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**(2011) 03 P&H CK 0190**

**In the Punjab And Haryana At Chandigarh**

**Case No : Criminal Miscellaneous No. M. 1542 of 2010**

Balwinder Singh and Others

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

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**Date of Decision : 28-03-2011**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Penal Code, 1860 (IPC) — Section 120B, 34, 406, 498A, 506

**Citation : (2011) 03 P&H CK 0190**

**Hon'ble Judges : Nirmaljit Kaur, J**

**Bench : Single Bench**

**Final Decision : Dismissed**

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## **Judgement**

Nirmaljit Kaur, J.—This is a petition u/s 482 Code of Criminal Procedure for quashing of FIR No. 207 dated 17.10.2007 registered under Sections 406, 506, 498-A, 34 and 120-B IPC, the order dated 07.12.2009 passed by the Additional Sessions Judge, Amritsar, whereby, the revision filed by the Petitioners has been dismissed.

2. Brief facts of the case are that the marriage between Rajwinder Kaur and Harjit Singh was solemnized on May 09, 1995. In March 2006, Harjit Singh, husband of the complainant died. Thereafter, in August 2007, the complainant Rajwinder Kaur made complaint against the Petitioners and subsequently an FIR, in question, was registered. The Petitioner No. 1-Balwinder Singh and Petitioner No. 2, Paramjit Kaur, are the father-in-law and mother-in-law of the complainant, respectively. Petitioner No. 3-Daljit Singh is elder brother-in-law of the complainant and Petitioner No. 4-Sujan Singh is the father-in-law of Petitioner No. 3.

3. While praying for quashing of the FIR, learned Counsel for the Petitioners contended that the marriage between Rajwinder Kaur and Harjit Singh took place on May 9, 1995. In November 1996, the Petitioners No. 1 and 2 i.e. the parents of Harjit Singh disowned their son and delinked him their moveable and

immovable properties. A public notice to the said effect was published in the newspaper. For almost 11 years, Harjit Singh son of Petitioners No. 1 and 2 was living separately with the complainant wife. The Petitioners have no link, relation, association or connection with Harjit Singh, his wife or his children since he has been disentitled from the family. In March 2006, the husband of the complainant died in accident. After the husband of the complainant died, the present FIR was registered in October 2007. During the life time of Harjit Singh, the complainant was staying separately with her husband and after the death of Harjit Singh, complainant had gone to her parents to live with them. For almost 12 years, there had been not even a single complaint of any kind whatsoever much less complaint of harassment, cruelty or demand of dowry was made or even alleged by the complainant or her parents against the Petitioners. First time, the complaint was made in the year 2007 and that too, when the complainant was staying with her parents. It is further contended that no offence u/s 498-A IPC is made out.

4. Heard.

5. No reply has been filed by the Respondents till date. Three opportunities to file reply were given. Finally, on 25.03.2011, when the matter was adjourned for 28.03.2011 to enable the learned Counsel for the Respondent-complainant to file reply, it was specifically stated therein that no further adjournment shall be granted. In spite of the same, today, neither the Respondent-complainant is present nor has any reply been filed.

6. There are two parts of the FIR. The first part reads as under:

In all, her parents had spent more than Rs. 5 lacs on marriage. In March 2006, her husband Harjit Singh met with an accident and he died leaving behind the applicant and her two minor daughters. During the life time of Harjit Singh, the accused No. 1 and 2 and Toni, brother of deceased Harjit Singh, his father-in-law Sujan Singh, sister of Harjit Singh, namely, Pinki w/o Bobby used to maltreat and beat and torture the applicant to bring Rs. 4 lacs from her parents. On refusal of applicant to meet their illegal demand, she was beaten up many times. However, her husband used to give her shelter. At the instance of accused No. 1 and 2, the father of applicant gave Rs. 1 lac to start shop "Guru Ram Dass Jewellers, Tarn Taran Road, Amritsar but still accused were not satisfied, Balwinder Singh and Tony demanded more Rs. 2 lacks and Pinik w/o Bobby also joined them.

7. It is apparent from the above that these allegations pertain to the period when the husband of the complainant was alive as also of the allegations immediately after the marriage. Surprisingly, the complainant never registered an FIR or even filed a complaint for the allegation qua this period till the death of her husband. Thus, there was no complaint for almost 11 years and not even a single complaint whatsoever much less complaint of harassment, cruelty or demand of dowry was made.

8. The second part of the FIR reads as under:

That after the death of Harjit Singh, applicant was given severe beatings and was turned out from the matrimonial house with minors in wearing apparels. Accused were approached many times to return her dowry/istridhan detained by them and also jewellery in said jewellery shop of her husband but accused are giving threats to kill the applicant, her brothers and her father in case of any demand for dowry articles made from them.

9. Whereas, as per the petition, the Petitioners No. 1, the father-in-law of the complainant disentitled his son Harjit Singh from his moveable and immovable properties. The Petitioners were not in talking terms with Harjit Singh and even Harjit Singh used to do separate business and had delinked himself completely from his family. A public notice to this effect is stated to have been published in the newspaper soon after the Marriage. These facts have not been denied. The Respondent has failed to file any reply, even though, Rs. 5,000/- deposited by the Petitioners as litigation expenses were ordered to be released. The above facts show that the complainant was residing separately with her husband. As such, it cannot be said that she did not carry her dowry articles along with her while shifting out of her in-laws house to set up a separate residence with her husband. Moreover, if she was already staying separately with her husband, then the question of throwing her out after the death of her husband, does not arise. Moreover, the allegations are vague. No time or date, when she was thrown out has been mentioned.

10. The Single Bench of this Court in a case of Divya alias Babli and Ors. v. State of Haryana and Anr. reported as 2006 (4) RCR (Cri) 322, while relying on the judgement of Apex Court rendered in the case of Kans Raj v. State of Punjab and Ors. reported as 2000 (2) RCR (Cri.) 695 held as under:

22. Another judgment rendered in Shinder Pal @ Kakke's case (supra) relied by Mr. Saini, this Court while relying upon a judgment of Apex Court rendered in Kans Raj Vs. State of Punjab and Others, wherein their Lordships have observed that a tendency has developed for roping in all the relations in dowry cases which ultimately weakens the case of the prosecution even against the real accused.

23. My view is also fortified by the latest judgment of Hon'ble Supreme Court rendered in Ramesh Kumar and Ors. v. State of Tamil Nadu, 2005 (2) R.C.R. (Cri) 68 in which their Lordships while quashing the proceeding against sister-in-law who was staying at a different place observed that there were bald allegations to rope in as many relations of the husband.

24. Another latest judgment of Apex Court rendered in Sushil Kumar Sharma v. Union of India and Ors., 2005 (3) R.C.R.(Cri) 745 where issue of striking down Section 498-A IPC had sprouted, their Lordships observed that in such type of cases the "action" and not the "section" may be vulnerable and the Court by upholding the provisions of law may still set aside the action, order or decision and grant appropriate relief to the persons aggrieved. Their Lordships while dealing with the dowry menace, however, observed in para 17 as under:

The object of the provision is prevention of the dowry menace. But as he has been rightly contended by the Petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy (ignominy?) suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not an assassin's weapon. If cry of "wolf" is made too often as a prank, assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre-conceived notion or view. It is strenuously argued by the Petitioner that the investigating agencies and the Courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalised statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the Courts is that of watch dog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally indisputable that in many cases no direct evidence is available and the Courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.

11. Coming back to the facts of the present case, the marriage was solemnized on 09.05.1995. The father of Harjit Singh disowned his son Harjit Singh, husband of the complainant. The husband of the complainant died in March, 2006 and the FIR was registered on 17.10.2007. Therefore, it is apparent that the Petitioners were residing separately and they had nothing to do with the matrimonial life of the Respondent-complainant. The complaint was filed after the death of Harjit Singh. The allegations against the Petitioners are, therefore, exaggerated and do not inspire confidence in the peculiar facts and circumstances of the present case.

12. Moreover, the allegations are vague and an outcome of malice against the family members of the deceased husband. Lately, a tendency has developed for roping in all the relations in dowry cases in order to browbeat and pressurise the

immediate family of the husband. Accordingly, sometimes inflated and exaggerated allegations are made. In the present case also, all the family members have been enroped. Bald and vague allegations have been levelled against them. No date and time is given to substantiate the allegations of cruelty.

13. In the light of the judgment passed by this Court in the case of Divya alias Babli and Ors. (supra), the present petition qua Petitioners is allowed and FIR No. 207 dated 17.10.2007 registered under Sections 406, 506, 498-A, 34 and 120-B IPC, the order dated 07.12.2009 passed by the Additional Sessions Judge, Amritsar, whereby, the revision filed by the Petitioners has been dismissed, are hereby, quashed.