
(2012) 05 P&H CK 0120

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-28371 of 2008

Sanjiv Kumar

APPELLANT

Vs

State of Haryana and another

RESPONDENT

Date of Decision : 21-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 151, 173, 482

Penal Code, 1860 (IPC) — Section 323, 324, 34, 406, 498A

Protection of Women From Domestic Violence Act, 2005 — Section 12, 17, 18, 19, 20

Citation : (2012) 3 Crimes 559 : (2012) 3 RCR(Criminal) 87

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Advocate : Pritam Saini, for the Appellant; Kartar Singh, D.A.G., Haryana for Respondent No. 1-State and Mr. Rakesh Nehra, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—Tersely, the facts and material, culminating in the commencement, relevant for disposal of the instant petition and emanating from the record are that, inter-caste love marriage of Manoj Kumar Saini, younger brother of petitioner Sanjiv Kumar, was solemnized with complainant-Anju Saini, respondent No. 2 (for brevity "the complainant") on 06.07.2002 in Arya Samaj Mandir at Hisar, without the consent of family members. When the father of Manoj Kumar Saini came to know that he is going to perform love marriage with the complainant, then he disowned him(Manoj Kumar) and got published the following public notice on 11.06.2002:- I declare that my son, Manoj Saini, who is out of my control has no relation with me. I have disowned him from my movable and immovable property. Anyone having any type of dealing with him shall himself be responsible.

As soon as, he came to know about the inter-caste marriage, in the meantime, he actually suffered serious ailments and ultimately, died due to the attitude of his son Manoj Kumar Saini. On 20.04.2008, i.e. six years after solemnization of

marriage, the complainant lodged a complaint against petitioner-Sanjiv Kumar, brother-in-law (Jeth), his wife Suman, sister-in-law (Jethani) and Rani, mother-in-law, inter alia, with the allegations that they started pressurizing her, to bring more money from her parents. They did not give any share out of property and demanded Rs. 2-3 lacs. According to the complainant that, she left her matrimonial home due to fear and started residing with her younger sister. She apprehended danger to her life, as she was unable to fulfill their demand of dowry. In the background of these allegations, a criminal case was registered against the petitioner and his other co-accused, by way of FIR No. 258 dated 20.04.2008 (Annexure P-5), on accusation of having committed the offence punishable under Sections 498-A, 406 and 506 /34 IPC, by the police of Police Station City, Rohtak.

2. Although, during the course of investigation, Rani (mother-in-law) and Suman, sister-in-law (Jethani) of the complainant, were found innocent, however, the police submitted the challan/final police report in the court against the petitioner in terms of Section 173 Cr.P.C., to face the trial for the commission of pointed offences.

3. The petitioner-accused did not feel satisfied with the initiation of the criminal prosecution against him and preferred the present petition, to quash the impugned FIR (Annexure P-5), invoking the provisions of Section 482 Cr.P.C.

4. The case set-up by the petitioner, in brief, insofar as relevant, is that the complainant performed inter-caste love marriage with Manoj Kumar Saini against the wishes of his father, who had disowned him. They were residing separately. Ultimately, his father died due to shock. After his death, the complainant and her husband started misbehaving with his family members. Manoj Kumar Saini tried to forcibly enter into the house with the help of miscreants, then the mother of the petitioner submitted an application to the police as well as to the higher authorities. It was alleged that the petitioner, who was a practicing Lawyer, had shifted from Rohtak and practiced from September 2001 to January 2004 at Chandigarh. After the death of his father, he has again shifted to Rohtak. His younger brother Manoj Kumar Saini and his wife (complainant) started harassing his family members. They wanted to forcibly occupy the house and illegally demanded share in the property. When the mother of the petitioner refused to give him the property, then Manoj Kumar Saini with the connivance of his wife (complainant), managed to lodge the FIR (Annexure P-5) against the petitioner, in order to take the revenge. It has been specifically pleaded in para 15 of the petition as under:-

That from facts and circumstances narrated above, it is clear that registration of FIR against the petitioner is clear cut misuse of the provisions of Section 498-A/ 406 IPC. From the facts narrated above, it is clear that the complainant and Manoj Kumar had solemnized the love marriage without consent of the family of the petitioner. The petitioner actually being an elder brother of Manoj Kumar has been involved in the present case. Otherwise, question of harassment and raising

a demand of dowry does not arise. The fact of the matter is that not only the petitioner but the entire family of the petitioner is being harassed by Manoj Kumar and the complainant with active connivance. When both the husband and wife failed to achieve the target to get share in the property, now they in concert with each other i.e. husband and wife, got registered the FIR and complaint under provisions of the Domestic Violence Act, 2005 so that the petitioner, his mother and sister get involved in the litigation and, ultimately, would agree to share the property with them. Thus, on this score alone, the FIR registered against the petitioner is totally baseless and the allegations levelled in the FIR cannot be taken against the petitioner at all.

5. Levelling a variety of allegations and narrating the sequence of events in detail, in all, the petitioner claimed that he has been falsely implicated, in order to take revenge and wreak vengeance by the complainant with the connivance of his younger brother Manoj Kumar Saini, with the intention to illegally get share in the property. On the strength of aforesaid grounds, the petitioner sought to quash the impugned FIR (Annexure P-5), in the manner depicted hereinabove.

6. The respondents refuted the prayer of the petitioner and filed their respective replies, inter alia, pleading certain preliminary objections of, maintainability of the petition, cause of action and locus standi of the petitioner. Instead of reproducing the entire contents of the reply and in order to avoid the repetition, suffice it to say that, that the respondents have reiterated the allegations contained in the impugned FIR (Annexure P-5). However, it will not be out of place to mention here that they have stoutly denied all other allegations contained in the main petition and prayed for its dismissal. That is how, I am seized of the matter.

7. After hearing the learned counsel for the parties, going through the record with their valuable help and after considering the entire matter deeply, to my mind, the instant petition deserves to be accepted in this context.

8. As is evident from the record that, the inter-caste love marriage of the complainant was solemnized with Manoj Kumar Saini on 06.07.2002, whereas the present FIR was lodged against the petitioner, his wife and mother on 20.04.2008 (i.e., after a period of six years). During the course of investigation, the story of the complainant was disbelieved qua wife and mother of the petitioner and they were found innocent. Only petitioner, brother-in-law (Jeth) of the complainant was charged for the commission of the indicated offences.

9. Not only that, copy of the Ration Card (Annexure P-1) would go to show that complainant-Anju Saini was residing separately with her husband Manoj Kumar Saini and daughter Manvi. Manoj Kumar Saini was disowned by his father. Manoj Kumar and the complainant broke open the lock of the house and his mother Rani reported the matter to the police, to take action against them, vide complaint dated 15.07.2006 (Annexure P-2). She moved another complaint dated 16.08.2007 (Annexure P-3) to the SHO, Police Station City, Rohtak. The

incident of trespassing by the complainant and her husband was published by virtue of publication (Annexure P-4).

10. This is not the end of the matter. Again, the complainant has also filed another separate complaint (Annexure P-6) against the accused under Sections 12, 17 to 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 and Section 498-A IPC, to which, the petitioner filed the reply (Annexure P-7). The proceedings (Annexure P-8) were also initiated under Sections 107/151 Cr.P.C. between the parties. Manoj Kumar Saini, husband of the complainant, lodged another FIR No. 680 dated 18.09.2009 (Annexure P-9) under Sections 323, 324 and 34 IPC against the petitioner, his wife and two other unknown persons. In other words, it stands proved on record that the complainant and her husband were residing separately from the family of the petitioner, which falsifies the claim of the complainant contained in the FIR (Annexure P-5), wherein she stated that her mother-in-law started pressurizing her for bringing money. They tried to illegally trespass the house of his mother Rani and she reported the matter to the police. There is a long line of complaints between the parties.

11. The only allegations alleged against the petitioner, his wife and mother, were that they started pressurizing her for bringing more money. The wife and mother of the petitioner were found innocent by the police during the course of investigation. That means, the story of the complainant relatable to them has already been disbelieved even by the investigating agency. Once it is proved that the complainant and her husband were residing separately, whereas the petitioner was residing separately, in that eventuality, how, when, where, in what manner and in whose presence, the dowry articles were entrusted to him at the time of inter-caste love marriage or the petitioner has treated her (complainant) with cruelty and in what manner, he is remotely connected with the commission of the indicated offences, remains an unfolded mystery. The complainant with the connivance of her husband appears to have maliciously and vexatiously involved the petitioner in this case, in order to wreak vengeance and to take the revenge, after the expiry of period of six years from solemnization of their marriage.

12. Moreover, as indicated here-in-above, very very vague allegations are assigned to the petitioner in the FIR. The only allegations assigned to the present petitioner are that, he asked that they cannot bear their expenses and will not give anything out of their property, bring Rs. 2-3 lacs from your mother, otherwise they will burn her alive. Thereafter due to fear, she left her matrimonial home. The allegations are as vague as anything and no specific role or overt-act is attributed to the petitioner. Above all, it is highly impossible to believe that the petitioner (who is brother-in-law (Jeth) of the complainant) would treat her with cruelty in connection with and on account of demand of dowry.

13. It is now well settled principle of law that, in order to attract the penal provisions of the offences punishable under Sections 406 and 498-A IPC, there must be specific allegations/overt acts and prima facie material against the

petitioner to indicate that the dowry articles were actually entrusted to him and he misappropriated the same. The in-laws and other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases, where such accusation is made, the overt acts attributed to such persons, other than husband, are required to be prima facie established. By mere conjectures and implications, such relations cannot be held to be involved for the offences relating to the demand of dowry, which are totally lacking in the present case. As the Bench mark, all the essential ingredients to constitute the offences and element of the complicity of petitioner, are totally missing, therefore, to me, no criminal prosecution can legally be permitted to continue against him, in view of the law laid down by the Hon''ble Supreme Court in cases Ramesh and others Versus State of Tamil Nadu. 2005 (2) R.C.R. (Criminal) 68, Sushil Kumar Sharma Versus Union of India and others. 2005 (3) R.C.R. (Criminal) 745 and Kans Raj Versus State of Punjab and others. 2000 (2) R.C.R. (Criminal) 695.

14. An identical question came to be decided by the Hon''ble Apex Court in case Preeti Gupta and Another Vs. State of Jharkhand and Another, . Having interpreted the provisions of Section 498-A IPC, it was ruled as under (paras 30 to 36) :-

30. It is a matter of common experience that most of these complaints u/s 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

31. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint u/s 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of

these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the

relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society.

36. When the facts and circumstances of the case are considered in the background of legal principles set out in preceding paragraphs, then it would be unfair to compel the appellants to undergo the rigmarole of a criminal trial. In the interest of justice, we deem it appropriate to quash the complaint against the appellants. As a result, the impugned judgment of the High Court is set aside. Consequently, this appeal is allowed.

15. Again, this Court has also considered this aspect of the matter in cases *Harjinder Kaur and others v. State of Punjab* 2004 (4) RCR (Cri) 332; *Labh Singh and others v. State of Haryana* 2006 (2) RCR (Cri) 296; *Rakesh Kumar and others v. State of Punjab and others* 2009 (2) RCR (Cri) 565; *Mohinder Kaur &*

Others v. State of Punjab & Another 2010 (2) RCR (Cri) 597, Paramjit Kaur v. State of Punjab 2011 (5) RCR (Cri) 686 and the judgment dated 17.1.2012 rendered in case Ritu Khurana and another v. Brij Lal Chopra CRM No. M-8227 of 2010; wherein it was held that "the allegations against the relatives of the husband were vague and there is growing tendency to come out with inflated and exaggerated allegations roping in each and every relation of the husband, things have now taken a reverse trend and the women are abusing beneficial provisions of Section 498-A IPC."

16. In this manner, the argument of the learned counsel that the petitioner has been falsely implicated by the complainant and her husband in this case, has considerable force and the contrary contentions on behalf of learned counsel for the complainant-respondent pale into insignificance, "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances. 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.

17. Therefore, if the crux of the allegations levelled against the petitioner, as discussed hereinabove, is put together and is perused, then, to my mind, no pointed offences are made out against the petitioner and the complainant has vexatiously and maliciously filed the FIR (Annexure P-5) against him, in order to wreak vengeance. In case, the complainant is permitted to prosecute her brother-in-law (Jeth), who is residing separately, then it will inculcate and perpetuate great injustice to him. In this manner, the complainant appears to have falsely involved the petitioner in the present case. Therefore, to me, the impugned FIR (Annexure P-5) and all other subsequent proceedings arising therefrom, deserve to be quashed in the obtaining circumstances of the case.

18. No other legal point, worth consideration, has either been urged or pressed by the counsel for the parties. In the light of aforesaid reasons, the instant petition is accepted. Consequently, the impugned FIR (Annexure P-5) and all other subsequent proceedings arising therefrom, are hereby quashed. The petitioner is accordingly, discharged from the indicated criminal case registered against him.