
(2016) 04 P&H CK 0101
In the Punjab And Haryana At Chandigarh
Case No : Criminal Misc. No. M-16878 of 2015.

Vishali Mahindra @ Shallu and another.	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, 420, 498-A, 506

Citation : (2016) 1 LAR 494 : (2016) 2 LawHerald 1208

Hon'ble Judges : Anita Chaudhry, J.

Bench : Single Bench

Advocate : Vaibhav Sehgal, Advocate, for the Appellant; Deep Singh, AAG Punjab and Sonal Datt, Advocate for A.P. Pathak, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Anita Chaudhry, J. - The petitioners are seeking quashing of FIR No. 202 dated 11.11.2014, registered under Sections 406, 420, 498-A and 506 IPC at Police Station City South, District Moga and subsequent proceedings.

2. Respondent No. 3 Shelja was married to Bal Gobind on 28.05.2013 at Savai Madhopur, Rajasthan. Petitioner No. 1 Vishali Mahindra @ Shallu is the sister of Bal Gobind, who was married to petitioner No. 2 Rajan Mahindra. On 26.12.2013 Bal Gobind died. About a year later, Vijay Kumar (respondent No. 2), father of Shelja got the FIR registered alleging that he had spent around Rs. 20 lacs and after marriage, Shelja told him that Bal Gobind was suffering from some ailment and he usually remained ill and they were kept in dark. Shelja told him that the father-in-law and mother-in-law tortured her saying that they had not respected the son-in-law. Shelja also told them Rajan Mahindra and Shallu Mahindra used to utter bad words. The complainant further alleged some foul-play in the death of Bal Gobind. Shelja stayed for some days at her parental home and then returned to the matrimonial home. She told the complainant that she was tortured and harassed by her in-laws and relatives and asked her not to speak

about Bal Gobind's illness. The complainant and his wife went to Savai Madhopur where they were insulted and their daughter was thrown out of the house. The accused retained her istridhan and also criminally intimidated them on phone.

3. The case was registered and investigated. Challan was filed against the petitioners and other accused.

4. Quashing was sought, inter alia, on the ground that Shelja resided at her matrimonial home in Rajasthan while the petitioners were residing at Ludhiana and they had no occasion to harass and humiliate Shelja and they could not be said to be beneficiary to the alleged demand of dowry; no specific instance of cruelty or harassment in relation to demand of dowry had been referred against the petitioners nor there were any allegation of entrustment of dowry articles to them, which they had misappropriated and the allegations of criminal intimidation were general in nature without specifying as to who had extended the threat and that the allegations against the petitioners were vague and omnibus and they had been roped in with a malafide intention just to wreak vengeance.

5. In the reply filed on behalf of State, it was averred that enquiry into the matter was conducted by DSP(City), Moga and the case was rightly registered against the petitioners and co-accused against whom there were specific allegations of giving dowry. It was further averred that from the facts and circumstances of the case, provisions of Sections 406, 420, 498-A and 506 IPC were found attracted towards the petitioners and others and challan against them was presented in Court for trial.

6. In the reply filed by the complainant, it was asserted that the petitioners and other in-laws of Shelja were very greedy and they started harassing her for bringing less dowry from the first day of the marriage. The accused were aware of Bal Gobind's illness but they intentionally concealed it from them. Petitioner No. 1 increased the miseries of Shelja after marriage and after death they turned her out so that the property of Bal Gobind could be usurped. It was further asserted that the petitioners were entrusted with dowry and they pressurised Shelja to bring more dowry.

7. I have heard learned counsel for the parties and have gone through the paper-book carefully.

8. The question that arises is whether the facts of the case call for interference by this Court in exercise of the powers under Section 482 Cr.P.C.

9. The petitioners are the sister-in-law and her husband respectively of respondent No. 3. In catena of judgments, the Courts have viewed the seriousness of the implication and over-implication of the relations of the husband by exaggerating the allegations in the cases of matrimonial discord. It is relevant to refer to some of them.

10. In the case of Geeta Mehrotra and Anr. v. State of U.P. and Anr. 2012(4)

RCR(Crl.)812, the Hon"ble Apex Court quashed the FIR against the sister and brother of the husband by observing as under:-

"...It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law.

Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives or the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding."

11. This Court in Divya alias Babli and others v. State of Haryana and another, 2006 (4) RCR (Criminal) 322, while relying on the judgment of the Apex Court rendered in the case of Kans Raj v. State of Punjab and others, 2000(2) RCR (Crl.) 695 held as under:-

"22. Another judgement rendered in Shinder Pal @ Kakke's case[1] (supra) relied by Mr. Saini, this Court while relying upon a judgement of Apex Court rendered in Kans Raj v. State of Punjab and others, AIR 2000 Supreme Court 2324 wherein their Lordships have observed that a tendency has developed for roping in all the relations in dowry cases which ultimately weakens the case of the prosecution even against the real accused.

23. My view is also fortified by the latest judgment of Hon"ble Supreme Court rendered in Ramesh Kumar and others v. State of Tamil Nadu, 2005 (2) R.C.R. (Criminal) 68 in which their Lordships while quashing the proceeding against sister-in-law who was staying at a different place observed that there were bald allegations to rope in as many relations of the husband."

12. In Anita and Ors. v. State of Punjab, 2003(4) RCR (Criminal) 313, when a first information report was lodged by the wife under Sections 498-A and 406 of the Indian Penal Code against the entire family members of the husband, this Court exercising its powers under Section 482 Cr.P.C. had quashed the FIR and had observed that there was a tendency to involve all the relatives of the husband when the relations between the husband and the wife become strained.

13. Similarly, in the case of Harjinder Kaur and Ors. v. State of Punjab, 2004(4) RCR (Criminal) 332, a criminal complaint was filed under Sections 498-A and 406 IPC against the husband, his parents and 5 sisters. The proceedings qua sisters were quashed as the allegations against the sisters were found to be vague and exaggerated and made to rope in each and every relation of the husband.

14. In Arnesh Kumar v. State of Bihar and Anr. 2014(3) RCR(Crl.) 527, the Hon"ble Apex Court observed that the fact that Section 498-A IPC is a cognisable and non-bailable offence had lent it a dubious place of pride amongst the

provisions that are used as weapons rather than shield by disgruntled wives and the simplest way to harass is to get the husband and his relatives arrested under this provision.

15. Similarly, in the case of Anguri Devi etc. v. State of Punjab etc. 2011(2) RCR (Criminal) 431, this Court has quashed the FIR on the ground that a tendency has developed for roping in all the relatives in dowry cases in order to browbeat and pressurise the immediate family of the husband.

16. In the case of Preeti Gupta and Anr. v. State of Jharkhand and Anr. 2010 AIR (SC) 3363 the Hon''ble Apex Court observed that a serious re-look of the entire provisions of Section 498-A IPC was warranted by the legislation. It was observed that exaggerated versions of the incident are reflected in a large number of complaints and the tendency of over implication is also reflected in a very large number of cases. In that case the Hon''ble Apex Court quashed the criminal proceedings against brother and sister of husband, living separately.

17. The Apex Court in Sushil Kumar Sharma v. Union of India and others, 2005 (3) R.C.R.(Criminal) 745 where the question of striking down of Section 498-A IPC was raised, their Lordships observed that in such type of cases the "action" and not the "section" may be vulnerable and the Court by upholding the provisions of law may still set aside the action, order or decision and grant appropriate relief to the persons aggrieved. Their Lordships observed as under:-

"The object of the provision is prevention of the dowry menace. But as he has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy (ignominy?) suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not an assassin's weapon. If cry of "wolf" is made too often as a prank, assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any preconceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the Courts start with the presumptions that the

accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalised statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the Courts is that of watch dog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally indisputable that in many cases no direct evidence is available and the Courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view."

12. Lately, a tendency has developed for roping in all the relations in dowry cases in order to browbeat and pressurise the immediate family of the husband. Accordingly, sometimes inflated and exaggerated allegations are made. In the present case, the petitioners are the relatives who are admittedly residing separately. No specific allegation is alleged. The allegation, if at all, do not satisfy the definition of cruelty or misappropriation. No offence under Section 406 or 498-A is made out."

18. In the instant case, from a perusal of FIR, it is abundantly clear that the main grouse raised by the complainant was that they were kept in dark and not informed about the illness of Bal Gobind before the marriage and he died after some months of the marriage. There is not even a whisper that the petitioners were entrusted with any dowry articles. Entrustment is sine-quo-non for the offence under Section 406 IPC. The anxiety of the complainant to widen the net is apparent that he improved his stand and stated that dowry articles were given to the petitioners and they were the beneficiaries. But, it cannot be believed that the petitioners who are admittedly residing separately were entrusted with the istridhan. It was alleged in the complaint that in-laws taunted Shelja that her parents had not respected the son-in-law and sister-in-law i.e. the present petitioners. No overt act had been attributed to the petitioners not even a single instance of harassment or cruelty or demand of dowry had been referred against the petitioners. It was further alleged that when the petitioners visited Savai Madhopur, they harassed her. But it was nowhere mentioned that the petitioners maltreated or harassed Shelja in connection with demand of dowry within the definition of Section 498-A IPC. The complainant admittedly came to know about the alleged illness of Bal Gobind after one month of the marriage, but he never raised any objection immediately thereafter. In the FIR the complainant himself disclosed that he got married his daughter on the asking of Vijay Sood and Oma Sood and it appears that out of frustration he averred in the reply that it was petitioner No. 1 who prevailed upon him to marry his daughter to Bal Gobind. So far as allegations of criminal intimidation are concerned, it is generally said that the accused threatened them on phone, but it is not specified as to who was the accused who had extended the threat. The allegations against the petitioners are vague, omnibus, absurd and improbable and made just to wreak vengeance. On the basis of such a wild allegations, the petitioners cannot be put to the ordeal of trial. It cannot be forgotten that there is a tendency to rope in the relatives of

the husband in matrimonial dispute. By mere conjectures and implications and without referring to single instance of cruelty or harassment in relation to demand of dowry, the petitioners cannot be said to be involved for the offences mentioned in the FIR. In the considered opinion of this Court, the continuation of criminal proceedings against the petitioners would be sheer abuse of process of law. In this view of the matter, this Court would be within its powers to quash the proceedings even at threshold to secure ends of justice. Reliance can be placed on State of Haryana and Ors. v. Ch. Bhajan Lal and Ors. 1991(1) RCR (Crl.) 383 (SC).

19. In view of the discussion made above, the instant petition is allowed. The impugned FIR and consequent proceedings taken therein, against the petitioners alone are quashed. Needless to mention that this Court had evaluated the material on record only qua the petitioners and any observations made herein is without prejudice to the case of other accused.