IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.13517 of 2018
Date of Decision:15.05.2020

Amarjit Kaur and others ….Petitioners

versus

Jaswinder Kaur and another ….Respondents

CORAM: HON'BLE MR. JUSTICE JAISHREE THAKUR

Present: Mr. Bhrigu Dutt Sharma, Advocate
for the petitioner.

Mr. Ish Puneet Singh, Advocate
for respondent No.1.

Mr. Davinder Bir Singh, DAG, Punjab.
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JAISHREE THAKUR. J

1. This is a petition that has been filed under Section 482 Cr.P.C. seeking to quash Criminal Complaint No.31861/13 dated 06.09.2012 and the summoning order dated 06.12.2016 whereby petitioners herein have been summoned to face trial under Sections 498-A, 506, 120-B IPC and order dated 04.08.2017 declaring the petitioners as proclaimed offenders. Petitioners herein are the father-in-law, brother-in-law and sister-in-law of the respondent No.1 Jaswinder Kaur (hereinafter referred to as the complainant).

2. In brief, the facts are that the abovesaid criminal complaint had been made by the complainant, who got married with Jaswant Singh on 05.08.1989. Jaswant Singh is none other than the real brother of petitioners No.1 and 2 and son of petitioner No.3. In the complaint it was averred that marriage was solemnized lavishly and a sum of ₹4 lakhs was spent thereon, apart from giving dowry articles, gold ornaments and other luxurious items.

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The complaint was made against the husband Jaswant Singh, Amarjit Kaur alleged to be second wife of Jaswant Singh, father-in-law Dilbagh Singh, mother-in-law Charan Kaur, brother-in-law Ranjit Singh and the sister-in-law Amarjit Kaur.

3. It was further alleged that soon after the marriage, the accused persons named in the complaint started harassing the complainant on account of not bringing enough dowry and they raised a demand of Maruti 800 car along with an amount of ₹50,000/-. Though the complainant persuaded the accused persons with regard to inability of her parents to fulfill their demands, in the month of March, 1990, husband of the complainant at the instance of other accused gave her beatings and stated that she would have no place in the house if the demands are not fulfilled. Accused No.4 in the complaint i.e. mother-in-law of the complainant also raised a demand of gold ornament.

4. On 24.07.1993, the complainant gave birth to a girl child namely Manjinder Kaur at Nawanshahar and entire expenses of the delivery were borne by parents of the complainant. It was alleged that after the birth of girl child, the mother-in-law raised a demand of ₹5 lakhs. The husband and petitioners herein along with mother-in-law taunted the complainant for not giving birth to a male child. In the year 2002, the complainant was turned out of the matrimonial home and at that point of time, her mother-in-law took all gold ornaments and other articles belonged to the complainant. It was further alleged that on 24.01.2008, husband of the complainant at the instance of his family members turned her out of matrimonial home and on 23.02.2008 also left the daughter with the complainant at Jalandhar and threatened her of dire consequences if she made a complaint against him. In this regard, the complainant made a complaint to SSP, Nawanshahr on 15.04.2008 but no

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action had been taken. In the month of September, 2009, severe blows were given in her stomach by accused No.1 i.e. the husband. She came to know that her husband solemnized a second marriage with one Amarjit Kaur (who was made accused No.2 in the complaint) without taking any divorce from her. She filed a petition under Section 125 Cr.P.C. and also an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005. A complaint was also made by her to the Commissioner of Police on 5.76.2012 but no action had been taken.

5. In support of her complaint, complainant stepped into witness box as CW1 and examined one Balkiat Singh as CW-2 and Piar Kaur as CW3, who reiterated the version of the complaint. She placed on record photographs of her husband with second wife as Ex.C3 to C5 and copies of petition filed under Section 9 of the Hindu Marriage Act against her and against his second wife as Ex.C6 and C7 respectively. The Judicial Magistrate 1st Class, Jalandhar on appreciation of material placed before it, vide order dated 25.03.2013 summoned the husband to face trial under Sections 406, 498-A, 506 and 494 IPC and the mother-in-law under Sections 406, 498-A and 506 IPC whereas the other accused persons were discharged including the petitioners herein.

6. The aforementioned order was challenged by the complainant in revision before the Additional Sessions Judge, Jalandhar who vide order dated 02.02.2015 while noting the fact that there are specific allegations against accused No.3, 5 and 6 i.e. petitioners herein set aside the order passed by the Judicial Magistrate 1st Class, Jalandhar and directed to pass appropriate summoning order after re-considering the evidence placed before him.

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7. Since the revisional court set aside the order passed by the Judicial Magistrate, the complainant filed a petition before this Court to the extent that since the husband and mother-in-law did not challenge their summoning order, the revisional court gravely erred in setting aside the order in toto. This Court vide order dated 21.08.2015 clarified that the summoning order passed by the trial Court against husband Jaswant Singh and mother-in-law Charan Kaur will not be deemed to have been set aside.

8. The trial Court on reconsideration of the evidence before it passed order dated 06.12.2016 whereby accused Nos.3, 5 and 6 i.e. petitioners herein have also been ordered to be summoned to face trial under Sections 498-A, 506 and 120-B IPC.

9. Pursuant to the summoning order, notice were issued to the petitioners and since they did not put in appearance despite publication, they were declared as proclaimed offenders vide order dated 04.08.2017.

10. Mr. Bhrigu Dutt Sharma, learned counsel appearing on behalf of the petitioners would submit that there is no specific allegation levelled against the petitioners in the complaint and therefore, the Judicial Magistrate vide order dated 25.03.2013 after appreciating the material placed before it gave a finding that no offence is made out against the petitioners herein and only summoned the husband and mother-in-law of the complainant to face trial under Sections 406, 498-A, 506 IPC. Even in the revision petition filed by the complainant against the aforementioned order, the revisional court failed to consider the fact that a right had been accrued in favour of the petitioner vide order dated 25.03.2013 passed by the Judicial Magistrate and therefore, an opportunity of hearing ought to have been given to the petitioners before setting aside the said order and gravely erred in remanding the matter back to

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the trial Court for reconsideration of the evidence. On remand, the trial Court failed to take into consideration that there is no specific allegation levelled against the petitioners in the complaint and in the absence of any specific allegation, a complaint is liable to be dismissed.

11. He further contended that in pursuance to the summoning order dated 06.12.2016, summons issued to the petitioners were never served as the address of the petitioners given in the complaint by the complainant was incorrect as they were not residing at the said address at the relevant point of time. In support of his contention, he relied upon zimni orders dated 22.12.2016, 03.01.2017, 20.01.2017, 08.02.2017, 28.02.2017, 09.03.2017, 01.04.2017 and 24.04.2017 annexed with the petition as Annexure P-7 (colly). On the application moved by the complainant for effecting service upon the petitioners by way of substituted service, the trial Court vide order dated 24.04.2017 ordered the petitioners to be summoned by way publication. The proclamation published in the newspaper would show that petitioners No.2 and 3 were shown to be residents of Shaheed Bhagat Singh Nagar whereas they were actually residing in Canada since 1996 and the said fact was very well in the knowledge of the complainant. Moreover, petitioner No.1 was residing in her matrimonial home at Roper and therefore, was not aware of the pendency of the proceedings. The proclamation was published on 16.07.2017 and petitioners were required to be appeared before the trial Court on 17.07.2017 i.e. the very next day after the publication made in the newspaper. Even order dated 04.08.2017 declaring the petitioners as proclaimed persons has been passed before the expiry of 30 days of the publication of proclamation on 16.07.2017, which is in violation of the

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provisions of Section 82 (1) and 82 (4) of the Code of Criminal Procedure and therefore, is not sustainable in the eyes of law.

12. Per contra, Mr. Ish Puneet Singh, learned counsel appearing on behalf of complainant-respondent No.1 supported the orders under challenge whereby petitioners have been ordered to be summoned to face trial and declared as proclaimed persons, while contending that the same have been passed on appreciation of material placed before the trial Court. The husband and the mother-in-law did not challenge the order whereby the husband had been ordered to face trial under Sections 406, 498-A, 506, 494 IPC and the mother-in-law under Sections 406, 498-A and 506 IPC. There are specific allegations levelled against the petitioners in para Nos.3, 5 and 6 of the complainant and therefore, they have rightly been summoned to face trial on the appreciation of evidence by the trial Court.

13. I have heard learned counsel for the parties and have perused the paper book.

14. It is the conceded position on record that in the first round of appreciation of evidence, the trial Court vide order dated 25.03.2013 gave a finding that no offence as levelled in the complaint is made out against the petitioners herein and summoned only husband and the mother-in-law to face trial. The complainant challenged the said order in revision petition and the revisional court remanded the matter to the trial court to pass a fresh order qua petitioners after re-appreciation of evidence. On re-appreciation of evidence, the trial court vide order dated 06.12.2016 summoned the petitioners to face trial under Sections 498-A, 506 and 120-B IPC and in pursuance to summoning order when the petitioners had failed to appear

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before it, the trial Court vide order dated 04.08.2017 declared them as proclaimed persons.

15. It would be in the interest of justice to see at the first instance whether any offence is made out against the petitioners as per allegations levelled against them in the complaint or not? Because if the complaint fails, as a necessary corollary, all subsequent proceedings arising therefrom would automatically go. The allegations levelled against the petitioners in paras No.3, 5 and 6 of the complaint are reproduced as under:-

> "*3.That on showing the incapability to arrange for Maruti 800 car and more dowry articles, in the month of March 1990, the accused No.1 at the instance of respondents No.3 to 6 started giving merciless beatings to the complainant.……*
>
> *5. That it is also not out of place to mention here that the accused No.1, 3 to 6 used to taunt the complainant for not giving birth to a male child……..*
>
> *6. That on 24.1.2008 the accused No.1 at the instance of accused No.3 to 6 started beating the complainant and further turned out the complainant from her matrimonial house in bare three clothes……All the dowry articles and shtridhan belonging to the complainant is in custody of accused No.1, 3 to 6 and are using the same for their personal gain since then the complainant is living at the mercy of her brothers and widow mother."*

16. A perusal of the aforementioned would reveal that there are no direct and specific allegations against the petitioners that they had given beatings to the complainant or demanded any dowry article or misappropriated the *shrtidhan.* The expression used is 'at the instance of accused No.1'. The

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complainant has failed to bring on record any evidence to show that she had been physically abused by the petitioners or entrustment of any dowry article.

17. Petitioner No.1 is the sister-in-law of the complainant, who got married on 04.02.1989 and has been residing in her matrimonial home since then and therefore, there is not even a remotest possibility that husband of the complainant was used to give beatings to her at the instance of petitioner No.1. Petitioner No.2 was born on 12.07.1979 and was 11 years of age in March, 1990 when the complainant alleged that she was given beatings by her husband at the instance of petitioner No.2. Moreover, he had left for Canada in March, 1996 and is residing there since then. Similarly, petitioner No.3 aged 74 years had left for Canada in 1996 and is residing there since then with petitioner No.2. In such an eventuality, it is hard to believe that petitioners had harassed the complainant as alleged in the complaint.

18. It has become a common practice to use the provisions of Section 498-A IPC as a weapon rather than shield by disgruntled wives. The simplest way to harass is to get the relatives of the husband roped in under this provision, no matter they are bed ridden grand parents of the husband or the relatives living abroad for decades. The case in hand is also of similar nature. The complainant has failed to make out a prima facie case against the petitioners regarding allegation of inflicting physical and mental torture to the complainant or demanding dowry from her. The complaint does not disclose specific allegation against the petitioners except casual reference of their names that husband of the complainant gave her beatings at the instance of petitioners. The Hon'ble Supreme Court in ***Geeta Mehrotra Vs. State of U.P. (2012) 10 SCC 741*** quashed the FIR registered against the unmarried sister of

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the husband on the ground that prima facie case was not attracted against her in the absence of specific allegations.

19. In view of the aforementioned facts and circumstances, this court is of the opinion that the case in hand is a sheer abuse of process of law and therefore, is a fit case to exercise the jurisdiction of this Court under Section 482 Cr.P.C. Consequently, the complaint No.31861/13 dated 06.12.2016 and all subsequent proceedings arising therefrom including the orders dated 06.12.2016 and 04.08.2017 qua petitioners are quashed.

20. The petition is allowed accordingly.

(JAISHREE THAKUR)
JUDGE

May 15, 2020
Pankaj*

Whether reasoned/speaking Yes/No

Whether reportable Yes/No

HIGH COURT OF PUNJAB AND HARYANA
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