
(2015) 04 P&H CK 0129
In the Punjab And Haryana At Chandigarh
Case No : CRM- M No. 9662 of 2013

Avtar Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 221, 300, 313, 482
Penal Code, 1860 (IPC) — Section 323, 34, 406, 498-A, 506

Citation : (2015) 04 P&H CK 0129

Hon'ble Judges : Raj Mohan Singh, J

Bench : Single Bench

Advocate : Vijay Lath, for the Appellant; Pardeep Prakash Chahar, D.A.G.,
Advocates for the Respondent

Judgement

Raj Mohan Singh, J.

1. Petitioners seek quashing of FIR No138 dated 11.08.2012 under Sections 498-A, 506, 406 IPC, Police Station Mullana, District Ambala along with entire subsequent proceedings in pursuance thereof.

2. The FIR was registered by respondent No. 2 with the allegations that her marriage was solemnized on 23.01.2007 with Jaswinder son of the petitioners. Out of this wedlock two children took birth. Father of the complainant has already expired. Mother is having three shops in the village. Allegations have been made that in-laws kept on insisting for transfer of shops in their favour and also to bring motorcycle from parental house. The complainant kept on tolerating the atrocities for the sake of preserving matrimonial life. Complainant alleged that greed of the petitioner and her husband kept on increasing. In 2008, mother of the complainant gave Rs. 20,000/- to husband of complainant. The behavior of in-laws remained normal only 2-3 days thereafter. Again they started demanding money. Fed-up with the behavior of in-laws, the complainant moved complaint to the Court on which case was registered against the in-laws. The said case was at the evidence stage, then the in-laws of husband came to the

village of the complainant and apologized before the mother of the complainant by holding her feet that the girl will be kept properly. The husband said that in case complainant does not withdraw this complaint, then he will commit suicide and also kill the children. The mother of the complainant got disturbed and complainant changed her statement in the Court with a view to settle in the matrimonial house. Resultantly, the in-laws were acquitted, but after 15-20 days, husband again started pressurizing for the transfer of shops from the mother of the complainant otherwise he will give divorce to the complainant. When the minor daughter fell ill, then the husband and in-laws asked the complainant to get her treated in the parental house. The husband while leaving the village said that law is in his favour and the complainant can be implicated in the case. Again demand for transfer of shops was made. Since the mother of the complainant is not having other source of income, therefore, complainant showed her helplessness. Divorce petition has been filed by the husband. The complainant could not attend the proceedings due to shortage of funds. With this background, the FIR came to be recorded.

3. Earlier, FIR No. 214 dated 26.08.2011 was registered at the instance of complainant. After filing of the challan, the said case was processed before the trial Court, under Sections 406, 498-A, 323, 506, 34 IPC. Trial Court recorded following findings in Para 8, 9 and 10:--

"(8) While stepping into witness box, PW1 Manisha Rani, complainant has testified that her marriage was solemnized with accused Jaswinder Singh on 23.03.2007. After marriage, she lived in her matrimonial house at Bharatgarh. She specifically stated that her in-laws never demanded any dowry nor harassed her for want of dowry. They have neither given any beatings upon her person nor misused the dowry articles nor they threatened to injure with life. This witness turned hostile and on the request of learned PP for the State, she has been duly cross-examined by him with leave of the Court.

(9) In cross-examination, she has specifically stated that she has heard the contents of complaint Ex. PA, however, denied that she made the complaint. She admitted her signatures on the complaint but stated that the were affixed under pressure of Biradari people.

(10) Kamlesh Rani, PW2, has stated that the marriage of her daughter was solemnized with Jaswinder Singh on 23.03.2007. Her daughter lived in the matrimonial home nicely. The in-laws of her daughter never demanded any dowry nor maltreated her. Stated that her daughter is still residing in her matrimonial home nicely. She has also turned hostile and duly cross-examined by the learned PP for the State with the leave of the Court. In cross-examination, she also denied that she has never given statement, Ex. PD to the police."

4. Having recorded the aforesaid findings, the Court found that no incriminating evidence is available on record, therefore, statement of accused under Section 313 Cr.P.C. was dispensed with. Ultimately, the Court acquitted the petitioners

along with their son Jaswinder Singh, vide judgment dated 05.04.2012.

5. As per ration card, petitioners as a unit are living separately than their son Jaswinder Singh whose ration card is separate along with his wife only.

6. The respondents have contested the case by alleging that it was only for the sake of preserving matrimonial tie, the complainant made favourable statement in earlier FIR No. 214 dated 26.08.2011, under Sections 406, 498-A, 323, 506, 34 IPC, Police Station, Mullana that entailed in acquittal of the petitioners and her husband vide judgment dated 05.04.2012 passed by Additional Chief Judicial Magistrate, Ambala. The respondent No. 2 asserted that cruelty is continuing in nature and even after the acquittal of the petitioners in earlier case, the husband kept on insisting for transfer of shops from the mother of the complainant.

7. Perusal of FIR No. 138 dated 11.08.2012, under Section 498-A, Police Station, Mullana reveals that after allegations upto the stage where the judgment of acquittal was recorded, subsequent allegations primarily relate to husband. Learned counsel for the petitioners relies upon Section 300 Cr.P.C. to state that the petitioners cannot be tried twice for the same offence particularly when they were acquitted by the competent court on these very allegations. Section 300 Cr.P.C. is reproduced as under:--

"300. Person once convicted or acquitted not to be tried for same offence -.

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

..."

8. In support of his contention, learned counsel for the petitioners cites Cr.M. No. M-15726 of 2012 decided on 15.07.2014 titled "Jaswinder Singh and others v. Himmat Singh and others", 1997 (4) R.C.R. (CrL.) 449 titled "Supinder Singh v. Provident Fund Commissioner" and 1997 Cr.L.J. 1037 (Karnataka).

9. On the other hand, learned State as well as private respondent vehemently argued that the cruelty arising out of matrimonial relation is continuing process and that has not stopped even after acquittal of the petitioners in earlier FIR. The perusal of FIR in question does not show any complicity of the petitioners in terms of subsequent allegations. Plea of the respondent that she had to make statement in favour of accused on persisting requests having made by them to her mother for saving the matrimonial house, does not change the legal position. The position of law as enumerated from Section 300 Cr.P.C. as well as precedents on the issue shows that a person who has been acquitted earlier cannot be tried for the same offence, otherwise it will lead to double jeopardy.

10. Looking to the aforesaid position on law, I am of the view that no lawful grounds exists for proceedings with FIR against the petitioners who are parents of husband and are living separately in the village. Even if the village address is shown to be same in both the ration cards, still the composition of family shown therein are distinct. The complainant is shown to be residing with husband for which separate ration card was issued to them.

11. Living of husband together with the petitioners would be an academic issue in view of legal position depicted above. Consequently, the FIR and all subsequent proceedings if allowed to continue would lead to illegal vagaries of life of the petitioners. The petitioners are not expected to face trial over issues which have already been culminated in previous FIR. No subsequent misconduct has been alleged. This Court feels that it is a fit case where inherent jurisdiction in terms of Section 482 Cr.P.C. should be invoked in order to prevent abuse of process of law and in order to achieve ends of justice.

12. Accordingly, FIR No138 dated 11.08.2012 under Sections 498-A, 506, 406 IPC, Police Station Mullana, District Ambala along with entire subsequent proceedings undertaken in pursuance thereof stands quashed.