

(1993) 04 P&H CK 0055

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 5632-M of 1992

Nirlape Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 20-04-1993

Acts Referred:

Citation : (1993) 2 AICLR 800 : (1993) 2 RCR(Criminal) 531

Hon'ble Judges : S.K.Jain, J

Advocate : G.S. Punia, Advocates for appearing Parties

Judgement

S.K. Jain, J.

1. This petition under Section 482, Code of Criminal Procedure, relates to quashment of FIR No. 20 dated 30/11/1991 registered at Police Station, Division No. 2, Ludhiana, under Sections 406 and 498A, IPC.

2. The brief facts relevant for the disposal of the petition are that the marriage between the parties was solemnised on 23/4/1989 at Ludhiana. No child was born out of their wedlock although they resided as husband and wife and cohabited till 18/7/1989. On account of incompatibility of temperaments and certain other reasons they fell out and started living separately. Efforts for reconciliation made by friends and relatives failed. The husband Nirlape Singh filed a petition under Section 9 of the Hindu Marriage Act against the wife Smt. Gurinderpal Kaur which was decreed ex parte on 18.12.1990. The wife filed an application for setting aside ex parte decree which was pending. The wife also filed a petition under Section 9 of the Hindu Marriage Act on 22/8/1990 which was ultimately dismissed as withdrawn on 17/11/1991. The wife (respondent No. 2) lodged First Information Report No. 20 dated 30/11/1991 under Sections 405/498A of the Indian Penal Code with Police Station Division No. 2, Ludhiana against the petitioner No. 1 (husband). The wife had also instituted a petition under Section 125, Code of Criminal Procedure, against the husband which was pending in the Court of Shri K. K. Lomas Judicial Magistrate 1st Class, Ludhiana. In the meanwhile, with intervention of relatives and friends, the parties compromised the whole matter

vide compromise Annexure P2. They instituted a petition under Section 13B of the Hindu Marriage Act seeking divorce by mutual consent. That petition was allowed by learned Additional District Judge, Delhi vide his judgment of May 14, 1992 (Annexure P3). The parties namely, Nirlape Singh and Smt. Gurinderpal Kaur, petitioners No. 1 and 2 respectively had made statement Annexure P4 before the District Judge, Delhi in support of the agreement Annexure P1 Smt. Gurinderpal Kaur respondent No. 2 has also withdrawn her petition under Section 125 of the Code of Criminal Procedure.

3. On account of amicable compromise between the parties and decree of divorce by mutual consent having been passed by the learned District Judge, Delhi in pursuance of the said agreement, quashment of impugned First Information Report Annexure P 1 is sought.

4. Learned counsel for the husband submitted on the basis of (i) Pardeep Kumar v. State of Punjab and another, 1988(2) Recent Criminal Reports 477, (ii) Anil Sethi and another v. The State of U.T. Chandigarh and another, 1988(1) Recent Criminal Reports 134 , (iii) Devinder Singh v. The State of Haryana and another, 1989(2) Recent Criminal Reports 206, (iv) Baljit Singh and others v. State of Punjab, 1990(1) Recent Criminal Reports 39 and (v) Devinder Gulati and another v. Saroj Rani, 1990(1) Recent Criminal Reports 228 , that since the parties had effected compromise, the impugned First Information Report may be quashed and that there was no likelihood of conviction in view of the compromise between the parties.

5. From the copy of the judgment dated 1451992 passed by learned Additional District Judge, Delhi in H.M.A. case No. 267/92 titled as Shri Nirlape Singh v. Smt. Gurinderpal Kaur, it is evident that the marriage between the parties has been dissolved by a decree of divorce by mutual consent under Section 13B of the Hindu Marriage Act. Para No. 7 of the agreement (Compromise Annexure P2) reads as under :

"That the wife and her parents had made a complaint before the Police Station Division No. 2, Ludhiana and FIR No. 20 dated 31.1.1991 was registered under Sections 406 and 498A, Indian Penal Code, in which the wife and her parents and other relatives shall not be giving any evidence in the matter and as the differences have been resolved by mutual consent, the wife shall have no objection to the filing of a petition by the husband in the High Court of Punjab and Haryana at Chandigarh for quashing the proceedings registered under Sections 498A, and 406 Indian Penal Code.

Again Para No. 9 of the petition of the agreement is to the following effect :

"That all the claims between the parties have been settled and the change and exchange of DAJ etc. items have fully taken place and that none of the parties have been left with any claim upon each other for the rest of their lives."

6. In view of the above circumstances, it is evident that if the accused persons

named in the First Information Report are prosecuted and tried under Sections 406 and 498A of the Indian Penal Code, the said trial is likely to end in smoke as the wife is not likely to support the prosecution. Therefore, in order to avoid involvement of both the parties in a protracted litigation, it is desirable to quash the impugned First Information Report Annexure P. 1. Of course, offence under Section 498A of the Indian Penal Code is not compoundable. But it would hardly make any difference, inasmuch as, quashment of the First Information Report would be in the interest of the family and the society as a whole. I am fortified on this point by the authorities in Pardeep Kumar's and Devinder Singh's cases (supra).

7. For the foregoing reasons, I hereby quash the First Information Report Annexure P1. This petition is accordingly, allowed.