
(2009) 04 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-10100 of 2009

Kamaljit Singh and others

APPELLANT

Vs

State of Punjab and another

RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

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

Citation : (2009) 4 RCR(Criminal) 433

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Advocate : Pritam Saini, for the Appellant;

Final Decision : Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.—The present petition has been filed u/s 482 Cr.P.C. seeking quashing of complaint dated 28.5.2008 (Annexure P1) and the summoning order dated 5.8.2008 (Annexure P2) on the ground that the same are abuse of the process of law.

2. Complainant-aggrieved wife Tejinder Kaur was married with petitioner No. 1 Kamaljit Singh on 6.5.2007. She submitted a complaint to the Senior Superintendent of Police, Ropar for registration of the case. But no action was taken on the complaint. Thereafter, she was compelled to file a complaint (Annexure P1). In the complaint she led preliminary evidence and taking preliminary evidence into consideration, the trial Court had summoned the petitioners to stand trial for offence under Sections 406 & 498-A IPC.

3. Counsel for the petitioners has made three fold submissions.

4. Firstly, it has been submitted that once a complaint was submitted to the Senior Superintendent of Police, therefore, petitioners cannot be summoned. It has been further submitted that subsequently on basis of complaint filed by the aggrieved wife to the Senior Superintendent of Police, case has been registered

against petitioners No. 1 and 2 vide FIR bearing No. 114 dated 4.9.2008. The case has been registered at Police Station City Ropar under Sections 406 & 498-A IPC.

5. Counsel for the petitioners has contended that continuation of the FIR case and the complaint in pursuance of which summoning order was passed, amount to abuse of process of law.

6. To deal with this first contention, it is observed that provisions of Section 210 Cr.P.C. can always be invoked for clubbing the FIR case and the complaint case. The helpless wife could not wait in case FIR is not registered. Therefore, she has taken recourse to alternative remedy available to her. In complaint case, all the three accused have been summoned but in the FIR only two persons were found guilty. Therefore, the only option available is that both the complaint case and FIR case be clubbed u/s 210 Cr.P.C. Thus, necessary directions are issued to the Area Magistrate to club both the cases u/s 210 Cr.P.C.

7. Counsel has further contended that marriage was solemnized at Ropar. He further submitted that complainant, for a period of 15 days, had cohabited as wife with petitioner No. 1 in District Ludhiana. Therefore, offence, if any, is made out at Ludhiana and the Courts at Ludhiana have jurisdiction to try the offenders. In the present case, offence has not been committed only u/s 498-A IPC but also has been committed u/s 406 IPC.

Section 181 Cr.P.C. read as under :-

181. Place of trial in case of certain offences - (1) Any offence of being a thug, or murder committed by a thug, of dacoity, of dacoity with murder, of belonging to a gang of dacoits, or of escaping from custody, may be inquired into or tried by a court within whose local jurisdiction the offence was committed or the accused person is found.

(2) Any offence of kidnapping or abduction of a person may be inquired into or tried by, a court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained.

(3) Any offence of theft, extortion or robbery may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property which is the subject of the offence was possessed by any person committing it or by any person who received or retained such property knowing or having reason to believe it to be stolen property.

(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

(5) Any offence which includes the possession of stolen property may be inquired

into or tried by a court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person who received or retained it knowing or having reason to believe it to be stolen property.

8. A Special reference can be made to Section 181(4) Cr.P.C. It says that in case of criminal misappropriation or criminal breach of trust the offence will be made at a place where goods are required to be returned or accounted for by the accused persons.

9. The aggrieved wife is residing at Ropar. Istri dhan is to be accounted for or returned at Ropar. Since the istri dhan has not been returned and the Court has come to conclusion that offence u/s 406 IPC is made out, therefore, the Court at Ropar has jurisdiction to try the offenders.

10. Thirdly, it has been submitted that petitioner No. 1 had filed a petition u/s 9 of the Hindu Marriage Act for restitution of conjugal rights, therefore, FIR and complaint are counter-blast. Whether the FIR or the complaint are counter-blast to petition u/s 9 of the Hindu Marriage Act is a matter of evidence. It is to be proved and determined from the facts of the case, after parties to the litigation have led evidence. Therefore, this ground is not accepted for quashing of FIR.

11. Counsel for the petitioners has stated that in view of the facts and circumstances of the case, the lodging of FIR and the complaint are abuse of the process. Abuse of the process is not a word which by mere use is to be accepted by the Courts. It is to be proved by leading evidence.

12. In the present petition, no circumstances have been given to say that in the present case there is an abuse of process.

13. Counsel for the petitioners has withheld the preliminary evidence adduced in the present case on the basis of which summoning order has been passed.

14. Therefore, there is no merits in the present petition and the same is dismissed.