
(2018) 07 P&H CK 0145

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 21700 Of 2015(O&M)

Ajay Kumar Gupta

APPELLANT

Vs

Virender Verma & Ors.

RESPONDENT

Date of Decision : 17-07-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 202, 340, 482
Indian Penal Code, 1860 — Section 419, 420, 465, 468, 469, 471
Hindu Marriage Act, 1955 — Section 9, 13

Citation : (2018) 07 P&H CK 0145

Hon'ble Judges : Ramendra Jain, J

Bench : Single Bench

Advocate : Vk Jindal, Akshay Jindal, Sk Aggarwal, P.S. Mattewal

Final Decision : Allowed

Judgement

Ramendra Jain, J

Through the instant petition under Section 482 Cr.P.C., prayer has been made for quashing complaint No.168-RBT dated 01.07.2011/ 14.05.2012 filed under Sections 419/420/465/468/469/471 IPC (Annexure P-1) pending before learned Judicial Magistrate, 1st Class, Hisar and order dated 15.06.2015 (Annexure P-2), whereby the petitioner has been summoned under Sections 419/420/465/468/469/471 IPC.

Put pithily, a petition under Section 9 of the Hindu Marriage Act, 1955 (for short 'the Act') for restitution of conjugal rights, alleged to be bogus, was filed on behalf of the complainant respondent No.1-husband Virender Verma, through respondent No.2 Santosh Kumar Chetal, Advocate, in the Court of Hisar. According to respondent No.1, on the basis of forged and fictitious service upon his wife namely Meena, the petitioner-Advocate practising at Bhiwani appeared on her behalf on 28.07.1998 and filed his Vakalatnama. Thereafter, the petitioner was replaced by Mr. Rajesh Kumar Garg, Advocate-respondent No.3. Finally the said petition was got dismissed as withdrawn on 21.12.1998.

Thereafter, application under Section 340 Cr.P.C filed jointly by respondent No.1 and his wife namely Meena Verma against the petitioner and respondents No.2 to 5 in the concerned Court at Hisar, was dismissed on merit by learned District Judge vide order dated 31.10.2008.(Annexure P-4).

Being aggrieved, respondent No.1 approached this Court by way of Criminal Appeal No.134-SB of 2009, titled 'Virender Verma & anr. Vs. Santosh Kumar Chetal & ors., which too was dismissed on merits vide order dated 25.05.2011, with liberty to respondents No.1 to file a complaint, if he so desires.

Consequently, respondent No.1 filed a complaint under Sections 419/420/465/468/469/471 Cr.P.C against the petitioner and respondents No.2 to 5 on the allegations that he or his wife never engaged the petitioner and respondents No.2 and 3 as their advocates. He never filed any petition under Section 9 of the Act against his wife for restitution of conjugal rights. In fact, respondent No.5, his real brother with the help of his friend respondent No.4-Om Parkash Saini filed a fictitious petition under Section 9 of the Act purported to be filed by respondent No.1 against his wife Smt. Meena through respondent No.2. After showing her presence through the petitioner Advocate by filing Vakalatnama, the petitioner was replaced by respondent No.3 Rajesh Garg, Advocate. Finally the said fictitious petition under Section 9 of the Act was got dismissed as withdrawn.

Learned Magistrate referred the complaint to the concerned police station under Section 202 Cr.PC for investigation, where Dolat Ram (Fuffa) of Smt. Meena, wife of respondent No.1 gave statement before the Investigating Officer that he had accompanied Smt. Meena and approached the petitioner, who was at that time practising at Bhiwani and handed over the original summons and copy of the petition to him along with his Vakalatnama duly signed by his niece Smt. Meena, with the instructions to the petitioner to appear as her Advocate in the case. His niece Smt. Meena had signed the Vakalatnama in his presence. Allegations levelled against the petitioner by respondent No.1 were absolutely false and baseless.

Investigating Officer, after inquiry, submitted a report dated 14.08.2014(Annexure P-8) to the Court exonerating the petitioner and respondent No.2 to 5. He specifically observed that no case was made out against the petitioner and respondents No.2 to 5.

However, the trial Court, on protest against the said report (Annexure P-8) from respondent No.1, chose to proceed further with the complaint. After recording preliminary evidence, petitioner and respondents No.2 to 5 were summoned vide order dated 15.06.2015.

Being aggrieved, the petitioner has approached this Court for quashing the complaint (Annexure P-1) of respondent No.1 and summoning order dated 15.06.2015 (Annexure P-2) along with the affidavit of Smt. Meena testifying therein that the petitioner had appeared on her behalf at the Courts of Hisar in a

petition under Section 9 of the Act on 28.07.1998. The said affidavit is reproduced as under:-

" I Meena daughter of Sh. Hetram am the resident of Dhani Suglaan, Hanumaan Gali, Bhiwani, Tehsil and District Bhiwani and do hereby declare solemnly as under:-

1. That I am permanent resident of the above mentioned address.
2. That my husband Virender had filed a case against me before the Court of Sh. R.S. Singhal, District Judge, Hisar, at that time.
3. That on 28.07.1998 I myself signed vakalatnama of Sh. Ajay Kumar Gupta Advocate and engaged & instructed him to appear in that case on my behalf.
4. That Sh. Ajay Kumar Gupta had appeared only on one date on my behalf and after that I had changed the counsel.
5. That from the very beginning Virender usually gave beatings to me and always filed false cases. Virender had threatened to kill me and in the present complaint got recorded my statement by putting pressure upon me. However, the actual fact is that I myself signed vakalatnama to engage Sh. Ajay Gupta Advocate to appear in that case only on one date on my behalf.
6. That the statement recorded in the complaint has been got recorded by putting pressure upon me under threat of Virender.
7. That neither I have any dispute with Ajay Gupta Advocate and nor I have any grievances against him."

Thereafter, the petitioner filed CRM-1707-2017 to place on record affidavit of the mother-in-law of respondent No.1 and mother of Smt.

Meena Verma wife of respondent No.1, namely Smt. Nirmala Verma, who had also testified in her affidavit about engagement of the petitioner by her

daughter Smt. Meena vide Annexure P-12 and signed Vakalatnama in favour of the petitioner.

To ascertain the genuineness of affidavits of Smt. Meena Verma and her mother Smt. Nirmala Verma in favour of the petitioner about his engagement by Smt. Meena Verma as her counsel, a Coordinate Bench of this Court vide order dated 29.03.2017 summoned both of the aforesaid persons for 25.04.2017.

Pursuant thereto, Smt. Meena Verma and Nirmala Verma appeared before this Court on 25.04.2017 duly identified by their counsel. They both testified about engagement of the petitioner as her counsel in the petition filed by respondent No.1 under Section 9 of the Act for restitution of conjugal rights. After recording their statements, their cross-examination was deferred on request of learned counsel for respondent No.1 namely Sh. P.S. Mattewal.

On 10.05.2017, the original record of this Court was sent to the concerned Magistrate at Bhiwani for cross-examination of Smt. Meena and her mother Nirmala Verma by counsel of respondent No.1 to a limited extent as to whether the affidavits in question were given by Meena Verma and her mother Nirmala Verma in favour of the petitioner with their free will and consent, without any pressure, directing the parties to appear before the District Judge on 29.05.2017 at District Bhiwani. Report from the District Judge Bhiwani was also called along with the cross-examination conducted by learned counsel for the respondents.

Pursuant thereto, Smt. Meena Verma and her mother Nirmala Verma, were cross examined at length on the point of their engaging the petitioner as their counsel in a petition under Section 9 of the Act for restitution of conjugal rights.

Despite their lengthy cross-examination, nothing fruitful to respondent No.1 could be brought out from their mouth.

Learned counsel for the petitioner placing reliance on Prabhu Chawla Vs. State of Rajasthan & anr., 2016(4) RCR (Criminal) 270, contends that in view of the affidavits of Smt. Meena and her mother, the complaint and summoning order impugned herein are liable to be quashed.

Contrary to it, learned counsel for respondent No.1 vehemently opposing the above submissions of learned counsel for the petitioner, placed reliance on Madhu Bala & ors. Vs. State of Haryana, 2015(3) RCR (Criminal) 881, to contend that instant petition under Section 482 Cr.P.C is not maintainable in view of availability of alternative remedy of revision to the petitioner. Respondents No.2 to 5 had also challenged impugned summoning order by way of revision before the First Revisional Court, who remitted the case back to the trial Court for passing a fresh order. The trial Court as on date has deferred the matter awaiting the decision of this Court in the instant petition. Further placing reliance on Manoj Kumar Sharma & ors. Vs. State of Chhattisgarh & anr., 2016(4) RCR (Criminal) 145, learned counsel for respondent No.1 contends that powers under Section 482 Cr.P.C for quashing criminal FIR should be used sparingly. The trial Court after perusing the statements of eight witnesses in the preliminary evidence examined by respondent No.1 coupled with the statement of handwriting and fingerprint expert, has rightly and legally passed the impugned order, summoning the petitioner. Therefore, impugned summoning order is not liable to be quashed. Smt. Meena, initially had admitted at preliminary stage in the complaint filed by respondent No.1 and has testified that she never engaged the petitioner as her counsel nor ever met him. Therefore, the veracity of the two statements of Smt. Meena can only be checked during trial. The subsequent statement of Smt. Meena in favour of the petitioner was given by her after five years during which period she obtained divorce from respondent No.1 and residing separately. For that reason, she now has come to the rescue of the petitioner illegally. The impugned order being a perfect judicious order is not liable to be set aside.

Having given thoughtful consideration to the submissions made by learned counsel for both the sides, I find merit in the instant petition for the reasons to follow:-

The petitioner was initially practising at Bhiwani. Therefore, it was impossible for him to come to know about filing of a petition by respondent No.1 at Hisar under Section 9 of the Act for restitution of conjugal Rights against his wife Smt. Meena without informing/engaging him by Smt. Meena or someone else on her behalf. Smt. Meena also handed over her Vakalatnama duly signed by her to the petitioner which he onwards filed in the Court at Hisar at the time of his appearance on her behalf only on a single date. Thereafter, she was represented by respondent No.2-Rajesh Garg, Advocate.

Learned counsel for respondent No.1 has not been able to point out as to what benefit, the petitioner ought to have gained by his appearance on behalf of Smt. Meena in the Court at Hissar. There is allegation of conspiracy between the petitioner and respondents No.2 to 5 in filing a bogus petition on behalf of respondent No.1 under Section 9 of the Act for restitution of conjugal rights against his wife Meena. However, respondent No.1 has not been able to prove the same by leading any evidence to this effect while adducing his preliminary evidence what to talk of any cogent or convincing. The trial Court while summoning the petitioner vide impugned order (Annexure P-2) has failed to appreciate this aspect of the matter.

That apart, Smt. Meena while seeking divorce from respondent No.1 in her petition under Section 13 of the Act filed in the year 2013, had levelled serious allegation of cruelty and desertion, pleading that respondent No.1 used to call some unknown persons in the house and to force her to maintain sexual relations with them. From the very beginning of marriage respondent No.1 and his family members started maltreating and torturing her to satisfy their lust of dowry.

No evidence has been brought on record in support of his allegations by respondent No.1 at the summary stage that he never filed any petition for restitution of conjugal rights against his wife. Even otherwise such a petition is always for the benefit for a person on whose behalf, the same is filed, inasmuch as such course of action unites a couple and not separates them. Therefore, petition under Section 9 of the Act filed on behalf of respondent No.1 was in his benefit and not adverse to his interest.

More so, address of Smt. Meena mentioned in the instant petition is the same, which was shown/mentioned in the petition under Section 9 of the Act filed by respondent No.1. Therefore, it cannot be said by any stretch of imagination that Smt. Meena never received any summons for the petition for restitution of conjugal rights filed by respondent No.1 against her. It is her parental house, where she might have shifted on account of strained relations with her husband respondent No.1 at the relevant time.

That apart, nobody dares to file forged and fictitious petition before any Court.

Smt Meena and her mother Smt. Nirmala Verma have filed their affidavits in this Court categorically testifying therein about their engaging the petitioner as counsel of Smt. Meena and instructing him to appear on her behalf. Besides it, on direction of this Court, they appeared before the District Judge for their cross-examination by learned counsel for respondent No.1, who after their lengthy cross-examination could not fetch anything in favour of respondent No.1. Statements of both of them on oath were also recorded in this Court. Therefore, the statements of wife of respondent No.1 namely Smt. Meena Verma and her mother Nirmala Verma, after facing the test of cross-examination, cannot be discarded and are liable to be relied upon.

In these circumstances, even if the petitioner is put to trial, nothing adverse can be brought by respondent No.1 against him, in view of the fact that his wife Smt. Meena Verma, who has engaged the petitioner, has already sought divorce and therefore, would not ever come to support respondent No.1 for the allegations which he has levelled against the petitioner.

With due respect in view of the proposition of law laid down by the Apex Court in Prabhu Chawla's case(supra), Manoj Kumar Sharma's case (supra) and Madhu Bala's case (supra) relied upon by learned counsel for respondent No.1 has to be ignored. The power under Section 482 Cr. PC has to be exercised in this case to save an innocent person from unnecessarily harassment to face trial in a false complaint filed by respondent No.1 against the petitioner to satisfy his whims and fantasies.

In view of the discussion made above, the petition is accepted. Complaint case (Annexure P-1) and the impugned order dated 15.06.2015 are quashed.