
(2004) 11 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 687 of 1990

Gurdeep Kaur

APPELLANT

Vs

Balbir Singh and Others

RESPONDENT

Date of Decision : 03-11-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 406

Citation : (2004) 13 CriminalCC 222 : (2005) 2 RCR(Criminal) 205

Hon'ble Judges : Jasbir Singh, J

Bench : Single Bench

Advocate : Jatinder Jit Kaur and Mr. P.C. Chaudhary, for the Appellant; Tanu Bedi, for the Respondent

Final Decision : Allowed

Judgement

Jasbir Singh, J.—Petitioner Gurdeep Kaur, the complainant, has filed this criminal revision against order dated 4.6.1990 (Annexure P/4)) passed by the Additional Sessions Judge, Jalandhar vide which revision petition filed by respondent Nos.3 and 4 was allowed and order of the Trial Magistrate dated 10.7.1989 (Annexure P/2) summoning the accused in criminal complaint filed by the petitioner was set aside. In this revision petition, prayer is also-made to set aside order dated 9.6.1990 (Annexure P/5) vide which Trial Magistrate, on the basis of order Annexure P/4, dismissed complaint of the petitioner.

2. It was case of the petitioner that her marriage was solemnized with respondent No. 1 on 12.10.1983 at Jalandhar. At the time of marriage, dowry articles worth Rs. one lac were given and entrusted to all the accused. Respondents were not satisfied with the dowry articles and they started demanding scooter and cash amount from the complainant. On Her inability to do so, they started mal-treating, torturing and abusing her. When she was in family way, she was given severe beatings by the accused and she was thrown out of her matrimonial house. Due to that her health deteriorated. It was farther case of the petitioner that on account of beatings, mental agony and physical

pain, she gave pre-mature birth to a child, who was found dead on 13.6.1984. Respondents never came to enquire about her health and regarding birth child. They rather told the petitioner and her parents that they would keep the petitioner in her matrimonial house only when their demands were fulfilled.

3. On efforts being made by petitioner's brother and other relatives, she was taken to her in-laws house on 29.5.1985. Their attitude did not change and continued to remain indifferent and cruel towards the petitioner. She was pressed to make a request to her brother, who was settled in USA to send money for the purchase of scooter, VCR and other articles, which were required to be given to the sister of respondent No.1 at the time of her marriage, which was going to be celebrated on 19.4.1987.

4. When she refused to oblige them, she was separated from the family and was made to live in a rented house in the same locality on 20.5.1987. In a very arbitrary manner, none of her dowry articles and of daily use were given to her. Even thereafter agony of the petitioner did not stop because of constant torture, mal-treatment and beatings. Again 4-1/2 months pregnancy of the petitioner was terminated on 9.8.1987 in Chawla Maternity Hospital, Jalandhar City.

5. On 3.10.1987, respondent No. 1 left the petitioner at her parents house on the pretext that she should spend some holidays with them. Later it came to the knowledge of the petitioner that on the same day in the evening, respondent No. 1 vacated the rented house, in which she was residing. It was case of the petitioner that all dowry articles, including her ornaments were lying with the respondents. They never returned, despite demand and had mis-appropriated those articles. Despite efforts made by parents of the petitioner, respondents virtually refused to rehabilitate the petitioner in her matrimonial house.

6. Compelled under these circumstances, she filed a complaint against all the respondents for commission of offences under Sections 406,498-A read with Section 34 IPC. To support her complaint, she got recorded her statement as PW-1 and also produced her father Banta Singh (PW-2), Mohan Singh (PW-3) and Bhagwan Singh (PW-4), who fully supported her version, as found mentioned in her complaint, Annexure P-1, in this revision petition.

7. Trial Magistrate, on appraisal of evidence, as led by the complainant/petitioner, summoned all the respondents to face trial for offences, as referred to above vide order" dated 10.7.1989 (Annexure P-2).

8. Record shows that against order Annexure P-2, respondent Nos.3 and 4 namely Gurmeet Kaur mother-in-law and Parminder Singh brother-in-law of the complainant, filed revision petition No.40 of 1989, which was ultimately taken up for hearing and decided by the Additional Sessions Judge, Jalandhar and accepted the same, summoning order, Annexure P-2 was set aside. Trial court on receipt and by relying upon that order (Annexure P-4), vide order dated 9.6.1990 (Annexure P-5), dismissed complaint of the petitioner. Hence, this criminal revision.

9. It is necessary to mention here that before filing of complaint by the petitioner, respondent No.1, her husband had filed an application against the petitioner u/s 13 of the Hindu Marriage Act, 195 for divorce. That application, after notice, was accepted and divorce was granted by the matrimonial court in favour of respondent No.1. Petitioner wife filed an appeal in this Court, which was dismissed by the learned Single Judge. Her appeal against that order was also dismissed. When order under challenge, Annexure P-4 and P-5 were passed, her SLP before the Hon''ble Supreme Court was still pending.

10. Ms.Jatinder Jit Kaur, Advocate, appearing for the petitioner, has vehemently contended that the orders Annexure P-4 and P-5 passed by the Additional Sessions Judge and trial Magistrate, respectively are not sustainable having been passed contrary to the established legal practice. By making reference to the judgment of Hon''ble Supreme Court in Smt.Nagawwa v. Veeranna Shivalinqappa Konjalqi and others, AIR 1976 Supreme Court 1947, she argued that the revisional court below had wrongly accepted the revision petition vide order under challenge by going beyond the permissible parameters, for interference, as provided by their Lordships of Supreme Court in Smt.Nagawwa's case (supra).

11. She further, by referring to contents of complaint, Annexure P-1, submitted that allegations regarding entrustment and cruel treatment to the petitioner against all the respondents were very clear, categoric and specific, revisional court below, had failed to appreciate contents of FIR in its true perspective, as such, order deserves to be quashed. She also brought it to the notice of the court that when order Annexure P-4 was passed, it was specifically brought to the notice of the court below that SLP filed by the petitioner was still pending before the Hon''ble Supreme Court, as such, court below was not justified in relying upon the decree of divorce granted to her husband.

12. It has further been brought to the notice of the court that subsequent thereto, appeal filed by the petitioner was allowed by the Hon''ble Supreme Court and matter was referred back for decision to this Court and ultimately, her LPA No.858 of 1990 was allowed, judgment passed in favour of the husband and his application for divorce were dismissed vide order dated 1.12.1994. Husband went to the Hon''ble Supreme Court, however, his appeal was dismissed. In this manner, matrimonial litigation ended up in favour of the petitioner and against respondent No.1.

13. She further argued that against summoning order, Annexure P-2, revision petition was filed by respondent Nos.3 and 4 only. Respondent Nos. 1 and 2 never challenged that order, as such, qua them it had become final. Trial Court had gone wrong while dismissing complaint of the petitioner vide order, Annexure P-5, by relying upon revision order passed in favour of respondent Nos.3 and 4, without appreciating as to whether any offence is made out against respondent Nos. 1 and 1 or not. She prayed that under these circumstances, order Annexure P-5 deserves to be set aside.

14. She further stated that the petitioner, who is present in court, is till ready and willing to forget the past, she is waiting for her rehabilitation in her matrimonial house and is ready to join her husband without any pre-condition. By stating above mentioned facts, she prayed that revision petition be allowed and orders under challenge Annexure P-4 and P-5 be set aside.

15. Arguments raised by counsel for the petitioner have vehemently been opposed by Ms.Tanu Bedi, Advocate appearing for the respondents. She supported orders, Annexure P-4 and P-5, by stating that as per averments made in complaint, no case is made out against any of the respondents, as such, courts were justified in passing the orders under challenge. She further, by referring to contents of judgment passed by this Court on 1.12.1994, tried to contend that while giving favourable decision to the petitioner, no finding had been given by this court to the effect that the allegations of cruelty, as alleged by the petitioner in those proceedings, were correct and justified. Divorce application of respondent No. 1 was dismissed only by opining that the alleged incidents of cruelty, as levelled by the husband respondent No. 1, were normal wear and tear of life. Once, it is so observed by this Court, counsel stated that wife cannot get any benefit of alleged acts of cruelty allegedly committed against her by the respondents.

16. She further stated that the complaint was filed in the year 1987. Even prior thereto parties were living separate and if at this stage, revision is allowed and matter is sent for trial, it will be most unjust to the respondents, who had been acting agony of litigation for the last more than one and a half decade. She prayed that revision petition, having no substance, be dismissed.

17. After hearing counsel for the parties, this court feels that revision petition deserves to succeed. It is clear from the order under challenge that one of the grounds, to set aside summoning order by the revisional court, was grant of decree of divorce in favour of the husband. Revisional court, by stating that orders passed by civil Courts are binding on the criminal Court had placed reliance upon the judgment and decree of divorce passed in favour of the husband and had opined that in the face of the finding given in favour of husband respondent No.1 granting divorce, summoning order was not justified and accordingly the same was set aside.

18. It is apparent from the record that when matter was heard by the revisional court, by filing an affidavit, it was specifically brought to the notice of the Court that SLP filed by the petitioner against order of this court was still pending in Hon"ble Supreme Court. Under those circumstances, it was desirable for the revisional court below not to rely upon findings of the matrimonial court in favour of the husband, while deciding revision petition. Be that as it may, it is an admitted case that SLP filed by the petitioner was allowed, matter was remitted to this Court for fresh hearing and ultimately, LPA No.858 of 1990 filed by the petitioner was allowed by this Court on 1.12.1994 and judgment and decree of divorce were set aside. During arguments, it also transpired that respondent

No.1 even filed an appeal against that order before the Hon"ble Supreme Court, which was dismissed. Under these circumstances, findings of the revisional court, while passing order under challenge by placing reliance upon order of matrimonial court, are liable to set aside.

19. It is an established law that revisional powers of any court are limited. Courts are supposed to interfere in revision only when there exists legal lacuna in the order under challenge and may be when findings under challenge are not supported by evidence and are absurd on the face of it. Their Lordships of Supreme Court in Smt.Nagawwa's (supra) had laid down parameters within which the revisional court can interfere in an order under challenge before it. It was observed that order of the Magistrate issuing process against the accused can be quashed or set aside on the following grounds:-

"(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are potently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercise by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

20. This court feels that the order under challenge passed by the revisional court does not conform to the parameters as laid down by their Lordships of Supreme Court, as referred to above.

21. It is apparent from the complaint, Annexure P-1 that the petitioner has alleged that after marriage, dowry articles which were shown in the list Annexure A with the complaint, were entrusted to all the accused. These articles were meant for petitioner's use, which she was never allowed and those articles were ultimately usurped and misappropriated by the respondents. It is her specific allegation that when she was thrown out of the house, her jewellery, clothes and other dowry articles were kept by the respondents. Despite demands, those articles were not returned to the petitioner. Petitioner has further given specific instances regarding the manner in which she was physically and mentally tortured, beaten up and thrown out of house twice. She has given specific dates of demand of dowry and beatings given to her. It has also been stated that because of physical and mental torture, her health had deteriorated and due to that she gave pre-mature birth to a dead child and on the second occasion, her pregnancy of 4-1/2 months was terminated.

22. This court feels that the averments made in the complaint, prima facie do constitute an offence against the respondents. It is also apparent from the records that petitioner, to support her case, apart from herself had produced three more witnesses and they had reiterated the averments made by her and had supported her case. Trial Magistrate, on appraisal of evidence, had summoned the respondents to face trial. It is an established law that at the time of summoning an accused in a complaint case, trial magistrate is supposed to look into allegations, as levelled in the complaint or averred at the time when preliminary evidence is led. Trial Magistrate has to be, prima facie, satisfied as to whether there are sufficient grounds for proceeding against the accused named in the complaint or not. It is not the duty of trial Magistrate to enter into detailed discussions on the merits or demerits of the case.

23. This court is of the view that summoning order, Annexure P-2 was perfectly justified. From the reading of contents of FIR and statements made by the witnesses in court, alleged offences, prima facie, were made out against the respondents. Grievance of the complainant, as found mentioned in complaint, was not improbable and there was no legal defect in the summoning order. Scope of enquiry u/s 202 Cr.P.C. in a complaint case, by the trial Magistrate is not to ascertain truth or falsehood of the complaint but the Magistrate dealing with that enquiry has to find out a prima facie case only, with reference to averments made before him in statements and contents of the complaint. At this stage, regular trial for adjudicating guilt or otherwise of the person complained against is not envisaged.

24. While passing order under challenge, trial Court had opined that, since items of dowry also includes those articles which were given to the respondents by way of gifts, as such, those could not be treated as stridhan of the petitioner. It is true that so far as customary gifts made to the relatives of the husband are concerned, these would not fall within the definition of dowry or stridhan. However, as is apparent from the list, Annexure "A" with the complaint, other items like jewellery, personal wears of the petitioner and articles, which were also meant for common use would fall within the definition of dowry.

25. Their Lordships of Supreme Court, in *Pratibha Rani v. Suraj Kumar and another*, AIR 1985 Supreme Court 628, had specifically opined that "in the case of stridhan property, title will always remain with the wife though possession of the same may be with the husband and the wife and other members of the family together and if any, member of the family misappropriated that property provisions of criminal law can be invoked. Husband and other family members who are in possession of stridhan will always remain as custodian of the property; they cannot claim any joint possession and any interest in that property". In view of the findings of Supreme Court in *Pratibha Rani's* case (supra), revisional court's order deserves to be set aside.

26. Argument of counsel for the respondents that since respondents are facing this criminal litigation for the last more than one and a half decade, sending this

matter for trial at this stage, will not be justified, has no legs to stand. For delay, wife cannot be blamed as she remained vigilant throughout. When she was thrown out, she immediately filed complaint, wherein summoning order was issued. Two of the respondents filed revision petition, which was allowed. Petitioner immediately challenged that order by filing this revision petition in this Court. Thereafter, delay has been caused due to heavy pendency of criminal cases in his court, for which wife cannot be blamed. If she is entitled to any relief, same cannot be denied to her due to this delay alone. She is fighting for her rights and has gone upto the Hon"ble Supreme Court, where litigation has ended in her favour regarding matrimonial dispute. Despite all this, she has made a statement in this court that she is still ready to live with her husband. When this offer was put to respondent No. 1 husband, he showed no flexibility and rather emphatically said no to her proposal. Petitioner, who is waiting for justice, as such, cannot be denied her due only because matter remained pending in this court.

27. In view of findings given above, this court feels that order, Annexure P-4 is liable to be set aside. Once, it is so, setting aside of order, Annexure P-5, which was passed on the basis of Annexure P-4, would be a natural consequence.

28. In view of reasoning given above, revision petition is allowed, order dated 9.6.1990 (Annexure-P-5) and order Annexure P-4 are set aside. Trial court is directed to proceed with complaint of the petitioner as per law. Trial court is directed to initiate process forthwith after issuing notice of appearance to both the parties.