
(1996) 09 DEL CK 0019

In the Delhi High Court

Case No : Criminal Miscellaneous Appeal No. 888 of 1996 and Criminal Writ Appeal No. 228 of 1996

O.P. Bhalla

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-09-1996

Acts Referred:

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

Citation : (1996) 4 AD 745 : (1995) 64 DLT 419 : (1997) 40 DRJ 401

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

Bench : Single Bench

Advocate : O.P. Saxena, P.K. Behl and Mukta Gupta, for the Appellant;

Judgement

S.K. Mahajan, J.

(1) One Pooja Bhalla was married to Hitesh Bhalla, son of the petitioners, on April 23, 1995. It appears that the marriage between them was a disaster and right from the date of marriage, Pooja Bhalla had started complaining of the mental and physical torture meted out to her by her husband and the petitioners on account of demand of dowry. Certain complaints were lodged by both the parties with the police. Thereafter, on the intervention of police and near relatives, the parties appeared to have arrived at a settlement and both husband and wife started living in a rented accommodation at Rohini in September, 1995. It was alleged by Pooja Bhalla that all her dowry articles were retained by the petitioners and when they shifted to Rohini, her parents had to settle the house for her and her husband. In January, 1996 Hitesh Bhalla is alleged to have deserted Pooja unless his demand of a new car was fulfilled by her parents. Pooja subsequently lodged a complaint with the police which resulted in the registration of Fir No.246/96 under sections 406/498-A Indian Penal Code. Petitioner No.1, father-in-law of Pooja, was arrested by the police on 12th March, 1996 and was released on bail on 16th March, 1996. In the meantime, the Metropolitan Magistrate passed a search order of the house of the petitioners. After orders

had been obtained by the police to break open the locks, the search of the premises of the petitioners was carried out by the police of Crime Against Women Cell along with Haryana police and the Istridhan of Pooja was recovered on such search. Independent witness was also stated to have been associated at the time of search. It is alleged by the petitioners that not only that the order of breaking open the lock of the premises of the petitioners was illegal but the police and the respondents by breaking open the locks of the house have rendered the petitioners penniless as they have removed all the cash, jewellery, household articles and even important documents from the house of the petitioners. The police had also instructed the Punjab National Bank, Sector-14, Sonipat not to allow the petitioners to operate the bank locker till further instructions of the Court. Aggrieved by the action of the police in raiding the house and in giving instructions to the Punjab National Bank not to allow the petitioners to operate the locker, the petitioners filed Crl.M.(M).888/96 for a direction to set aside and quash the orders dated 12-03-1996, 15-03-1996 and 23-03-1996 whereby the Metropolitan Magistrate had directed the search of the house of the petitioners for seizing Istridhan of Pooja Bhalla. Further relief claimed in the said petition was to direct the police to hand over possession of the house in the presence of an independent Court Commissioner who should visit the property and prepare an inventory of the articles and also to set aside and quash the order dated 14th March, 1996 whereby the police directed the Punjab National Bank not to allow the petitioners to operate the bank locker. The Court by an ex parte order passed on 27th March, 1996 appointed a local commissioner to visit the premises and make an inventory of the articles lying therein. The local commissioner has since filed his report. The police stated that the keys of the premises were not with them and it was also admitted by the petitioners that they had another set of keys with them, Therefore, the relief of handing over possession of the house was also not available to the petitioner in the said petition. The orders dated 13th March, 1996; 15th March, 1996 and 23rd March, 1996 had already been given effect to and I am, Therefore, not going into any academic discussion in this case as to whether said orders were illegal. Learned counsel for the petitioner has stated that he is now operating the bank locker with the Punjab National Bank. This relief about the bank locker has also, Therefore, become infructuous. In my view, Therefore, none of the reliefs are available to the petitioners in Crl.M.(M).888/96 and the same, according to me, has become infructuous and is, accordingly, disposed of.

(2) As already mentioned above, a local commissioner had been appointed by this Court in Crl.M.(M).888/96 and after the report had been submitted by the local commissioner, the petitioners alleged that they came to know about missing articles from their house and in these circumstances he lodged a complaint with the Sho, Punjabi Bagh police station and others for appropriate action. It was alleged in the complaint that appropriate case should be registered against Ms.Pooja Bhalla, Smt.Sunita Bhalla, their relatives, police officials of Delhi Police and Sonipat Police, who conducted the alleged illegal raid of the house of the

petitioners. As no case was registered by the police at Ps Punjabi Bagh, the petitioner has now filed this petition for a direction to the police to register an Fir on the basis of the complaint dated 31st March, 1996.

(3) To succeed in this petition, the complaint must disclose the commission of a cognizable offence by the respondents and that the said complaint is not actuated with malice or ulterior motives for wrecking vengeance on the respondents with a view to spite them due to the private and personal grudge. It is not in dispute that the house of the petitioners was searched by the police on the basis of the search warrant issued by the Court of Metropolitan Magistrate. The police officials were only performing their duty pursuant to an order passed by the Court of competent jurisdiction to search the house of the petitioners and in my view, Therefore, merely by search of the house the police officials or any of the other respondents have not committed any offence for which a complaint could be lodged against them. Even assuming for the sake of arguments that the order of the Magistrate directing search of the premises was illegal, in my view the police officials could not decline or refuse to carry out the search on the basis of the said order. After an order of search has been passed and search warrant had been issued by the Court, it was the duty of the police officials to carry out the search and in case they could not refuse to carry out the search.

(4) Coming to the next contention of the petitioner that the police officials had exceeded their powers by removing other articles which did not even belong to Pooja and they have thus allegedly committed a theft, in my view, the allegations made are wholly baseless. The search was carried out by the police officials of the Crime Against Women Cell in the presence of an independent witness and even the police officials of the Haryana police were associated with the search. The police had prepared a seizure memo giving details of the articles which had been recovered by them from the premises and none of the articles which have been mentioned by the petitioner in his complaint were seized by the police. I am not placing any reliance upon the report of the local commissioner because the original keys of the house always remained with the petitioner and nothing prevented him from opening the house before the visit of the local commissioner and stage manage the whole incident. It is no doubt true that on a complaint having been made before the police about the commission of a cognizable offence, the police has no option but to register a case and then to proceed with the investigation of the case under the provisions of Code of the Criminal Procedure, however, as held by the Supreme Court in *State of Haryana and others Vs. Ch. Bhajan Lal and another Shri S.A. Khan*, , where the criminal proceedings are manifestly attended with malafide and/or where the proceedings are maliciously instituted with an ulterior motive for wrecking vengeance on the accused with a view to spite him due to private and personal grudge, the said proceedings should be quashed. In my view, the whole purpose of the petitioners in lodging a complaint for registration of an Fir was to take vengeance on their daughter-in-law on whose instance the search of their house was carried out. It is a clear case where the petitioners are trying to maliciously institute the

proceedings with ulterior motives. I have no hesitation in my mind to hold that only intention of the petitioners to lodge a complaint with the police was to spite their daughter-in-law due to the private and personal grudge.

(5) Even assuming for the sake of arguments that the respondents have trespassed into the house of the petitioners and have committed theft, the alleged trespass and theft had taken place in Sonipat and no Fir could, Therefore, be registered at Ps Punjabi Bagh, Delhi.

(6) In my view, there is no case for direction to the police to register the FIR. The petition appears to be wholly malafide and the same is, accordingly, dismissed.