
(2006) 03 P&H CK 0115

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 20394-M of 2004

Kamal Kishore and Others

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 01-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, 406

Citation : (2006) 16 CriminalCC 655 : (2006) 2 RCR(Criminal) 342

Hon'ble Judges : Nirmal Yadav, J

Bench : Single Bench

Advocate : D.S. Dhillon, for the Appellant; Narinder Kapoor, AAG, Punjab, for the Respondent

Final Decision : Allowed

Judgement

Nirmal Yadav, J.—Vide this petition u/s 482 of the Code of Criminal Procedure, petitioners seek quashing of FIR No. 34 dated 9.6.2003, under Sections 498, 342, 406, 34 IPC, Police Station Thermal, Bathinda.

2. The facts in brief, are that petitioner No. 1 Kamal Kishore was married to respondent No. 2 Neetu on 13.10.1999 according to Hindu rites and ceremonies. One daughter, namely, Channu was born out of the wedlock. Initially, both of them lived happily, but later on due to differences in temperament, their relations became strained. On account of strained relations, respondent No. 2 lodged the present FIR alleging maltreatment at the hands of the petitioners. With the intervention of friends and relatives, the couple decided to sever their relation peacefully by filing a joint petition u/s 13-B of the Hindu Marriage Act for grant of divorce by mutual consent. Accordingly, both of them filed a joint petition for dissolution of marriage by mutual consent in the Court of District Judge, Bathinda on 18.8.2003. Their statements were recorded before the District Judge in which both of them admitted that all the claims between them have been settled and prayed that their marriage be dissolved by mutual

consent. At the second motion hearing on 19.2.2004, the District Judge, Bathinda accepted the petition and marriage between the parties was dissolved. Respondent No. 2 in her statement dated 19.2.2004, recorded before the District Judge, stated that both the parties have resolved to get their marriage dissolved by a decree of divorce by mutual consent and that she has received Rs. 1,33,413/- towards full and final settlement of her all claims. She further stated that she would not claim any past, present and future maintenance from Kamal Kishore. In her statement recorded on 19.8.2003 at the first motion hearing before the District Judge, respondent No. 2 stated that she would withdraw the application filed by her u/s 125 Cr. P.C. as well as the case u/s 498-A IPC registered at her instance. Respondent No. 2 had assured the petitioners that she would make herself available in the Court at the time of hearing. It is, thus, pleaded that continuance of proceedings actuated on the basis of present FIR would be an abuse of process of law and, therefore, the FIR be quashed as the parties have already settled their disputes.

3. Notice of this petition was issued to the respondents. On behalf of respondent No. 1-State, Darshan Singh, Deputy Superintendent of Police (City), Bathinda has filed the reply by way of affidavit. It is stated that challan in this case has been presented in the Court of Illaqa Magistrate and case is fixed for appearance of the accused. During investigation, it came to light that respondent No. 2 had entered into a compromise with the accused- petitioner in the Court of District Judge, Bathinda towards full and final settlement on 19.2.2004. Their marriage has been dissolved by mutual consent vide judgment and decree dated 19.2.2004.

4. As far as presence of respondent No. 2 is concerned, she was earlier represented by Shri D.D. Bansal, Advocate. However, on 5.12.2005, he withdrew his power of attorney by making a statement and consequently, notice was ordered to be issued to respondent No. 2 to appear in the Court. Despite the notice having served on respondent No. 2, she did not come present nor any one appeared on her behalf at the time of hearing of this petition.

5. From the facts and documents on record, it is not disputed that parties have entered into a compromise and settled the matrimonial dispute. The marriage of petitioner with respondent No. 2 has also been annulled by a decree of divorce vide order dated 19.2.2004. Respondent No. 2-Neetu made a categorical statement on 19.8.2003 that she would withdraw the application filed by her u/s 125 Cr. P.C. as also the case filed by her u/s 498-A IPC. In her statement dated 19.2.2004, she stated that she could not patch up her differences with the petitioner despite best efforts and that she has received Rs. 1,33,413/- towards full and final settlement. She further stated that they have resolved to get the marriage dissolved by way of decree of divorce by mutual consent and that she will not claim any past, present or future maintenance from Kamal Kishore, petitioner No. 1. In the order-Annexure P/2 of District Judge also, it has been recorded that petitioner Neetu testified that she has received Rs. 1,33,413/-

towards full and final settlement.

6. Admittedly, a settlement (compromise) was arrived at between the parties and statements to that effect were made before the District Judge, Bathinda, and in pursuance thereof, respondent No. 2 has received Rs. 1,33,413/- towards full and final settlement. In such circumstances, continuance of criminal proceedings would amount to causing unnecessary harassment to the petitioner. The conduct of respondent No. 2 in not appearing before the Court, thus, seems to be a harassing tactic against the petitioner. As such, allowing criminal proceedings to continue against the petitioner on the basis of impugned FIR, would amount to abuse of process of the Court.

7. Learned counsel for the petitioners referred to a judgment of Supreme Court in Mohd. Shamim and Others Vs. Smt. Nahid Begum and Another, , wherein, firstly, the wife had accepted Rs. 2,25,000/- towards Dower articles and Mehar and later on, objected to quashing of criminal proceedings in an application moved by the petitioners. The Apex Court observed that in view of conduct of the respondent-wife in not adhering to the settlement, criminal proceedings pending against the appellants would be an abuse of the process of the Court and consequently, the FIR was quashed.

8. In the case in hand, there is no dispute to the factum of compromise having been effected and acted upon by the parties in the Court of District Judge, Bathinda. In such circumstances, continuance of criminal proceedings against the petitioners on the basis of present FIR would be an abuse of process of law. Therefore, the petition is allowed and FIR No. 34 dated 9.6.2003, under Sections 498, 342, 406, 34 IPC, Police Station Thermal, Bathinda as well as subsequent proceedings taken thereon, are hereby quashed.

Petition allowed.