

(2002) 02 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 27628-M of 2000

Mrs. Anita

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 19-02-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 498A

Citation : (2002) 2 CriminalCC 609 : (2002) 2 RCR(Criminal) 822

Hon'ble Judges : R.C. Kathuria, J

Bench : Single Bench

Advocate : D.S. Pheruman, for the Appellant; B.S. Dhaliwal, DAG, Punjab, for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Kathuria, J.—Smt.Anita, petitioner seeks quashing of proceedings arising out of FIR No.3 dated 8.1.1997, registered under Sections 498-A, 506 and 406 of the Indian Penal Code with Police Station, City Phagwara.

2. Rahul was married to Renu, respondent No.2 on 7.5.1994. As the marriage went into rough weather, Rahul filed petition u/s 9 of the Hindu Marriage Act (hereinafter referred to as "the Act") against his wife Renu on 10.12.1996. Renu in turn lodged First Information Report referred to above against Rahul and six mother persons including the petitioner. She also filed petition u/s 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") in the Court at Phagwara on 10.2.1997. Later the parties with the intervention of relations compromised and it was decided that the case be withdrawn and a joint petition for divorce u/s 13-B of the Act was filed. Divorce was granted on 2.2.1998. Thereafter, the petitioner along with other accused sought quashing of the proceedings pending in the Court of Judicial Magistrate, Ist Class, Phagwara on the basis of First Information Report lodged by Renu. It was stated in the petition that the petitioner had given power of attorney for quashing of the petition but her name could not be included in the main petition bearing Criminal

Misc.No.9167-M of 1998 due to inadvertent mistake and for that reason proceedings qua her could not be quashed. It was also stated in the petition that Anita is the married sister of Rahul. It has also been stated that the petitioner had earlier filed a petition for quashing of the FIR vide Criminal Misc.No.35040-M of 1998 but as respondent No.2 could not be served, as her whereabouts were not known, the petition was withdrawn with liberty to file a fresh petition after receipt of correct address. Subsequently, when respondent No.2 started residing in her parents house, at the address mentioned in the petition, the present petition was filed.

3. On notice to the respondent, Ranjit Singh, Deputy Superintendent of Police, Sub Division, Phagwara has filed reply wherein the stand taken on behalf of the petitioner has been denied for want of knowledge.

4. I have heard Learned Counsel for the parties.

5. During the course of arguments, primarily reliance was placed on behalf of the petitioner on the order dated 18.8.1998 passed in Criminal Misc.No.9167-M of 1998, which is as under:-

"By means of this petition filed u/s 482 of the Code of Criminal Procedure, the petitioners Rahul, Pardeep Kumar, Kailash Rani, Roshan Lal and Sonia pray for quashing of criminal proceedings pending in the Court of Sh.S.K.Aggarwal, Sub Divisional Judicial Magistrate, Phagwara, arising out of F.I.R.No.3 dated 8.1.1997 registered under Sections 498-A, 506, 406 of the Indian Penal Code, Police Station City Phagwara, lodged by respondent No.1 Renu daughter of Ravinder Kumar Bhalla.

Sh. Yogesh Goel, Advocate, represent respondent No.2 and states that the matter has since been compromised and the marriage has been dissolved on a joint petition filed by respondent No.2 Renu and husband Rahul u/s 13-B of the Hindu Marriage Act, vide copy of judgment Annexure P-5 dated 2.2.1998 passed by learned Additional District Judge, Amritsar in H.M.A. Case No.5 of 1996/98. The Criminal Proceedings as also the impugned FIR deserves to be quashed qua the petitioner. The petition is accordingly allowed and the impugned FIR No.3 dated 8.1.1997 registered u/s 498-A, 506, 406 of the Indian Penal Code, Police Station City, Phagwara and consequential proceedings flowing therefrom pending in the Court of Sh.S.K.Aggarwal, S.D.J.M., Phagwara, are quashed qua the petitioner."

6. It is manifest from the above order that the proceedings were only quashed qua the petitioners and apparently Anita was not a party to the said petition.

7. The very foundation for seeking quashing of the proceedings as laid down in the petition is that due to inadvertence, counsel for the petitioners in Cr.Misc.No.9167-M of 1998 could not include the name of the petitioner in that petition. No material to support this stand has been placed on record. Even otherwise, in my view, this can hardly be a ground to quash the proceedings. The

very basis of the petition as spelled out was the compromise arrived at between the parties. If it is factually so, the petitioner could have annexed the compromise arrived at between the petitioner and Renu apart from the other accused to which reference was made during the course of arguments or the same could have been placed on record.

8. Moreover, it cannot be ignored that offence u/s 498-A, I.P.C. as such is not compoundable in view of the principles laid down by the Supreme Court in Ram Lal and Another Vs. State of Jammu and Kashmir, and Surendra Nath Mohanty and Anr Vs. State of Orissa, wherein it has been laid down that an offence declared to be non-compoundable by law cannot be compounded at all even with the permission of the Court. That being the position, prayer for quashing of the FIR in question on the ground that compromise had been arrived at between the petitioner and respondent No.2 cannot be allowed in view of the mandate of law laid in the above mentioned cases.

9. Consequently, I find no merit in the petition and the same is accordingly dismissed.