

(2015) 04 P&H CK 0158
In the Punjab And Haryana At Chandigarh
Case No : CRM-M No. 13019 of 2013

Kulvir Singh Kalirai

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 188, 482, 82
Information Technology Act, 2000 — Section 2
Penal Code, 1860 (IPC) — Section 4, 498-A

Citation : (2015) 04 P&H CK 0158

Hon'ble Judges : Raj Mohan Singh, J

Bench : Single Bench

Advocate : P.S. Ahluwalia, for the Appellant; Varun Sharma, A.A.G., Advocates for the Respondent

Final Decision : Allowed

Judgement

Raj Mohan Singh, J.—This petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No. 119 dated 19.12.2012 (Annexure P-1) under Section 498-A IPC registered at Police Station Sadar Banga, District SBS Nagar alongwith all subsequent proceedings arising there from.

2. Brief facts culminating in lodging aforesaid FIR are that marriage of the petitioner was solemnized with respondent No. 2 on 9.3.2005 at village Khankhana. Complainant alleged in the FIR that before the marriage, bridegroom was stated to be a computer Engineer but, in fact he is only 10+2 pass. In July 2005, bridegroom went to United States of America (for short "USA") with the complainant and on arrival there he started misbehaving with the complainant and also gave beatings. He started harassing parents of the complainant and demanded that he may be given a house. House was provided to him along with all household articles and he was also given cash to be spent on household articles. Uncle of bridegroom was instrumental about all these things. Complainant also alleged in FIR that in October 2008, petitioner became USA

citizen. Despite giving all facilities, he was not satisfied and under the threat of giving divorce, kept on demanding money. In India, the uncle and aunt of the petitioner started misbehaving with the maternal uncle of the complainant and demanded Rs. 1 crore. The matter was statedly compromised with intervention of the respectables. This prompted the husband in USA to give more beatings to complainant. Petitioner allegedly made demand that his parents be called to USA. They were called in USA. In November 2011, complainant delivered a male child and, thereafter, the husband and his family started harassing her. Despite granted Green Card, they demanded \$ 1,00,000 and also for transferring the business in the name of parents-in-law. Besides making other allegations of demand by the bridegroom, it was alleged by the complainant that the bridegroom asserted that he is having an offer of one crore from some party for performing second marriage. Therefore, if his demand is not accepted, he will accept offer of second marriage. He gave threats that the parents of the complainant will be sent back and also advanced threats that the complainant should come to India and there she will be told as to what they can do. Complainant also alleged that the bridegroom also claimed that his uncle is having links with the terrorists and accordingly threats were also advanced.

3. Allegations made in the FIR were predominantly relating to USA. Petitioner as well as respondent No. 2 are citizens of USA according to their passports Annexure P-2 and P-3.

4. Matrimonial discord took place in America and that resulted in proceedings in District Court of Johnson County, Kansas, Civil Court Department, where the Court vide order dated 12.9.2002 (Annexure P-4) restrained the petitioner as well as respondent No. 2 from bothering and harassing each other and were given joint custody of the child.

5. Mediation was also held to resolve the dispute amicably in the best interest of the child, vide order dated 3.10.2012 (Annexure P-5). In the context of mediation another order was passed on the even date i.e. on 3.10.2012 (Annexure P-6).

6. District Court of Johnson County passed the order dated 11.2.2013 in the context of child custody evaluation (Annexure P-7)

7. Vide order dated 27.8.2013 (Annexure P-8), a decree of divorce was passed by the District Court, Johnson County on the ground of incompatibility. Parenting Plan was submitted and signed by the parties in the divorce decree and the same was considered to be in the best interest of the minor. The conditions as mentioned in the decree were accepted by the parties.

8. Learned counsel for the petitioner relies upon Section 188 Cr.P.C. and submits that no prosecution against foreign nationals can be launched in India.

9. Learned State counsel contested the petition and alleged that the petitioner was declared a proclaimed offender on 6.6.2013 by Chief Judicial Magistrate,

SBS Nagar and, therefore, the petitioner is not entitled to any discretion at the hands of this Court.

10. Respondent No. 2 through her power of attorney Paramjit Kaur also filed written statement, thereby admitting the Court proceedings in USA being matter of record. However, the petition was pleaded to be without any basis and it was pleaded that the allegations pertained to the period when the couple remained in India and, therefore, major part of the events took place in India itself.

11. Before embarking upon merits of this case, it would be necessary to peruse Section 188 Cr.P.C. along with Section 4 IPC:-

"188. Offence committed outside India. When an offence is committed outside India-

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found: Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."

Section 4 IPC

[4. Extension of Code to extra-territorial offences. -The provisions of this Code apply also to any offence committed by--

[(1) any citizen of India in any place without and beyond India;

(2) any person on any ship or aircraft registered in India wherever it may be;]

[(3) any person in any place without and beyond India committing offence targeting a computer resource located in India.][Explanation.--In this section--

(a) the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Code;

(b) the expression "computer resource" shall have the meaning assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000.]"

12. Learned counsel for the petitioner argued that Indian Courts have no jurisdiction over the controversy in issue as larger part of the alleged offence was committed in USA. He relied upon Harmanpreet Singh Ahluwalia and Others Vs. State of Punjab and Others, (2009) CLT 1135 : (2009) CriLJ 3462 : (2009) 6 JT 375 : (2009) 7 SCALE 85 : (2009) 7 SCC 712 : (2009) 7 SCR 563 : (2009) AIRSCW 3976 , wherein the Court came to the rescue of the person on the ground that the larger part of the offence was committed in Canada and lodging of the FIR in Jalandhar was held to be bad and the same was quashed. On the

strength of aforesaid decision, learned counsel further argued that the High Court, while exercising powers under Section 482 Cr.P.C. can prevent misuse of process of law in order to achieve ends of justice.

13. Learned counsel for the petitioner further relied upon *Fatima Bibi Ahmed Patel v. State of Gujarat* and another 2008 (3) RCR (Crl.) 135 to contend that the Courts in India have no jurisdiction in terms of Section 4 IPC and Section 188 Cr.P.C. These provisions are not applicable because the petitioner is citizen of USA. Section 4 IPC applies to citizen of India where the act is done by the citizen in any place beyond India. Similarly Section 188 Cr.P.C. is also in respect of citizen of India where he commits the offence outside India. In such an eventuality he may be dealt with in respect of such offence as if it had been committed in India.

14. Since the petitioner is a citizen of USA and not a citizen of India, therefore provisions contained in Section 4 IPC and Section 188 Cr.P.C. are not attracted as the Indian Courts will have jurisdiction to try such an accused only when accused is citizen of India, even if the offence was committed outside India.

15. The territorial issue goes to the roots of the case. The proceedings held illegally and without jurisdiction would be nullity. The proceedings being nullity cannot sustain and will be non est. Subsequent proceedings based on such a phenomenon stand automatically vitiated and is liable to be declared non est. On this premise, learned counsel for the petitioner relied upon *State of Punjab Vs. Davinder Pal Singh Bhullar and Others etc.*, AIR 2012 SC 364 : (2012) CriLJ 1001 : (2012) 1 Crimes 44 : (2011) 14 JT 213 : (2012) 1 RCR(Criminal) 126 : (2011) 3 SCALE 394 : (2012) AIRSCW 207 : (2011) 8 Supreme 577 .

16. On the other hand, learned counsel for the respondents argued that the petitioner has already been declared a proclaimed offender and, therefore, he has to first move the Court which declared him proclaimed offender and raise objection against validity of order declaring him proclaimed offender.

17. Learned counsel for the respondents also submitted that the petitioner was not citizen of USA at the time of marriage, therefore, whether the offences alleged were or were not committed in India are the questions to be considered on the basis of evidence at the time of trial. The determination of such questions requires inquiry into facts and therefore, cannot be considered at this preliminary stage. Learned counsel further submitted that the territorial jurisdiction cannot be decided at this stage. On this premise, learned counsel for the respondents relied upon *A.V. Mohan Rao and Another Vs. M. Kishan Rao and Another*, AIR 2002 SC 2653 : (2002) 111 CompCas 390 : (2002) 4 CompLJ 160 : (2002) 3 Crimes 1 : (2002) 5 JT 180 : (2002) 5 SCALE 218 : (2002) 6 SCC 174 : (2002) 39 SCL 413 : (2002) 1 SCR 175 Supp : (2002) 2 UJ 1022 : (2002) AIRSCW 2981 : (2002) 5 Supreme 8 . Learned counsel further stated that even if the petitioner ceased to be Indian citizen, he must be tried and punished under Indian Penal Code notwithstanding his not being corporeally present in India at

the time.

18. After careful consideration of the contentions raised on behalf of both the parties, I am of the considered view that even in the FIR in question, factum of petitioner being USA citizen is specifically pleaded. All the alleged acts, harassment and alleged beatings are pleaded to have taken place in USA. Parties also invoked the jurisdiction of USA Court in terms of their matrimonial status as well as child custody evaluation. In view of this, Section 4 IPC and Section 188 Cr.P.C. have no application to the facts of the case. Fatima Bibi's case (supra) has full application in the context.

19. It is a settled principle of law that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. The legal maxim "sublato fundamento cadit opus" comes into play and applies on all force. It is like a situation when foundation of a building is removed then structure has to fall. The question of jurisdiction makes the impugned action nullity and the entire subsequent proceedings in consequence thereof would automatically fall through.

20. A.V. Mohan Rao (supra) has no application inasmuch as that the case relates to Indian citizen and in that eventuality it was held that even if the offence is committed by a citizen of India outside the country, the same is subject matter of jurisdiction of Indian Courts.

21. Learned counsel for respondent No. 2 vehemently argued that since the petitioner has already been declared a proclaimed offender, therefore, the remedy available to him is to surrender before the concerned Court and raise objection qua the validity of the proclamation under Section 82 Cr.P.C.

22. Since the issue of jurisdiction as has been discussed in Fatima Bibi's case (supra) plays pivotal role and no cognizance could have been taken by the Indian Court in terms of Section 4 IPC and Section 188 Cr.P.C. therefore, this Court is of the opinion that once basis of a proceeding is nullity, therefore all consequential acts, actions and orders would fall to the ground automatically and this principle is applicable to all the proceedings including judicial, quasi judicial and administrative. The initial proceeding itself i.e. lodging of FIR was bad in law, therefore, all consequential proceedings including the order declaring the petitioner to be proclaimed offender will be non est and have to be necessarily set aside. On the aforesaid analogy, I am squarely fortified in my view on the basis of observations made by the Hon'ble Supreme Court in Badrinath v. State of Tamil Nadu and others 2000 (4) SCT 832 and Mangal Prasad Tamoli (Dead) by Lrs. Vs. Narvedshwar Mishra (Dead) by Lrs. and Others, AIR 2005 SC 1964 : (2005) 11 JT 229 : (2005) 3 SCC 422 : (2005) AIRSCW 1287 : (2005) 2 Supreme 240 .

23. Looking to the entirety of facts and circumstances, particularly in view of the factum of culmination of matrimonial ties between the parties in USA and the arrangement qua the custody of child, I am of the view that continuation of

present criminal proceedings would be the result of abuse of process of law.

24. Accordingly, this petition is allowed. FIR No. 119 dated 19.12.2012 (Annexure P-1) under Section 498-A IPC registered at Police Station Sadar Banga, District SBS Nagar alongwith all subsequent proceedings arising there from including the order dated 6.6.2013, declaring the petitioner as proclaimed offender, are quashed.