
(2012) 03 P&H CK 0323
In the Punjab And Haryana At Chandigarh
Case No : CRM No. M-18108 of 2011

Naveen Kumar and Others	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 164, 482
Divorce Act, 1869 — Section 15, 57
Penal Code, 1860 (IPC) — Section 363, 366A, 506
Prohibition of Child Marriage Act, 2006 — Section 10, 11, 9

Citation : (2012) 03 P&H CK 0323

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mehinder Singh Sullar, J.—The conspectus of the facts, culminating in the commencement, relevant for the limited purpose of deciding the core controversy, involved in the instant petition and oozing out, from the record, is that, Poonam (respondent No. 3) daughter of complainant Ved Parkash respondent No. 2 (for brevity "the complainant") was studying in ITI Panipat and was residing in the hostel. On 16.4.2011, she came to her house at Hisar. On 18.4.2011, she left her parental house by pretending that she was going to Panipat, but she did not reach her hostel at Panipat. On inquiry (telephonically), it revealed that she has gone to Delhi with the sister of Naveen Kumar son of Bhim Sen (petitioner No. 1). On the basis of suspicion, the complainant reported the matter to the police that petitioner No. 1 Naveen Kumar, caste Chamar, his brother Ajay Kumar (petitioner No. 3) and other relatives, have full role in kidnapping his daughter. In the background of these allegations and in the wake of complaint of the complainant, the present case was registered against the petitioners-accused, vide FIR, bearing No. 302 dated 20.4.2011 (Annexure P1), on accusation of having committed the offences punishable under Sections 363,

366-A & 506 IPC by the police of Police Station City Hisar in the manner depicted hereinabove. The petitioners-accused did not feel satisfied with the initiation of criminal prosecution against them and preferred the instant petition, to quash the impugned FIR (Annexure P1) and all other subsequent proceedings arising therefrom, invoking the provisions of Section 482 Cr.PC, inter-alia pleading that petitioner No. 1 hails from the Harijan community (scheduled caste), whereas Poonam (respondent No. 3), daughter of the complainant, hails from the Kumhar community (backward class). She had fallen in love with Naveen Kumar and wanted to marry him, but the complainant and his other family members objected to their marriage. He wanted to marry his daughter to some other boy and when she came to know, she refused to marry with him. According to the petitioners, she telephonically called Naveen Kumar and narrated him the tale of her woe. Thereafter, they decided and performed their marriage on 14.4.2011, according to Hindu rites and ceremonies. After the solemnization of the inter-caste love marriage, they started residing together as husband and wife. However, the complainant asked them to hand over his daughter, otherwise, he threatened to implicate the petitioners in some false case. Subsequently, in order to take revenge, the complainant was stated to have lodged a false criminal case against the petitioners by introducing a concocted version.

2. Levelling a variety of allegations and narrating the sequence of events, in all, the petitioners-accused claimed that no indicated offences whatsoever are made out against them and the criminal prosecution deserves to be quashed, in view of law laid down by the Delhi High Court in case Ravi Kumar v. State (Delhi) 2006(1) RCR (Criminal) 41 (DB). On the strength of aforesaid grounds, the petitioners sought to quash the impugned FIR (Annexure P1) and all other consequent proceedings arising thereto as described hereinbefore.

3. Although the State of Haryana filed the affidavit of Jagbir Singh, DSP that he inquired the matter and found that Naveen Kumar (petitioner No. 1) and Poonam (respondent No. 3) are living together under one roof as husband and wife after performing their marriage, she is being kept nicely by her in-laws, she has no complaint against any member of her in-laws and her father had lodged a false case against the petitioners. However, the complainant-respondent No. 2 refuted the prayer of petitioners and filed his separate reply, inter-alia taking certain preliminary objections of, maintainability of the petition, concealment of facts, cause of action and locus standi of petitioners. According to the complainant that his daughter Poonam was minor and the marriage certificates (Annexures R1/1 & R2/2) produced by the couple were false. The petitioners were stated to have also violated the provisions of Sections 9 to 11 of the Prohibition of Child Marriage Act, 2006 (hereinafter to be referred as "the Act"). The factum of marriage of petitioner No. 1 with his daughter (respondent No. 3) is admitted by him, but it was claimed that the same is void. The petitioners are liable to be punished under the Act.

4. Instead of reproducing the contents of the reply of complainant in its entirety

and in order to avoid the repetition of facts, suffice it to say that he has reiterated the allegations contained in the FIR (Annexure P1) and pleaded that since the petitioners have committed the indicated offences, so, no ground for quashing the impugned FIR (Annexure P1) is made out. However, it will not be out place to mention here that the complainant has stoutly denied all other allegations contained in the main petition and prayed for its dismissal.

5. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, the present petition deserves to be accepted in this context.

6. Ex facie the argument of learned counsel for the complainant that as his daughter Poonam was minor at the time of marriage, therefore, the petitioners-accused have committed the offences punishable under Sections 363, 366-A, 506 IPC and Sections 9 to 11 of the Act, is not only devoid of merit but misconceived as well.

7. As is evident from the record, that Poonam (respondent No. 3) had herself voluntarily left the parental house and performed the inter-caste love marriage with Naveen Kumar petitioner No. 1 with her free will, without any kind of pressure and against the wishes of the complainant. After the solemnization of the marriage and apprehending danger to their lives and liberty, they filed a joint protection petition, bearing No. 12767 of 2010 and the State of Haryana was directed to provide the necessary protection, so that no harm is caused to them by this Court, by means of order dated 3.5.2011 (Annexure P2).

8. Not only that, in pursuance of order dated 4.7.2011 of this Court, Jagbir Singh, DSP conducted the inquiry and filed his affidavit, which, in substance, is as under:

That in view of the above said directions of this Hon''ble Court, the deponent conducted inquiry into the matter and visited the house of the petitioners No. 1 to 3 at their given address, where petitioner No. 1 and respondent No. 3 alongwith other family members were found present at their house. Petitioner No. 1 and respondent No. 3 got recorded their statements that they are living together under one roof as husband and wife after marriage performed by them. The respondent No. 3 also stated that she is being kept by her in-law very nicely and she has no complaint against any member of her in-laws. She has also stated that her father has got registered a false case against her husband and other family members. Both of them stated that they have filed CrI. Misc.No. 18108 of 2011 in the Hon''ble High Court for quashing of the said FIR.

9. Sequelly, it is clear from the status report dated 11.1.2012 filed by DSP Dinesh Kumar (para 6) that on 5.6.2011 Poonam made the following statement u/s 164 Cr.PC before the Magistrate :

I am doing course in Electronics in Pal Singh RBTI. I have performed marriage

with Naveen on 15th April at my own will and he has not abducted me and I went with him at my own. No action may be taken against him. I love him and now he is my husband. I am to go to his home. His parents are also agreed with this marriage.

In para 11 of the status report, it was reiterated that at present, Naveen Kumar and Poonam are residing together as husband and wife in her matrimonial home.

10. Meaning thereby, if the crux of the indicated facts and material on record, as discussed hereinabove, are put together and are perused, then, to me, the conclusion is irresistible that Poonam left the parental house voluntarily and claiming herself to be major, she solemnized the inter-caste love marriage with petitioner No. 1 Naveen Kumar with her free will and without any kind of pressure. It is not a matter of dispute that they are now residing happily as husband and wife in the matrimonial home.

11. Assuming for the sake of argument (though not admitted) that if Poonam was minor at the time of marriage, as urged on behalf of complainant and since she voluntarily left her parental house and performed the inter-caste love marriage with petitioner No. 1 Naveen Kumar with her free will, consent and without any kind of pressure, even then, no indicated offences are made out against the petitioners and at the most, their marriage is avoidable at her instance. The Hon'ble Supreme Court in case Smt. Lila Gupta v. Laxmi Narain and Others AIR 1978 Supreme Court 1351 held as under:-

A marriage contracted in contravention of or violation of the proviso to S.15 is not void but merely invalid not affecting the core of marriage and the parties are subject to a binding tie of wedlock flowing from the marriage. Even though the proviso is couched in a language prohibiting a certain thing being done, that by itself is not sufficient to treat the marriage contracted in contravention of it as void. A mere glance at S.15 of the Act and S.57 of the Indian Divorce Act would clearly show that the provisions are not in pari materia. The relevant provisions are so materially different, that the decisions interpreting S.57 cannot be bodily followed to hold that the same consequences should follow if the proviso to S.15 is contravened. Examining the matter from all possible angles and keeping in view the fact that the scheme of the Act provides for treating certain marriages void and simultaneously some marriages which are made punishable yet not void and no consequences having been provided for in respect of the marriage in contravention of the proviso to S.15, it cannot be said that such marriage would be void.

12. Apparently, the inter-caste love marriage of Poonam with Naveen Kumar (petitioner No. 1) offended her father. He arbitrarily lodged the FIR (Annexure P1) in order to wreak vengeance and no offences in question whatsoever are made out against the petitioners. This matter is no more res integra and is now well settled.

13. An identical question came to be decided by the Hon'ble Apex Court in case

Lata Singh v. State of UP and Another 2006(5) SCC 475. Having considered the concept of the provisions of Article 21 of the Constitution of India, viz-a-viz, inter-caste marriage, it was ruled (paras 15 to 17) as under:

15. We are of the opinion that no offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the Court as well as of the administrative machinery at the instance of the petitioner's brothers who were only furious because the petitioner married outside her caste. We are distressed to note that instead of taking action against the petitioner's brothers for their unlawful and high-handed acts (details of which have been set out above) the police has instead proceeded against the petitioner's husband and his relatives.

16. Since several such instances are coming to our knowledge of harassment, threats and violence against young men and women who marry outside their caste, we feel it necessary to make some general comments on the matter. The nation is passing through a crucial transitional period in our history, and this court cannot remain silent in matters of great public concern, such as the present one.

17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.

14. The ratio of law laid down in the aforesaid judgments "mutatis mutandis" is fully attracted to the facts of the present case and is the complete answer to the problem in hand.

15. What cannot possibly be disputed here is that, the complainant could not reconcile with the inter-caste love marriage of his daughter and lodged a criminal case against the petitioners under sections 363, 366-A & 506 IPC. The FIR was lodged maliciously and vexatiously, in order to wreak vengeance only. In that eventuality, such malafide criminal prosecution amounts to deep misuse/abuse of process of law and deserves to be quashed, as per law laid down by Hon''ble Supreme Court in case State of Haryana and others v. Ch.Bhajan Lal and Others AIR 1992 Supreme Court 604, which was again reiterated in case Som Mittal v. Government of Karnataka 2008(2) R.C.R. (Criminal) 92. Otherwise, if the false prosecution is allowed to continue, then it will inculcate and perpetuate injustice to the petitioners, which is not legally permissible.

16. No other legal point, worth consideration, has either been urged or pressed by the counsel for the parties.

17. In the light of aforesaid reasons, the instant petition is accepted. Consequently, the impugned FIR (Annexure P1) and all other subsequent proceedings arising therefrom, are hereby quashed and the petitioners are discharged from the indicated criminal case registered against them, in the obtaining circumstances of the case. Needless to state that, the compliance of the order and natural consequences would follow accordingly.