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(2009) 11 P&H CK 0176

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M-21862 of 2009 (O and M)

Seema Rani APPELLANT

Vs

Gurpreet Kaur RESPONDENT

Date of Decision: Nov. 10, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 406, 498A

Citation: (2009) 32 CriminalCC 716 : (2010) 1 RCR(Criminal) 960

Hon'ble Judges: Augustine George Masih, J

Bench: Single Bench

Advocate: Rahul Rampal, for the Appellant; Sushil Gautam, for the Respondent

Final Decision: Allowed

Judgement

Augustine George Masih, J.

The present petition is for quashing of the complaint dated 18.3.2008 (Annexure P-1) and for quashing/setting aside the summoning order dated 26.9.2008 passed by the learned Sub-Divisional Judicial Magistrate, Dera Bassi (Annexure P-2) vide which the petitioner has been summoned to face trial under Sections 406, 498-A and 494 IPC and all consequential proceedings arising therefrom on the ground that the basic ingredients of the provisions for which the petitioner has been summoned to face trial by the trial Court, do not find mention in the complaint against her.

2. Counsel for the petitioner contends that there are no allegations against the petitioner in the complaint or in the statement made by the complainant before the trial Court which would constitute any of the offences under Sections 406 and 498-A IPC as everywhere it is mentioned that the said acts were committed by accused Nos. 1 to 3 in the complaint. The petitioner is accused No. 4 in the complaint. His further contention is that the allegation, if any, against the petitioner is that the petitioner and accused No. 1, namely, Gurpreet Singh, had contracted a second marriage and, therefore, the petitioner committed an offence of bigamy which

would be an offence u/s 494 IPC and, therefore, she should be summoned, tried and thereafter punished. The basic ingredients with regard to the second marriage having taken place between Gurpreet Singh-accused No. 1 and petitioner-accused No. 4 has neither been pleaded in the complaint nor in the statement made by the complainant before the trial Court. He contends that in the complaint, neither the date of the marriage, the manner nor the law under which it was performed, have been mentioned. It has even not been mentioned as to who were the persons present at the time of solemnization of such marriage. The ceremonies essential for a marriage to be in existence, have not been even referred to in the complaint or in the statement made by the complainant before the trial Court. He, therefore, on this basis, prays for quashing of the complaint dated 18.3.2008 (Annexure P-1) and summoning order dated 26.9.2008 (Annexure P-2).

3. Counsel for the respondent, on the other hand, submits that it has been specifically stated in para 10 of the complaint that the petitioner, who is accused No. 4, is working in the office of accused No. 1 Gurpreet Singh (husband of the complainant) and since they were having illicit relations, they secretly performed marriage with each other. Out of the loins of accused No. 1, the petitioner (accused No. 4) gave birth to a female child on 15.6.2006 and an entry in that regard had been made in the office of the Registrar, Births and Deaths, Ludhiana on 30.6.2006 at Sr.No. 1488. Copy of the birth certificate has also been attached with the complaint. His further contention is that CW-1 Arjan Singh, Health Worker, Municipal Council, Ludhiana, has proved the birth certificate of the female child as Exhibit C-1 in which, in the column of parents, names of accused No. 1- Gurpreet Singh and accused No. 4-Simranjit Kaur @ Seema find mention. His further contention is that CW-2 Head Constable-Naresh Kumar, had proved the copy of FIR No. 151, dated 7.12.2007, which was got registered by the complainant against the accused wherein allegations with regard to the performance of second marriage, have been levelled. He, on the basis of these submissions, submits that the complainant while appearing as CW- 3, has also reiterated the position as has been projected in the complaint before the trial Court. In her statement (Annexure P-3), he further refers to the statement and submits that the year of marriage i.e. 2005 has been mentioned in the complaint and on this basis, he submits that the offence against the accused-petitioner is clearly made out u/s 494 IPC. He relies upon a judgment of the Hon''ble Supreme Court in the case of Gopal Lal Vs. State of Rajasthan, , to contend that the requirement of the second marriage being a valid marriage, is not needed so as to constitute an offence u/s 494 IPC.

4. I have heard counsel for the parties and have gone through the records of the case. A perusal of the complaint Annexure P-1 as well as the statement of Gurpreet Kaur-complainant before the trial Court, which is attached as Annexure P-3, clearly shows that there is no allegation against the petitioner as regards offences under Sections 498-A and 406 IPC. Therefore, the summoning order under Sections 498-A and 406 IPC qua the petitioner is clearly not sustainable. As far as the commission of

offence u/s 494 IPC by the petitioner is concerned, a perusal of the complaint would show that except for the bald statement made in para 10 thereof that the marriage was secretly performed by accused No. 1 and petitioner-accused No. 4, there is no mention of the date of the marriage; as to who were the persons who attended the marriage; and when, where and by whom the ceremony of marriage was performed. The only improvement which has been made by the complainant in her statement before the trial Court is that she has mentioned the year of marriage as 2005. Bereft of the basic ingredients, which would prove the marriage, the offence u/s 494 IPC with regard to bigamy cannot be said to have been committed. The basic ingredients of bigamy to fall u/s 494

IPC are :-

(1) that the accused spouse must have contracted the first marriage,

(2) that while the first marriage was subsisting the spouse concerned must have contracted a second marriage, and

(3) that both the marriages must be valid in the sense that the necessary ceremonies required by the personal law governing the parties had been duly performed.

5. The first ingredient that Gurpreet Kaur-complainant is married to Gurpreet Singh accused No. 1, is not in dispute. As regards the other two ingredients, the same are not spelt out either from the complaint or from the statement of the complainant made before the trial Court. The judgment which has been relied upon by the counsel for the respondent goes against the complainant- respondent herself as the said judgment was based upon the question of a second marriage having been performed and that marriage not being a valid marriage. Here it has not been shown that the second marriage was indeed performed. That apart, merely because a certificate has been produced from the Municipal Council, showing accused No. 1 and petitioner- accused No. 4 as parents of a girl child, would not mean or prove that there was a second marriage between them.

6. Finding the basic ingredients missing with regard to the offences for which the complaint against the petitioner has been filed by the complainant and in the statement before the trial Court, the complaint dated 18.3.2008 preferred against the petitioner-Simranjit Kaur @ Seema Rani cannot be sustained and is hereby quashed. The summoning order dated 26.9.2008 passed by the learned Sub-Divisional Judicial Magistrate, Dera Bassi (Annexure P-2) also cannot sustain for the same reasons and is also hereby quashed.

7. The petition stands allowed in the above terms.