

(1989) 05 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 3201-M of 1988

Harpal Singh

APPELLANT

Vs

Mukhtiar Singh

RESPONDENT

Date of Decision : 29-05-1989

Acts Referred:

Citation : (1989) 2 RCR(Criminal) 188

Hon'ble Judges : J.S.Sekhon, J

Advocate : J.S. Dhaliwal, Satinder Khanna, Advocates for appearing Parties

Judgement

J.S. Sekhon, J.

1. The husband filed this application under Section 482 of the Code of Criminal Procedure, for quashment of the criminal complaint filed by the fatherinlaw Mukhtiar Singh under Section 406 I.P.C. as well as the order dated 2nd November, 1987 of the Additional Chief Judicial Magistrate, Ludhiana for summoning him to face trial under Section 406 IPC.

2. In brief, the facts are that Smt. Manvinder Kaur daughter of Mukhtiar Singh complainant was married with Harpal Singh on 10th October, 1983 at Ludhiana. After the marriage both the spouses cohabited together in Aggar Nagar, Ludhiana. The parents of the petitioner forced the complainant to give some dowry to Harpal Singh accused, as the latter had made a condition precedent for marrying Smt. Manvinder Kaur. The husband along with his parents continued treating her on the grouse of having brought less dowry. Ultimately, the complainant party had to buy a second hand scooter bearing Registration No. DLX7301 and gave it to Harpal Singh on the understanding that he will behave properly with the daughter of the complainant. Still Harpal Singh continued torturing his wife thereafter and raised a demand for gold Kara and gold ring for himself and for his mother respectively. When the complainant failed to satisfy the unreasonable demand of Harpal Singh, the latter turned and cut Smt. Manvinder Kaur from his house in the month of July, 1984 after giving her severe beating but the matter was reconciled with the intervention of some relations and

respectables. The husband, however continued maltreating the wife and ultimately turned her out from the house in the month of March, 1985. She was then pregnant and gave birth to a female child at her parents house. Harpal Singh, however, refused to see his wife or the child unless the above referred items of dowry were given. Under these circumstances, the father of Smt. Manvinder Kaur had to file a complaint under Sections 406, 420 and 506 IPC against Harpal Singh and his parents. The trial Court vide order dated 2nd November, 1987 after recording the statement of Mukhtiar Singh complainant, Smt. Manvinder Kaur and Om Parkash, summoned all the accused to face trial for the offence under Section 406 IPC only.

3. The learned Counsel for the petitioner tried to make out a case for quashment of the criminal proceedings on the ground that only Smt. Manvinder Kaur was competent to file the complaint under the provisions of Section 198 of the Code of the Criminal Procedure. There appears to be no force in this contention as the provisions of Section 94 only bar the Court to take cognizance of matrimonial offence figuring in Chapter XX of the Indian Penal Code except at the instance of the aggrieved spouse. Thus, there is no bar for filing a complaint by the father of the wife against her husband and in laws regarding the misappropriation of her Istri Dhan.

4. The next leg of the attack of the petitioner pertains to the factum that the allegations regarding, entrustment of property being too vague, no offence under Section 406 IPC could be made out even if the entire evidence of the prosecution is taken to be true. Reliance in this regard has been placed on the judgment rendered by Single Bench of this Court in Balvinder Kumar and another v. Kashma Devi alias Shama Devi, 1988(1) Recent Criminal Reports 67 , as well as on the decision of this Court in Inderjit Singh and others v. Smt. Sushma Rani, 1988(1) Recent Criminal Reports 527 and Jasbir Kaur and others v. Kamaljit Kaur, 1988(1) Recent Criminal Reports 532 .

5. It is further maintained that the alleged dowry including the scooter cannot be said to be Istri Dhan of Smt. Manvinder Kaur as the marriage of Harpal Singh with her was a nullity because her earlier husband Manmohan Singh was still alive and she had suppressed this fact while effecting marriage with Harpal Singh.

6. The learned Counsel for the respondent, on the other hand, contends that in the face of specific allegation of the scooter having been entrusted to Harpal Singh accused by Mukhtiar Singh complainant, it cannot be said that the allegation regarding the entrustment of property was vague. He further maintained that so far as the marriage is not declared void or a nullity by any competent court, the relationship of wife and husband still subsists between the parties and it is a clear case of misappropriation of Istri Dhan.

7. The bare perusal of the complaint leaves no doubt that some articles of dowry were entrusted to Harpal Singh and he has laid down a condition precedent for getting this dowry before effecting marriage with Smt. Manvinder Kaur. The

matter does not rest here as there is specific allegation in the complaint as well as in the evidence of Mukhtiar Singh complainant and of Smt. Manvinder Kaur that scooter bearing Registration No. DLX 7301 was given to accused No. 1 i.e. Harpal Singh for satisfying his greed for dowry. Thus it cannot be said at this stage by any stretch property to Harpal Singh accused petitioner was too vague or that no case is made out for an offence under Section 40, Indian Penal Code.

8. According to the provisions of Section 5 of the Hindu Marriage Act, 1955, a marriage may be solemnized between any two Hindus if neither party has a spouse living at the time of the marriage. Barring the allegations of Harpal Singh accused in the petition, there is no specific evidence on the file in order to prove that Smt. Manvinder Kaur had married Manmohan Singh or that the said marriage was subsisting at the time of her marriage with Harpal Singh, the present petitioner. Uncertified copy of the order dated 20th November, 1981 of the Additional Senior Sub Judge, Ludhiana, appended as Annexure P1 to the petition, simply shows that the suit filed by Smt. Manvinder Kaur against Manmohan Singh was dismissed. The copy of the order does not reveal the nature of the suit between the parties. In the circumstances it cannot be said that the aforesaid suit related to a declaration that Smt. Manvinder Kaur is not the legally wedded wife of Manmohan Singh. Moreover, even if it is taken that there was no valid marriage between the parties, the same is of no consequence, because the essential ingredients of Section 406, Indian Penal Code involve the entrustment of the property to the accused and its dishonest misappropriation. In the present case, the scooter was entrusted to Harpal Singh by Mukhtiar Singh complainant as a gift or dowry in the capacity of being the husband of Smt. Manvinder Kaur. Thus, under the term of Isti Dhan of Smt. Manvinder Kaur and the conduct of the husband in refusing to part with this property would ex facie amount to an offence under Section 406, Indian Penal Code.

9. For the foregoing reasons, no case is made out for quashing the complaint or the impugned order of the learned Additional Chief Judicial Magistrate, Ludhiana summoning the petitioner to face trial under Section 406, Indian Penal Code. However, the allegations regarding entrustment to property against the parents of Harpal Singh are concerned, these are too vague to sustain such a complaint. It is stated by the learned counsel for the petitioner at the bar that proceedings against them had already been quashed. There is no justification for suo motu passing that order. Consequently, this petition fails and the same is hereby dismissed. The trial Court shall give notice to the respective counsel for the parties and dispose of this complaint expeditiously.