
(2016) 03 P&H CK 0090

In the Punjab And Haryana At Chandigarh

Case No : Crl. Misc. Nos. M-34045 and M-6326 of 2013 (O&M)

Lakhwinder Kaur and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, Section 482
Penal Code, 1860 (IPC) — Section 406, Section 498-A

Citation : (2016) 03 P&H CK 0090

Hon'ble Judges : Anita Chaudhry, J.

Bench : Single Bench

Advocate : Ritesh Pandey, Advocate, for the Appellant; Harsimrat Rai, AAG, for the Respondent

Final Decision : Allowed

Judgement

Anita Chaudhry, J.—1. These petitions have been filed by the married sisters and their husbands and are seeking quashing of the complaint filed by respondent No. 2 under Sections 498-A and 406 IPC and all the subsequent proceedings including the summoning order.

2. In 2010, Jivan Bala @ Jyoti filed a complaint against her husband, in laws, sisters-in-laws and their husbands. She was married to Balwinder Singh in 2005. Allegations were levelled that the complainant's parents spent Rs. 3,00,000/- on the marriage, Istridhan and dowry articles were given which were not returned. It was pleaded that the dowry articles were entrusted to the accused at Ludhiana and there was an assurance that it would be returned after marriage. In para 5 of the complaint the list of articles given are i.e. press, umbrella, kitchen set, wrist watches, 10 gents towels, trunk, brief case, 101 utensils, sweaters, beddings, pillows etc. to name a few. It was pleaded that the articles were entrusted and were not returned. It was her case that the accused taunted her on one pretext or the other. They taunted her for not bringing TV and Motor Cycle. She had alleged maltreatment. The complainant told her in-laws that her

parents were poor and they could not fulfill their demands. A child was born in January, 2006. It was pleaded that the behaviour did not change even after that. The father of the complainant paid Rs. 25,000/- to the accused, still it made no change. The allegations were that on 12.08.2006 the accused snatched the child and turned her out. The parents of the complainant convened a Panchayat but it did not yield any result and the accused refused to maintain the complainant.

3. Preliminary evidence was led and the trial court summoned all the accused.

4. Petitioners are seeking quashing of the complaint and the subsequent proceedings arising qua them.

5. Pursuant to the notice, respondents have put in appearance.

6. The complainant filed her reply and had taken the objection that the petitioners had approached the court without exhausting the remedies and there was an alternative remedy. It was pleaded that specific allegations have been levelled against all the accused and they had misappropriated and converted the istridhan to their own personal use and had refused to return the dowry articles despite demand.

7. The submission on behalf of the petitioners was that no specific role was attributed to the petitioners and the allegations were vague and the complaint and the subsequent proceeding was an abuse of the process of law. It was urged that there was a tendency to rope in all the relations in matrimonial disputes and the proceedings qua the petitioners were liable to be quashed. It was urged that Hon"ble Apex Court in the case of Dhariwal Tobacco Products Ltd. and others Vs. State of Maharashtra and another, 2009 (1) SCC (Cri) 806 had held that the petition under Section 482 Cr.P.C. cannot be dismissed only on the ground that remedy of revision under Section 397 of the Cr.P.C. was available and merits of the case have to be seen. Reliance was placed on Divya alias Babli and others versus State of Haryana and another, , 2006(4) RCR (Criminal) 322; Chandralekha and others versus State of Rajasthan and another; Sushil Kumar Sharma versus Union of India and others and unreported judgment dated 29.09.2015 of this court passed in CRM No. M-1991 of 2013 titled as Sukhdeep Kaur & another versus State of Punjab & another.

8. On the other hand, the submissions was that in a later judgment the Apex Court in Mohit alias Sonu and another versus State of U.P. and another, , 2013(3) RCR (Criminal) 673, had held that where specific remedy has been provided by way of appeal or revision, then the inherent power under Section 482 Cr.P.C. cannot and should not be resorted to. It was urged that inherent power can be exercised when there is no remedy provided and the law had been settled by the Apex Court in Padam Sen & another versus State of Uttar Pradesh, , AIR 1961 SC 218.

9. According to the petitioner there is no prosecution but persecution. The submission mainly was that the entire family has been roped in mainly on vague

allegations which are general in nature and the complaint has been made after five years of the marriage and the sisters were married long ago.

10. It is necessary to notice some of the judgments rendered on the issue. In *Divya alias Babli & ors. v. State of Haryana & anr.*, 2006(4) RCR (Criminal) 322, this court observed that women were abusing the beneficial provision of Section 498-A IPC and a tendency had developed for roping all the relations in dowry cases and the proceedings qua the petitioners, who were the sisters-in-law, were liable to be quashed. The relevant extract from the judgment reads as under:-

"20. I have been(sick) the complaint very minutely once again. Although either side has not placed on record the challan for its perusal but in my considered view the prosecution should go by what is alleged in the basic complaint (Annexure P-1). It has come on record that the complainant is M.A. pass and her husband Sanjay (non-petitioner) is employed in the Electricity Supply Board, New Delhi and was earning about Rs. 10,000/- per month. A bare perusal of the complaint indicates that it has been drafted with certain oblique reasons so that all the family members of in-laws of the complainant are taken in. Rajbir, who is maternal uncle's (Mama's) son of Sanjay Kumar (husband) is also not spared. Daya Kishan, a member Panchayat is also implicated in this case with the allegation that the complainant was being harassed at the behest of aforesaid persons (Rajbir and Daya Kishan). In para 2 of the complaint it is stated that several dowry articles including Istridhan was given to the respondents exclusively as well as jointly. I am surprised as to how Rajbir and Daya Kishan petitioners can be said to have any nexus with the entrustment of dowry articles. Similarly, the other two petitioners, namely, Babli who is also known as Divya (petitioner No. 1) and Meenakshi who is also known as Soni alias Manisha have been arrayed as accused with the general allegations of demand of dowry, entrustment of dowry articles and the harassment at their hands. Divya @ Babli petitioner is a married sister-in-law (real sister of husband) who was married way back in 1986 and is residing at a different place. She cannot even be remotely connected with both the offences as alleged viz. 498-A/406 Indian Penal Code. Meenakshi @ Soni @ Manisha (petitioner No. 2) is unmarried sister-in-law. Mr. Saini states that she is still unmarried as the parents have not arranged her marriage on account of the pendency of the criminal proceedings against her. In my considered view, her involvement in the instant case is an outcome of usual hatred in the mind of the complainant side after the matrimonial discord. This rather goes to strengthen my observation that a tendency has developed for roping in all the relations in dowry cases.

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22. In *Rajinder Mohan Kashyap's case Rajinder Mohan Kashyap v. Om Parkash Sharma*, 2005(1) RCR (Criminal) 274 (supra) relied upon by Mr. Saini, this Court while quashing the proceedings qua some of the family members of in-laws of the wife has also observed that it has become a tendency in matrimonial disputes to implicate all the family members, even some time the distant

relations, on the vague allegations. In the said judgment this Court has relied upon a judgment of Hon''ble Supreme Court rendered in M/s. Pepsi Foods Ltd. v. Special Judicial Magistrate, , 1997(4) RCR(Crl.) 761 (SC) in which their Lordships have observed as under :-

".... Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused."

22. Another judgment rendered in Shinder Pal @ Kakke's case (supra) relied by Mr. Saini, this Court while relying upon a judgment of Apex Court rendered in Kans Raj v. State of Punjab and others, , 2000(2) RCR(Crl.) 695 (SC) : AIR 2000 Supreme Court 2324 wherein their Lordships have observed that a tendency has developed for roping in all the relations in dowry cases which ultimately weakens the case of the prosecution even against the real accused.

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25. Taking into consideration the totality of facts and circumstances of the instant case and following the rationale of the judgment rendered in Sushil Kumar Sharma's case (supra) Sushil Kumar Sharma v. Union of India & ors. , 2005(3) RCR (Criminal) 745, in my considered view, the instant petition qua petitioners Divya @ Babli, Ms. Meenakshi, Rajbir Singh and Daya Kishan (Petitioner Nos. 1 to 4) deserves to be allowed. Ordered accordingly.

11. In Manjit Kaur v. State of Punjab & ors. CRM-M-38990 of 2007 rendered on 10.10.2014, this Court while observing that it is unheard that articles, as mentioned in the FIR, are given to unmarried sister-in-law, quashed the FIR. The relevant observations of this Court read as under:-

"Learned counsel for the petitioner has argued that in view of the latest law in Hardeep Singh v. State of Punjab and another, , 2014 (3) SCC 92, even on the basis of examination-in-chief, the additional accused can be summoned. I am of the view that the Court must also be satisfied that there are sufficient grounds to proceed against the additional accused. List of the articles entrusted to Manjit Kaur and Harwinder Kaur, reproduced above, is completely absurd. It is unheard that TV is given to the unmarried sister-in-law along with four bangles and fridge. The list of articles allegedly entrusted to Harwinder Kaur @ Rano, married sister-in-law of the complainant shows that two watches were given. Then 4 tolas of gold set is alleged to have been given along with 251 steel utensils. I am of the view that wild allegations have been leveled and the same cannot be believed. During investigation, the police found that no case is made out against

Manjit Kaur and Harwinder Kaur. I am of the view that the conclusion drawn by the police is absolutely correct. Even a plain reading of the FIR shows that wild allegations were leveled without any basis and entire family of the husband was roped in, including married and un-married sisters-in-law."

12. Similarly, in the case of Anguri Devi etc. v. State of Punjab etc. , 2011(2) RCR (Criminal) 431, this Court has quashed the FIR on the ground that a tendency has developed for roping in all the relatives in dowry cases in order to browbeat and pressurize the immediate family of the husband.

13. This Court in Divya alias Babli and others v. State of Haryana and another reported as , 2006 (4) RCR (Criminal) 322, while relying on the judgement of the Apex Court rendered in the case of Kans Raj v. State of Punjab and others reported as , 2000(2) RCR (Crl.) 695 held as under:-

"22. Another judgement rendered in Shinder Pal @ Kakke's case Shinder Pal @ Kakke vs. State of Haryana, , 2004 (2) R.C.R. (Criminal) 398 (supra) relied by Mr. Saini, this Court while relying upon a judgement of Apex Court rendered in Kans Raj v. State of Punjab and others, , AIR 2000 Supreme Court 2324 wherein their Lordships have observed that a tendency has developed for roping in all the relations in dowry cases which ultimately weakens the case of the prosecution even against the real accused.

23. My view is also fortified by the latest judgment of Hon''ble Supreme Court rendered in Ramesh Kumar and others vs. State of Tamil Nadu, 2005 (2) R.C.R. (Criminal) 68 in which their Lordships while quashing the proceeding against sister-in-law who was staying at a different place observed that there were bald allegations to rope in as many relations of the husband.

14. The Apex Court in Sushil Kumar Sharma vs. Union of India and others, , 2005 (3) R.C.R.(Criminal) 745 where the question of striking down of Section 498-A IPC was raised, their Lordships observed that in such type of cases the "action" and not the "section" may be vulnerable and the Court by upholding the provisions of law may still set aside the action, order or decision and grant appropriate relief to the persons aggrieved. Their Lordships observed as under:-

"The object of the provision is prevention of the dowry menace. But as he has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy (ignominy(sick)) suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the

existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not an assassin's weapon. If cry of "wolf" is made too often as a prank, assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any preconceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the Courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the Courts is that of watch dog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally indisputable that in many cases no direct evidence is available and the Courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view."

12. Lately, a tendency has developed for roping in all the relations in dowry cases in order to browbeat and pressurize the immediate family of the husband. Accordingly, sometimes inflated and exaggerated allegations are made. In the present case, the petitioners are the relatives who are admittedly residing separately. No specific allegation is alleged. The allegation, if at all, do not satisfy the definition of cruelty or misappropriation. No offence under Section 406 or 498-A is made out.

15. This Court in Anita & ors. v. State of Punjab , 2003(4) RCR (Criminal) 313, while observing that it is unbelievable that the unmarried sisters and unmarried brother of the husband would be entrusted with any article of dowry separately quashed of the FIR under Section 498-A/406 IPC qua them, held as under:-

"11. The allegations in my view qua the present petitioners are vague in nature and they have no concern with the demand of dowry or cruelty at all. There is a tendency to involve all the relatives of the husband when the relations between the husband and the wife become strained. It is not believable that the unmarried sisters or unmarried brother of the husband would be entrusted with any article of dowry separately. It appears to me that the complainant has knitted a net wider in order to involve everybody in her in-laws."

16. The facts of the case are required to be analyzed in view of the legal position enumerated above.

17. In the instant case there is no dispute that petitioners are residing separately. Petitioners Lakhwinder Kaur and Jaswinder Kaur are married sisters-

in-law, while petitioners-Gurmail Singh and Som Nath are their husbands. Petitioner Daljeet Kaur is also a married sister-in-law of the complainant. As stated in the complaint, petitioner-Daljeet Kaur was entrusted with one ring, six set double bed sheets, one mixi, one dinner set, two lemon sets; petitioner-Lakhwinder Kaur was entrusted with a Iron, table, umbrella, kitchen set, ladies wrist watch, ten gents towels; petitioner-Gurmail Singh was handed one gold ring, one gents suit; petitioner-Jaswinder Kaur was entrusted with one lemon set, three bowls, silver ornaments, one trunk, one brief case, one fan, 101 utensils and petitioner-Som Nath was entrusted with one gold ring, one gents suit and 2 pair of shoes. It cannot appeal to prudence that the petitioners were individually entrusted with the aforesaid articles. It is the allegation that the aforesaid articles were entrusted to the petitioners on the understanding that it would be handed back to the complainant on reaching the matrimonial home.

18. The marriage took place in the year 2005 and the complainant was stated to be turned out from house on 12.05.2006. Nothing has been shown that during the period interregnum the complainant ever raised any demand. Admittedly, the petitioners are residing separately and it cannot be believed that they had usurped the same and converted it for their own use. Even otherwise, the other household articles mentioned in the complaint were being used by her and the family and it cannot be believed that they were entrusted to the petitioners. That apart, the customary gifts given to the in-laws do not fall within the definition of dowry.

19. Coming to the offence under Section 498-A IPC, from a perusal of complaint it is abundantly clear that there are no specific allegations against the petitioners of harassment. No date or time was mentioned as to when she had been harassed or maltreated by the petitioners. No specific instance was given. There are general and wild references that after the marriage, the accused taunted that she had not brought Motor-cycle, cash of Rs. 50,000/-, colour television and refrigerator. The allegations against the petitioners are vague, omnibus and general in nature and appear to have been made out of frustration just to widen the net. The petitioners are residing separately and they cannot be termed as beneficiaries of the said demand. It cannot be forgotten that there is a tendency to rope in the relatives of the husband in a matrimonial dispute. In the considered opinion of this Court, by mere conjectures and implications, the petitioners, who are residing separately, cannot be said to be involved for the offence of demand or misappropriation of dowry articles.

20. The complainant had relied upon Mohit's case (supra). There is no dispute to the proposition of law laid there, but at the same time, no fetters can be put on the powers of the Court from exercising powers under Section 482 Cr.P.C. once the Court finds that the proceedings against the petitioners are smeared with malafides then continuation thereof would be an abuse of the process of the Court. Only because a revision petition is maintainable, the same by itself, would not constitute a bar for entertaining a petition under Section 482 Cr.P.C.

Summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course. Therefore Mohit's case (supra) is of no help to the respondent.

21. In the considered opinion of this Court, the allegations made in the complaint are absurd and improbable and warrants interference with an object to meet the ends of justice and prevent abuse of the process of the Court.

22. In view of the discussion made above, the instant petitions are allowed. The impugned complaint and consequent proceedings taken therein, including the summoning order against all the petitioners are quashed.