance. On the contrary, there is a cogent material on record that the instant criminal case was registered against the petitioners maliciously or vexatiously in order to wreak vengeance. The marriage between the husband and wife stood dissolved, they have remarried and are now residing with their respective spouses. In that eventuality, to my mind, the continuation of criminal prosecution against the petitioners is nothing else, but sheer and deep misuse/abuse of process of criminal law in this relevant connection.

16. No other point, worth consideration, has either been urged or pressed by the Counsel for the parties. In the light of aforesaid reasons, the instant petition is accepted. Consequently, the impugned FIR (Annexure P1), order (Annexure P2) framing the charges against the petitioners and all other subsequent proceedings arising therefrom are hereby quashed and the petitioners are discharged from the indicated criminal case registered against them.