
(2013) 11 P&H CK 0070
In the Punjab And Haryana At Chandigarh
Case No : C.R.R. No. 2302 of 2009 (O and M)

Lajwanti @ Bimla

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0070

Hon'ble Judges : R.P. Nagrath, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

R.P. Nagrath, J.—The complainant-petitioner impugns the order dated 24.7.2009 of Additional Sessions Judge in Criminal Revision No. 60

of 2009, whereby summoning order of private respondents No. 2 to 6 dated 2.7.2008, issued by learned Judicial Magistrate 1st Class, Sirsa, was

set aside. The summoning order was passed on the protest petition dated 18.08.2003 filed by the petitioner to contest cancellation report

presented by the prosecution. Complaint dated 30.7.2002 was filed by petitioner in the Court of Area Magistrate who forwarded it to the police

u/s 156(3) Cr.P.C. and FIR No. 79 dated 6.8.2002 was registered under Sections 494/420/406/467/468/471 read with Section 109 of the

Indian Penal Code (IPC). 13 accused were impleaded in the said complaint.

2. The facts of the case briefly are that the petitioner was married to Gokul Chand-accused No. 1 for about 15-16 years. A female child was born

to her from the wedlock. She was harassed and maltreated for not meeting the demand of more dowry and used to be turned out of the

matrimonial home. The petitioner used to be rehabilitated with the intervention

of Panchayats. Accused No. 2 and 3, namely; Hukam Chand and Rajjo Bai are parents of Gokul Chand; accused Nos. 4 to 7 are relatives of the husband and the other accused 9 to 13 with whom we are presently concerned, are private respondents Nos. 2 to 6. Respondent No. 4, is Parkash Kaur with whom Gokul Chand aforesaid statedly solemnized second marriage; respondents No. 2 and 3 are her parents and respondents No. 5 and 6 are the sisters of respondent No. 4 and impleaded as accused having abetted the commission of crime.

3. The crucial allegation in the FIR was that all the accused including private respondents solemnized second marriage of Gokul Chand with private respondent No. 4-Parkash Kaur on 14.01.2001 at village Koppa, Tehsil Gadarpur, District Udham Singh Nagar, Uttar Pradesh (UP) during subsistence of marriage with the petitioner. They got printed a false wedding card of second marriage describing Gokul Chand as Lekh Raj son of Gurditta Ram. In fact, Gurditta aforesaid is Mausaa i.e. husband of mother's sister of Gokul Chand. The above fact has also been certified by Vice-President of Gram Panchayat Sakeria, Tehsil Gadarpur, District Udham Singh Nagar, UP and by the President of the said Block.

4. Before filing of the complaint dated 30.07.2002, the petitioner had made a complaint to the Superintendent of Police. Panchayats of both the villages got effected a compromise dated 07.02.2001 whereunder Gokul Chand, accused No. 1 admitted that he has kept Parkash Kaur daughter of Boota Ram resident of village Koppa, District Udhampur (UP) as his concubine. Gokul Chand also agreed to deposit an amount of Rs.

1,50,000/- in the bank account of the petitioner and provide her a separate residence. It was also agreed that all the dowry articles would be returned. Apart from that the petitioner was to be supplied 30 Maunds of wheat and 5 Maunds of rice every month. She was also to be given a milch buffalo. On the basis of said compromise the petitioner started residing at her matrimonial village Mangla.

5. Gokul Chand, however, did not comply with terms and conditions of the compromise. After a few days accused Nos. 1 to 4 persuaded the complainant to withdraw the amount deposited in her account with a promise to purchase 1-1/2 acres of land in her name so that she keeps on getting lease money regularly. That amount was withdrawn by the petitioner and

paid to accused Nos. 1 to 4, but they have been avoiding to abide by the said compromise and turned her out only in wearing apparels. These accused have thus misappropriated the said amount of petitioner and committed breach of trust with regard to dowry articles. It was further stated that a male child was also born from the wedlock of Gokul Chand with respondent No. 4-Parkash Kaur about six months before registration of FIR but that fact was kept concealed from the complainant. The Panchayats on behalf of the petitioner approached the accused party for complying with the terms and conditions of compromise dated 7.2.2001 but to no effect. The accused rather threatened the petitioner with dire consequences.

6. The investigating agency presented cancellation report on the basis of affidavits dated 21.8.2002 sworn-in by the petitioner-complainant and

Gokul Chand accused No. 1. It is stated by the petitioner in the said affidavit that she has received the amount of Rs. 1,50,000/- in the presence of

the Panchayats and also agreed to file a divorce petition by mutual consent before 23.8.2002. These affidavits were also attested by witnesses

from villages of petitioner and accused No. 1. In the affidavit of Gokul Chand also reference is made to the earlier compromise dated 7.2.2001

and that the petitioner had started living with Gokul Chand. It is also stated in this affidavit of Gokul Chand that after sometime the petitioner left

the matrimonial home and was since residing with her parents for about 1-1/2 years. The petitioner was served with notice of cancellation report

but she filed protest petition dated 18.8.2003. The Magistrate took cognizance of the protest petition as a complaint case. It was stated in protest

petition that during investigation of the FIR police got signatures of the complainant-petitioner on various documents/stamp papers by threatening

her. She was told at that time that signatures were required for proper investigation but the police is stated to have connived with the other party.

7. In preliminary evidence, the petitioner appeared as C.W.-1 and examined her brothers, namely; C.W.-2 Hari Chand and C.W.-3 Jawahar Lal.

She also examined three other witnesses who had attested compromise dated 7.2.2001. They are C.W.-4 Hans Raj, C.W.-5 Surain Chand and

C.W.-6 Daulat Ram. On the strength of the above preliminary evidence, learned Magistrate found sufficient grounds for proceeding against all the

13 accused under Sections 494/109 IPC. Out of these 13 accused, 5 of them, namely; Parkash Kaur-respondent No. 4 and her family members

challenged the summoning order in Revision and the learned Additional Sessions Judge, Fast Track Court, Sirsa, allowed the revision vide order

dated 24.7.2009.

8. I have heard learned counsel for the parties and carefully gone through the record. A perusal of trial Court record would show that only two of

the accused, namely; Gokul Chand and his mother Rajo Bai have since appeared and two others who were accused Nos. 5 and 8 have since

died. Accused No. 5 was Gurditta Ram whose name appeared as father of bridegroom in the, wedding card to prove second marriage of Gokul

Chand with private respondent No. 4. The case before the trial Court was still at the stage of securing presence of remaining accused.

9. I am of the considered view that it was not appropriate for the investigating agency to present final report simply on the basis of compromise as

the FIR was registered for other serious offences under Sections 420/406/467/468/471 apart from Section 494 IPC read with Section 109 IPC.

There were allegations of preparing a false wedding card containing fake name which required thorough investigation.

10. Further Section 494 IPC can be compounding only with leave of the Court as provided in Sub-section 2 of Section 320 Cr.P.C. it is quite

strange to note that the FIR was registered on 6.8.2002 and the cancellation report was prepared on 3.9.2002 by just relying upon the affidavits of

complainant-petitioner and Gokul Chand accused No. 1. The Magistrate rather should have at once interfered to reject the cancellation report as

the complainant presented a protest petition. The appropriate and legal course was to direct further investigation, instead of proceeding to treat the

protest petition as a complaint case. Unless the cancellation report is based on the finding that story mentioned in the FIR is false, the appropriate

remedy to seek quashing based on compromise in respect of the offences which were non-compoundable lies in approaching this Court u/s 482

Cr.P.C. and not to proceed in the manner adopted in this case.

11. However, the Magistrate having proceeded to treat the protest petition as a complaint, and recorded preliminary evidence, the legality of the

revisional order against summoning has now to be determined. Despite enough

evidence led at the preliminary stage, learned revisional Court has formed an opinion which demolishes the whole story, even against summoning of remaining accused who have not challenged the summoning order, despite two of the accused, namely; Rajjo Bai and Gokul Chand appearing in the trial Court since 5.11.2008.

12. On the basis of preliminary evidence, the remaining accused including husband of the petitioner and his parents have been summoned by the learned Magistrate u/s 494/109 IPC, finding sufficient grounds to proceed against them that Gokul Chand accused No. 1 solemnized second marriage with private respondent No. 4. It was, thus, not possible for Revisional Court to say that there was no evidence to prove the second marriage of Gokul Chand with respondent No. 4, the daughter of private respondents No. 2 and 3.

13. According to the petitioner-complainant, second marriage was solemnized with respondent No. 4 on 14.01.2001. Accused No. 1, in the compromise dated 07.02.2001 admitted that respondent No. 4 was residing with him as his concubine. In the said compromise it was stated that petitioner does not have objection if respondent No. 4, namely; Parkash Kaur daughter of Boota Ram resident of village Koppa district Udhampur (UP) continues residing with accused No. 1 as a concubine. It was also admitted that respondent No. 4 was residing with accused No. 1, for about one month. Accused Gokul Chand has even admitted the compromise dated 07.02.2001 in his subsequent affidavit dated 21.08.2002 on the basis of which cancellation report was filed. u/s 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other persons as well as against the person who makes such confession.

14. The petitioner-complainant in her statement as C.W.-1 in the preliminary evidence testified that the said marriage was solemnized on the basis of wedding card photostat copy of which was referred as Mark "B" during her examination. The wedding card was later on marked as PW-6/D during examination of Daulat Ram C.W.-6 who testified that documents Ex. PW-6/A to PW-6/E were obtained by them when Panchayat was

held to discuss the compromise. The wedding card of marriage of respondent No. 4 is invitation on behalf of Boota Ram and his wife, namely;

respondents No. 2 and 3. The particulars of respondent No. 4 mentioned in the wedding card are exactly the same as given in the compromise

dated 07.02.2001, which could not be questioned at this stage. How, therefore, learned Revisional Court could hold that there is no sufficient

evidence to proceed against the private respondents especially when it was admitted by accused No. 1 that respondent No. 4 is being kept by him

as his concubine.

15. In the certificate Ex. PW-6/B issued by the President of Gram Panchayat, Village Scaniya it is mentioned that this marriage was solemnized on

14.01.2001 between the daughter of Boota Ram respondent No. 2 and Lekh Raj son of Gurditta Ram as per wedding card but in fact the

marriage was solemnized with Gokul Ram accused No. 1, whom the Vice-President Block Gadarpur District Udham Singh Nagar (U.P.)

personally knows.

16. In the complaint dated 30.7.2002 originally filed, which was forwarded u/s 156(3) Cr.P.C. as well as in the protest petition, names of both the

witnesses, namely; President of Gram Panchayat and Vice President, who have issued certificates of performance of marriage have been cited in

the list of witnesses and also proposed to be examined. C.W.-4 and C.W.-5 have also stated about accused No. 1 having admitted before them

the factum of performing second marriage with respondent No. 4.

17. At the stage of issuing process in a complaint case, the Magistrate is only to be satisfied whether there are sufficient grounds for proceeding

against the accused and not that the evidence should be sufficient to convict the accused or even prima facie case for framing of the charge.

18. Hon^{ble} Supreme court held in Nupur Talwar Vs. Central Bureau of Investigation and Another, as under:--

All along having made a reference to the words ""there is sufficient ground to proceed"" it has been held by this Court, that for the purpose of issuing

process, all that the concerned Court has to determine is, whether the material placed before it is sufficient for proceeding against the accused"".

The observations recorded by this Court extracted above, further enunciate, that the term ""sufficient to proceed"" is different and distinct from the

term "sufficient to prove and establish guilt". Having taken into consideration the factual position based on the statements recorded u/s 161 of Code

of Criminal Procedure (as also, u/s 164 thereof), and the documents appended to the charge sheet, as also, the other materials available on the file;

I have no doubt whatsoever in my mind, that the Magistrate was fully justified in issuing process, since the aforesaid statements, documents and

materials, were most certainly sufficient to proceed against the accused. Therefore, the order issuing process u/s 204 passed by the Magistrate on

9.2.2011 cannot be faulted on the ground, that it had been passed in violation of the provisions of Code of Criminal Procedure, or in violation of

the declared position of law on the subject. Despite my aforesaid conclusion, I reiterate, that the material taken into consideration by the

Magistrate will have to be substituted by cogent evidence recorded during the trial; before any inferences, assumptions, views and deductions

drawn by the Magistrate, can be made the basis for implicating the accused. As the matter proceeds to the next stage, all the earlier conclusions

will stand effaced, and will have to be redrawn, in accordance with law.

19. In view of the above discussion, the impugned order passed by the Revisional Court is found totally perverse and not supported from record

available with the trial Court qua private respondents No. 2 to 4. To this extent the order, therefore, deserves to be set aside.

20. So far as respondents No. 5 and 6 are concerned, they are sisters of respondent No. 4. This Court would not like to set aside the order of

Revisional Court qua them simply because they being sisters of respondent No. 4 may have participated in the family function organized by their

parents.

21. In view of the foregoing reasons, the petition is partly allowed, setting aside the order of Revisional Court dated 24.07.2009 so far as it

proceeds to quash the summoning order issued against respondents No. 2 to 4. But the instant petition against respondents No. 5 and 6 is

dismissed. The petitioner and respondent Nos. 2 to 4 parties are directed to appear before the learned trial Court on 28.11.2013 and the trial

Court would proceed further in accordance with law. The record of trial Court and Revisional Court be returned forthwith.