

(2009) 07 P&H CK 0264

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M-77844 of 2006

Shamsher Singh

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision: July 1, 2009

Acts Referred:

- Dowry Prohibition Act, 1961 - Section 4
- Penal Code, 1860 (IPC) - Section 498A

Citation: (2009) 32 CriminalCC 400 : (2010) 1 RCR(Criminal) 297

Hon'ble Judges: M.M.S. Bedi, J

Bench: Single Bench

Advocate: In person, for the Appellant; P.S. Sidhu, AAG, Punjab and Mr. A.K. Walia, for the Complainant, for the Respondent

Final Decision: Dismissed

Judgement

M.M.S. Bedi, J.

Petitioner seeks quashing of FIR No.369 dated July 1, 2005 u/s 498-A IPC read with Section 4 of the Dowry Act, Police Station Sadar Patiala, registered at the instance of Ruldu Singh, alleging that his daughter Raj Kaur was married about 8 years prior to the lodging of the FIR to the petitioner. There is a son aged 7 years born out of the wedlock. The petitioner is employed in a factory at Bahadurgarh. He is married twice. His first wife has obtained divorce from him and she has got a daughter who is being paid maintenance through Court. After two years of his marriage, the petitioner started harassing his wife for having brought insufficient dowry. Sometimes he used to turn her out of the house but complainant being a poor man again used to leave his daughter in the house of the petitioner with the intervention of the Panchayat. The petitioner had three plots one of the plots is 213 yards usable for shops. As the first wife wanted to get her share in the said property, therefore, the petitioner had transferred his property in the name of daughter of the complainant. The petitioner had started living with a girl of Village Alipur. He gave

beatings to the daughter of the complainant. In the month of July 2004, he gave severe beatings to his daughter and forcibly made her to consume acid. He had threatened to leave his wife and forcibly take away the son. His daughter had been maltreated by the mother of the petitioner as well as other family members.

2. This petition was ordered to be heard alongwith Crl.Misc.No.M-39016 of 2006 vide order dated February 12, 2007, by a Coordinate Bench of this Court. It is pertinent to observe that the said petition is a petition u/s 482 Cr.P.C. challenging the order of maintenance u/s 125 Cr.P.C. passed in favour of the wife and son of the petitioner. The said petition has been dismissed vide a separate order.

3. Contention of the petitioner in the present case is the same as in Crl.Misc.No.M-39016 of 2006. Petitioner claims that the complainant's daughter Raj Kaur was also married to Gajjan Singh but the daughter of the complainant had concealed the said fact from the petitioner. In view of her earlier marriage subsisting at the time of her marriage to petitioner, his marriage to Raj Kaur was void. Copy of the petition filed by Gajjan Singh u/s 9 of the Hindu Marriage Act dated June 1, 2006 has been placed on record. It is averred in the petition that the matter was compromised between Gajjan Singh and Raj Kaur and said petition was dismissed as withdrawn vide order annexure P2 dated July 19, 1997. The petitioner had caught his wife in compromising position with her brother-in-law on May 29, 2004 and narrated the said incident to her parents who scolded her and due to shame she tried to consume toilet acid. Later on, a compromise was arrived at between the petitioner and respondent No.2 and in pursuance thereto, petitioner paid a sum of Rs.6 lacs to respondent No.2 as permanent alimony on August 19, 2004. After taken Rs.6 lacs which was paid as permanent alimony, the present FIR was lodged on July 1, 2005 u/s 498 A IPC and Section 4 of the Dowry Act. The petitioner has filed petition u/s 11 of the Hindu Marriage Act for declaring the marriage as nullity. Copy of the petition is placed on record as annexure P4. Reply of Raj Kaur- respondent No.2 has been placed on record in proceedings u/s 11 of the Hindu Marriage Act to show that she has admitted that she was married to the petitioner on September 30, 1998 whereas she had given birth to the child on June 7, 1998.

4. A perusal of annexure P5 indicates that the petitioner had given date of marriage as September 30, 1996 in his petition u/s 11 of the Hindu Marriage Act but respondent No.2 has clarified that marriage had taken place on September 30, 1998 and not on September 30, 1996. Date of birth of the child is neither mentioned by the petitioner in the petition u/s 11 of the Act nor in the reply.

5. I have heard the petitioner and considered all his contentions raised by him for seeking quashing of the FIR. For quashing of the FIR, parameters have been laid down by Hon'ble Supreme Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, which are as follows:-

- 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.
- 2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under S. 156 (1) of the Code except under an order of a Magistrate within the purview of S. 155(2) of the Code.
- 3) Where the uncontested 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.
- 4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S. 155(2) of the Code.
- 5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- 6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- 7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

6. The petitioner has raised a number of disputed question of facts before this Court which cannot be adjudicated while exercising inherent jurisdiction. All the pleas taken by the petitioner before this Court have already been raised by the petitioner in petition u/s 11 of the Act. It is yet to be determined by a civil Court whether marriage of the petitioner to respondent No.2 is a nullity or not. If the marriage is a nullity, the status of child born out of the wedlock of the petitioner and his wife has also to be determined. When all the pleas raised by the petitioner are sub-judice before the trial Court and the petitioner has not been able to satisfy this Court that the present case falls within the ambit of parameters laid down in Bhajan Lal's case (supra), it will not be appropriate to exercise inherent jurisdiction to quash the FIR.

Dismissed in limine.

7. Dismissal of this petition will not affect the rights of the petitioner. It will be open to the petitioner to take up all the pleas taken up in this petition while raising defence before the trial Court at an opportune time.