
(2006) 04 P&H CK 0133

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 50850-M of 2003

Anju Bala and others

APPELLANT

Vs

State of Punjab and another

RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 406

Citation : (2006) 17 CriminalCC 548 : (2006) 3 RCR(Criminal) 191

Hon'ble Judges : Nirmal Yadav, J

Bench : Single Bench

Advocate : APS Deol, for the Appellant; R.K. Nihalsinghwala, DAG, Punjab For the Respondent No. 2 Mr. and T.N. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Nirmal Yadav, J.—Petitioner Nos. 1, 4 and 5 are sisters while petitioner No. 3 is brother of Subhash Kataria and petitioner No. 2 is wife of petitioner No. 3. They seek quashing of order dated 1.8.2003 passed by Chief Judicial Magistrate, Moga, vide which they have been summoned to face trial under Sections 406, 498A IPC on the application moved by the complainant u/s 319 Criminal Procedure Code.

2. The facts in brief are that complainant Sonia Arora was married to Subhash Kataria in the year 1996. She was earlier married to one Hardev Kumar Arora and their marriage was dissolved from the Queens Bench, Alberta on 9.4.1996. It is pleaded that marriage between the parties was a simple arrangement and no dowry article was given at the time of marriage. After 10 days of marriage Sonia Arora left for Canada and thereafter she applied for migration of her husband Subhash Kataria, who joined her in Canada. Sometime thereafter, relations between the parties became strained and matrimonial dispute arising between them, was referred to Canadian Police. Complainant Sonia Arora came to India and demanded a share in the shop jointly owned by her father-in-law, mother-in-

law and brother-in-law. On their refusal, she lodged a complaint against all the family members under Sections 498A and 406 IPC. The Police after investigation, presented the challan against the husband-Subhash Kataria, father-in-law-Ram Pal Kataria and mother-in-law-Satya Rani and the present petitioners were kept in column No. 2. While forming the opinion with regard to innocence of petitioners, the police took note of the statement made by Sonia Arora on 7.12.1998 in the Court of Shri J.K. Mattoo, Sub-Divisional Judicial Magistrate, Moga, to the effect that she did not wish to proceed against the present petitioners and accordingly, the challan was presented against the other three accused, namely, Subhash Kataria, Ram Pal Kataria and Satya Rani. However, after presentation of challan, the complainant appeared in the Court of Chief Judicial Magistrate on 18.12.2000 and deposed against all the petitioners including the other co-accused. Accordingly, the learned Public Prosecutor moved an application u/s 319 of the Code of Criminal Procedure for summoning the petitioners to face trial along with other co-accused. The learned Chief Judicial Magistrate allowed the application and summoned the petitioners vide the impugned order dated 1.8.2003.

3. Aggrieved by the summoning order, the petitioners filed a revision petition in the court of Additional Sessions Judge, Moga. The learned Additional Sessions Judge even after taking note of the fact that complainant had made statement before the Sub Divisional Judicial Magistrate that she does not wish to initiate any action against the present petitioners, upheld the order of the learned Magistrate summoning the petitioners u/s 319 Criminal Procedure Code and dismissed the revision petition vide order dated 29.9.2003, Annexure P-5. Accordingly, the petitioners have invoked the inherent jurisdiction of this Court by filing the present petition u/s 482 of the Code of Criminal Procedure.

4. In her reply, respondent No. 2 has stated that she had submitted an application for registration of case, to the Senior Superintendent of Police, Moga, which was marked to ASI-Kashmir Kaur, who took a fortnight to conclude the inquiry. Since the complainant could not wait indefinitely as she had to return to Canada, she filed a criminal complaint against the accused on 2.12.1998 and confronting the usual difficulty in effecting service on all the accused, made a statement on 7.12.1998 that she did not wish to proceed against the present petitioners, who were arrayed as accused No. 4 to 7 in the complaint. She had to catch a flight on 13.12.1998. However, the police registered the FIR on 6.12.1998, but incorporated the report of Kashmir Kaur, ASI, who had exonerated the petitioners. She challenged the action of the investigating agency by filing Crl. Misc. No. 23595-M of 1999. Thereafter she was examined as prosecution witnesses in the State case on 18.12.2000 where she testified with regard to the complicity of all the accused including the present petitioners and thereafter, learned Public Prosecutor moved an application for summoning the petitioners. Learned counsel for the respondents argued that in view of the statement made by the complainant, petitioners have been rightly summoned u/s 319 Criminal Procedure Code and this does not amount to abuse of process of

the Court. It is argued that the learned Magistrate has come to the conclusion that the offences under Sections 406, 498A IPC are clearly made out against the petitioners.

5. I have heard learned counsel for the parties and perused the material on record.

6. Learned counsel for the petitioners contends that petitioner Nos. 1, sister of Subhash Kataria, who was married in the year 1984 is residing with her husband and the couple is having two grown up children aged 18 and 17 years. Petitioner No. 4 was also married much prior to the marriage of the complainant and is residing with her husband and other family members separately. Petitioner No. 5 was married in the year 1988 and is residing with her husband at Ludhiana. Petitioner Nos. 2 and 3 have also been residing separately from Subhash Kataria and the complainant. All the petitioners are well settled with their families and have no concern with the complainant and Subhash Kataria. It is pleaded that complainant had left India 10 days after the marriage and Subhash Kataria, later on, joined her in Canada. The relation between them became strained. The complainant herself stated before the learned Magistrate that she did not want to pursue her complaint against the present petitioners. However, in order to wreck vengeance on her husband, she has again made the statement against the present petitioners and thereby, has knitted the net wider to involve her husband's married sisters, brother and his wife with an ulterior motive. It is further argued that the allegations levelled in the FIR are quite improbable and do not appeal to the judicial conscience. The complainant was already married to one Hardev Kumar and she was a divorcee when she got married to Subhash Kataria. Therefore, the marriage was a simple affair and only one ring was given by the parents of the complainant at the time of marriage. The allegation with regard to dowry article was found to be false by the police. In such circumstances, no offence u/s 406 or 498A IPC is made out on the face of the facts mentioned in the complaint and accordingly the Investigating Agency after thoroughly investigating the matter did not challan the petitioners and they were kept in column No. 2. Even in the reply filed by the respondent-complainant, she has admitted the factum of her having made the statement that she does not want to proceed against the petitioners.

7. Learned counsel for the petitioners argued that trial Court had mechanically accepted the statement made by the complainant while deposing before the Court and completely ignored the fact that she had already stated on 7.12.1998 that she did not wish to proceed against the present petitioners. The complainant while deposing before the Court has made substantial improvements in her case and besides her statement there was no cogent evidence before the trial Court to summon the petitioners. Learned counsel further argued that the powers u/s 319 Criminal Procedure Code for summoning the additional accused are to be used sparingly and primarily to advance the cause of criminal justice and not as a handle in the hand of the complainant to cause harassment to the other party. In

support, the learned counsel referred to 2004 (4) RCR 332 (P&H) [Harjinder Kaur and others v. State of Punjab]; 2002 (2) RCR 719 (P&H), [Dr. Sant Singh v. State of Punjab] and 2004 (2) RCR 398 (P&H). It is argued that the summoning order has been passed mechanically and even the revisional court did not take into consideration the statement made by the complainant herself as well as the conclusions reached by the investigating agency. To substantiate his arguments, learned counsel further referred to a judgment of the Supreme Court in Michael Machado and another v. Central Bureau of Investigation and another, 2000 (2) RCR 75 (SC).

8. On the other hand, learned State Counsel assisted by learned counsel for respondent No. 2 argued that present petition is not maintainable. The revision petition filed by the petitioners has already been dismissed and the present petition being second revision petition cannot be entertained. Learned counsel further argued that exercise of power u/s 482 Criminal Procedure Code is exception and not the rule and requires great caution in its exercise. It is further argued that it would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable or not and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. It is argued that exercise of inherent powers to quash the proceedings in a complaint is called for only in a case where complaint does not disclose any offence or is frivolous, vexatious or oppressive and the allegations set out therein do not constitute the offence of which cognizance has been taken by the Magistrate. At the same time it is not necessary that there should be meticulous analysis of the case before the trial Court to find out whether the case would end in conviction or acquittal. Learned counsel argued that in the light of the statement made on oath by the complainant, the ingredients of offence under Sections 406 and 498A IPC are clearly made out and there is no material to show that the complaint is mala fide, frivolous or vexatious. In support, the learned counsel referred to a judgment of the Apex Court in the case of State of Karnataka v. M. Devendrappa, 2002 (1) RCR (Cri) 481.

9. After giving my thoughtful consideration to the rival contentions made by learned counsel for both the parties and perusing the entire record, I do find force in the arguments raised by learned counsel for the petitioners. A close scrutiny of the allegations as contained in the FIR clearly shows that the allegations made against the petitioners are vague and general in nature. As regards the allegation of entrustment of dowry articles, the complainant has stated that Madhu Bala, petitioner was given one suit and one gold chain weighing one tola; one colour T.V. was allegedly given to Satish Kumar, petitioner and one gold ring each was given to petitioners-Madhu Bala, Neelam Rani and Veena Rani, besides some clothes and household articles. The articles mentioned in the complaint appear to have been presented as gift to the petitioners being relative of Subhash Kataria, husband of the complainant, at the time of marriage.

The complainant has further made a bald allegation that the dowry articles were misappropriated by all the accused. On the face of it, the allegation, qua the present petitioners, seems to be vague and does not attract the provisions of Section 406 IPC. It appears that in order to rope in all the family members of her husband, the complainant has made the net wider by making vague and general allegations. There is a general tendency to rope in all the relations in dowry cases, which, in fact, should be discouraged as it is likely to affect the society in general. Moreover, the efforts for involving entire family members ultimately weaken the case of the prosecution even against the real accused. In the instant case, I am of the view that the prosecuting agency has thoroughly investigated the case. ASI-Kashmir Kaur, in her report, had concluded that marriage of couple was a simple affair where only one ring and a suit was given. The allegations levelled under the Dowry Prohibition Act against the accused were not proved. She had further found that Subhash Kataria had contracted the marriage in order to immigrate to Canada and for that no other family member except Subhash Kataria alone was responsible. The learned trial Court casually passed the impugned summoning order against the petitioners on an application moved u/s 319 Criminal Procedure Code in the absence of any cogent evidence.

10. As regards the argument that present petition in the form of second revision cannot be entertained, it would suffice to say that powers conferred on the High Court u/s 482 Criminal Procedure Code are extra-ordinary powers in order to facilitate the expeditious disposal of the cases. Such inherent powers of the High Court come into play when there is no provision for redressal of grievance of the aggrieved party. A reference in this regard can be made to a judgment of the Apex Court in the case of V.C. Shukla Vs. State through C.B.I., and Madhu Limaye Vs. The State of Maharashtra, .

11. Admittedly, charges have not been framed against the present petitioners and they have been summoned to face trial along with other co-accused vide order dated 1.8.2003. The Apex Court while examining the ambit and scope of powers u/s 482 of the High Court in the case of M/s Pepsi Food Ltd. and another v. Special Judicial Magistrate and another, 1997 (4) RCR 761 (SC), has observed as under :-

It is settled that High Court can exercise its power of judicial review in criminal matters. In State of Haryana and others Vs. Ch. Bhajan Lal and others, . this Court examined the extraordinary power under Articles 226 of the Constitution and also the inherent powers u/s 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. While laying down certain guidelines where the Court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the Courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. One of such

guidelines is 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. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but it is also of judicial nature. This Article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior Courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and u/s 482 of the Code have no limits but more the power more due care and caution to be exercised in using these powers.

12. As a sequel to the above discussion, I am of the opinion that no prima facie case under Sections 406, 498A IPC is made out against the present petitioners. Accordingly, the petition is allowed and impugned order of Magistrate dated 1.8.2004 (Annexure P-4) as well as the order passed by the revisional Court dismissing the petitioners' revision against the summoning order, being abuse of process of Court, are hereby quashed.