
(2013) 11 P&H CK 0297

In the Punjab And Haryana At Chandigarh

Case No : Criminal Misc. Nos. 42190 of 2013 in/and M-21538 of 2013
(O&M)

Gurpreet Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0297

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Jitendra Chauhan, J.—This is an application u/s 482 of the Code of Criminal Procedure for recalling the order dated 12.08.2013, passed in CRM-M-21538 of 2013, vide which FIR No. 43 dated 16.11.2012, registered under Sections 406, 498-A IPC at Police Station Women, Patiala; and all consequential proceedings arising therefrom were quashed qua the husband Gurpreet Singh, on the basis of compromise arrived at between the parties. Learned counsel for the applicants submits that on the basis of the compromise and the statements of the parties recorded by the Judicial Magistrate 1st Class, Patiala on 24.07.2013, the impugned FIR as stated above was quashed by this Court vide order dated 12.08.2013. On 07.09.2013, the petitioner u/s 13-B of the Hindu Marriage Act, 1955, came up for recording the second statement of the parties. Gurpreet Singh, the husband, refused to record his statement in terms of the compromise after getting rid of the criminal proceedings which was quashed by this Court on the basis of the compromise. It is argued that the husband after availing the benefit of the order dated 16.11.2013, passed by this Court in CRM-M-21538-2013, whereby the FIR was quashed, cannot be allowed to resile at this stage. He prays that the impugned FIR may be revived.

2. Though no reply to the application has been filed, however, the learned counsel for the non-applicant/petitioner, states that it is the wife, who has not

complied with the terms and conditions of the compromise.

3. Mr. Sofat, AAG, Punjab, has no objection if the impugned FIR is revived.

4. I have heard the learned counsel for the parties and perused the paper book.

5. In this case, the marriage of Jaswinder Kaur was performed with Gurpreet Singh on 13.12.2009. The parties could not pull on well together and have been residing separately. Ultimately, on the application of Joginder Singh, the father of the girl, the FIR in question was registered against Gurpreet Singh. Thereafter a compromise was effected between the parties. Husband Gurpreet Singh filed CRM-M-21538-2013 for quashing of the FIR No. 43 dated 16.11.2012 under Sections 406, 498-A IPC registered at Police Station Women, Patiala, along with proceedings consequent thereto, on the basis of compromise. This petition came up before this Court on 09.07.2013, on which date the following order was passed by this Court:-

Present: Mr. Kuldip Sanwal, Advocate for the petitioner.

The learned counsel refers to Annexure P-2, the compromise, and Annexure P-3, the statement of the complainant, in petition u/s 13-B of the Hindu Marriage Act, filed by the petitioner.

Notice of motion for 12.08.2013.

At the asking of the Court, Mr. Luvinder Sofat, AAG, Punjab, accepts notice on behalf of the respondent-State. A complete copy of the paper book has been handed over to the learned State counsel, in the Court.

The parties shall appear before the learned Chief Judicial Magistrate/Illaq Magistrate on 17.07.2013, to get their statements recorded regarding the veracity of the compromise.

The learned Court shall, after recording the statements, send a report regarding the genuineness of the compromise being arrived at between the parties, along with the statements, to the Registrar Judicial of this Court, within a week thereafter. A copy of the report be also sent through fax.

6. The Judicial Magistrate 1st Class, Patiala recorded the statements of the parties and sent her report. The statements of the parties recorded on 24.07.2013 are reproduced:-

Statement of Jaswinder Kaur, aged 32 years daughter of Capt. Joginder Singh resident of H. No. 41, Street No. 2, Joginder Nagar, Patiala, On S.A.

I state that my marriage was solemnized with Gurpreet Singh son of Jaswant Singh on 13.12.2009 at Patiala and out of our wedlock a male issue namely Vanshveer Singh alias Chinnu was born on 15.09.2010. My father had got registered a criminal case vide FIR No. 43 dated 16.11.2012 under Sections 406/498-A IPC in Women Cell, Patiala against my husband Gurpreet Singh. I along with my father have compromised the matter with Gurpreet Singh vide

written compromise deed dated 15.03.2012. I have seen copy of the same today in the court. I admit compromise to be correct and same is Ex. CX, which bears my signature at point B as well as signature of my father at point A. I admit terms and conditions of compromise Ex. CX to be true. In pursuance to compromise aforesaid I along with my husband Gurpreet Singh had filed petition u/s 13-B of HMA which is presently pending in the court of learned District Judge, Patiala and is fixed for 19.08.2013. I have already received an amount of Rs. 2,75,000/- as per terms and conditions of compromise Ex. CX before Learned District Judge, Patiala i.e. half of the settled amount. I have no objection, if FIR No. 43 against Gurpreet Singh along with all consequent proceedings thereto be quashed after recording of final statement on 19.08.2013 before Learned District Judge, Patiala in afore mentioned petition.

Statement of Gurpreet Singh, aged 31 years son of Jaswant Singh son of Rakha Ram, resident of H. No. 64, New Mehar Singh colony, Tripari Town, Patiala, on S.A.

I state that my marriage was solemnized with Jaswinder Kaur daughter of Capt. Joginder Singh on 13.12.2009 at Patiala and out of our wedlock a male issue namely Vanshveer Singh alias Chinnu was born on 15.09.2010. My father in law Capt. Joginder Singh had got registered a criminal case vide FIR No. 43 dated 16.11.2012 under Sections 406/498-A IPC in Women Cell, Patiala against me. I have compromised the matter with my wife Jaswinder Kaur and father in law Capt. Joginder Singh vide written compromise deed dated 15.03.2012. I have seen copy of the same today in the court. I admit compromise to be correct and same is Ex. CX, which bears my signature at point C along with signatures of my father in law at point A and my wife at point B. I admit terms and conditions of compromise Ex. CX to be true. In pursuance to compromise aforesaid I along with my wife Jaswinder Kaur had filed petition u/s 13-B of HMA which is presently pending in the court of learned District Judge, Patiala and is fixed for 19.8.2013. I have already paid an amount of Rs. 2,75,000/- as per terms and conditions of compromise Ex. CX before Learned District Judge, Patiala i.e. half of the settled amount and undertake to pay the remaining amount of Rs. 2,75,000/- either before Learned District Judge, Patiala in petition u/s. 13-B of aforesaid or before Hon''ble Punjab & Haryana High Court Chandigarh at the lime of quashing of FIR in question i.e. FIR No. 43 dated 16.11.2012 under sections 406, 498-A IPC, P.S. Women Cell, Patiala.

7. On the similar lines is the statement of Joginder Singh, father of the girl, recorded by the Judicial Magistrate 1st Class, Patiala on the same day i.e. 24.07.2013.

8. After considering the statements of the respective parties recorded in the presence of their counsel, the Judicial Magistrate 1st Class, Patiala sent her report to this Court, the relevant extract of the report is reproduced as under:-

.....From those statements of the parties, it appears to me that compromise

entered into between the parties is genuine one and the same has been executed between the parties out of their free will and consent, without any threat or pressure.....

9. The matter came up for hearing before this Court on 12.08.2013. Relying on the statements of the parties recorded by the Magistrate and the report of the Magistrate sent to this Court, this Court quashed the impugned FIR observing that no purpose would be served in keeping the proceedings alive.

10. In pursuance of the compromise the parties filed a joint petition u/s 13-B of the Hindu Marriage Act, for the dissolution of the marriage by a decree of divorce by mutual consent, on 08.02.2013 before the District Judge, Patiala which was registered as Hindu Marriage Act application No. 25/11.02.2013.

11. The parties appeared before the District Judge, Patiala on 07.09.2013 for second motion. On 07.09.2013, husband Gurpreet Singh backed out from the compromise and made the following statement:-

Statement of Gurpreet Singh son of Shri Jaswant Singh, resident of H. No. 64, New Mehar Singh Colony, Patiala-petitioner No. 1 on S.A.

Petitioner No. 2 Jaswinder Kaur has failed to comply with the terms and conditions mutually agreed between the parties as well as compromise Ex. CA (already exhibited), therefore, I withdraw my consent for divorce with mutual consent and this petition may be dismissed as withdrawn. Petitioner No. 2 be directed to return the amount of Rs. 2,75,000/- so paid to her by me at the time of first statement.

12. Smt. Jaswinder Kaur made the following statement before the District Judge, Patiala on 07.09.2013 on second motion:-

Statement of Jaswinder Kaur aged about 31 years wife of Shri Gurpreet Singh, daughter of Shri Joginder Singh resident of H. No. 41, Street No. 2, Joginder Nagar, Badungar, Patiala-petitioner No. 2 on S.A.

Petitioner No. 1 has rather failed to comply with the terms and conditions of the agreement Ex. CA. I am ready to give divorce. It is petitioner No. 1 Gurpreet Singh who has refused to give his consent for divorce with mutual consent.

13. Because, one of the parties, has withdrawn the consent, the petition u/s 13-B of the Hindu Marriage Act, could not succeed.

14. Inherent powers of this Court can be invoked when special circumstance are made out. This Court can exercise its inherent jurisdiction u/s 482 of the Code to prevent the abuse of process of the Court or to secure the ends of justice. In matrimonial offence, it is incumbent upon the justice delivery system to encourage genuine settlements of matrimonial disputes. In this case, the conduct of the husband in getting the impugned FIR registered against him quashed, assuring the wife that the compromise reached is bona fide and genuine. Accordingly, the wife got the impugned FIR quashed by making the statements

supporting the compromise whereas, the husband has backed out from the compromise reached, and thus, she has been put in disadvantageous position, by the husband.

15. Thus, the assurance given to the respondent-wife and this Court, was not bona fide, rather it was full of mala fide. The conduct of the husband in not honouring the statement made and demand raised to return the amount of Rs. 2,75,000/- appears to harass and humiliate the wife and show the thumb to the majesty of justice. Such a deplorable conduct, whereby the process of Court is misused, cannot be approved by the Court. Consequently, CRM-42190-2013, is allowed, the order dated 12.08.2013, of this Court, quashing the impugned FIR is recalled; CRM-M-21538-2013 is dismissed; FIR No. 43 dated 16.11.2012, registered under Sections 406, 498-A IPC, at Police Station Women, Patiala, is restored to its original position as on 12.08.2013.

16. Before parting with this order, this Court feels that it is a case, where husband Gurpreet Singh has misused the process of the law by taking advantage and obtaining favourable order from this Court. For his misconduct, this application is allowed with costs of Rs. One lac to be paid by husband Gurpreet Singh to applicant-wife, Jaswinder Kaur within three months from today.

17. The Senior Superintendent of Police Patiala/Chief Judicial Magistrate Patiala shall ensure that the proceedings of the FIR are revived to its original number and started from the stage as on the date of passing the order dated 12.08.2013. Disposed of in above terms.