
(1989) 09 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 4690-M of 1989

Vishwa Mitter and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 22-09-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, 472, 498A

Citation : (1990) 1 DMC 530 : (1990) 1 RCR(Criminal) 34

Hon'ble Judges : A.P. Chowdhri, J

Bench : Single Bench

Advocate : Arun Palli, for the Appellant; R.K. Single and P.S. Saini, for the Respondent

Judgement

A.P. Chowdhri, J.—The facts necessary for the disposal of the present petition u/s 482 of the Code of Criminal Procedure for quashing FIR No. 28 dated 1-6-1989, Police Station Ambala under Sections 498A and 406, I.P.C. are as follows :

2. Smt. Kiran Bala, respondent No. 2 was married to Vishwa Mitter, petitioner No. 1 on 14-7-1983. The parties to the marriage have been living separately from each other since 24-3-1985. Smt. Kiran Bala filed a complaint under Sections 498A and 406, I.P.C., dated 27-5-89 against her husband, petitioner No. 1 and certain relations of the husband, who are petitioners Nos. 2 to 4. These are her mother-in-law Smt. Ram Lubhai, petitioner No. 4 her sister-in-law i.e. sister of her husband, Smt. Tarlochan Kumari, petitioner No. 3 and Rakesh Kumar Verma husband of her sister-in-law Trilochan Kumari, petitioner No. 2. The complaint was sent to the police by the learned Chief Judicial Magistrate, Ambala u/s 156(3) of the Code of Criminal Procedure. The police entered FIR Annexure P-1. The accused named in the FIR have filed this petition for quashing, the same. It may also be mentioned that the wife instituted an application u/s 125 of the Code of Criminal Procedure on 19-5-1986. In that application, she made a statement dated 13-6-1987 (Annexure P-3) on 23-7-1986, the husband caused a

notice to be sent through his lawyer asking the wife to collect items of dowry lying at his house. No reply was received to that notice. On 13-3-1989, the husband instituted an application for dissolution of marriage on the ground of desertion. During the pendency of the said proceedings, the husband made an application Annexure P-5 on 9-5-1989 for a direction that the wife should remove articles of dowry lying at his house.

3. No reply was filed to the petitioner by the private respondent No. 2.

4. After hearing learned counsel for the parties, I am of the view that the FIR against petitioner Nos. 2 to 4 deserves to be quashed as an abuse of the process of the Court. There is, however, no case for quashing the FIR against petitioner No. 1.

5. Learned counsel for the petitioners contended that the complaint which was the basis for the present FIR was barred by limitation of three years laid down in Section 468(2)(c) of the Code of Criminal Procedure. It was pointed out that in the complaint, no date was mentioned when the accused allegedly declined to restore possession of the dowry articles to respondent No. 2. In the absence of any such specification, it was submitted, the only inference was that the accused declined to restore possession of those articles on 24-4-1985 when the parties last resided together. Counting the limitation from that date the complaint dated 27-5-1989 was beyond three years and thus barred under the provisions mentioned above. A perusal of the FIR Annexure P-1 in which the complaint has been reproduced shows that in paragraph 4, it was stated that the complainant was finally turned out of the house on 24-4-1985 and despite best efforts by the brotherhood till the end of 1987, no fruitful result had come out and the accused persons refused to rehabilitate the complainant in her matrimonial home and also refused to deliver the articles of dowry. In other words, it was averred in paragraph 4 that the accused refused to deliver the dowry articles towards the end of year 1987. The complaint, in the facts of the case, was thus filed within the period of limitation laid down in Section 468 of the Code. Moreover, I have had an occasion to examine this question in detail in Criminal Misc. No. 5686-M of 87 decided on August 10, 1989 and for the reasons mentioned therein, the offence u/s 406, I.P.C. is a continuing offence within the meaning of Section 472. In any case, it is necessary in the interest of justice to condone the delay assuming that there was delay in the case, in exercise of the powers u/s 473 of the Code. The first contention of the learned counsel is, therefore, rejected.

6. Learned counsel for the petitioners took me through the petition dated 19-5-1986 Annexure P.2 filed by respondent No. 2 u/s 125, Cr.P.C. for maintenance. He also read out the statement of respondent No. 2 dated 13-6-1987 Annexure (P. 3) made in connection with the said maintenance application and pointed out that the only ground for their break-up was the impression gathered by the husband that the wife was incapable of giving birth to a child and that is why he had turned her out of the house. The contention of the learned counsel is that if what is now alleged were true, there was no reason

why the wife should not have made allegations to that effect in the application for maintenance as well as her statement. In any case, the wife would not have given a clean chit to the husband except for the allegations that be believed that the wife was incapable of giving birth to a child. I do not intend to examine this contention at this stage. The law is fairly well-settled that for purposes of quashing the proceedings u/s 482 of the Code, the allegations in the complaint must be assumed to be true and on such an assumption, it should be seen whether what was alleged, it disclosed any offence or was otherwise an abuse of the process of the Court. Reference in this connection may be made to J.P. Sharma Vs. Vinod Kumar Jain and Others, . There is thus no merit in the connection for the present purposes.

7. It was next contended by the learned counsel that there was no question of denial on the part of the husband to restore whatever articles of dowry were lying with him. In this connection, learned counsel referred to a legal notice Annexure P-4 sent through his counsel by petitioner No. 1, almost three years before the lodging of the FIR. In paragraph 4 of the notice, it was stated that some dowry articles were lying in one room and called upon the wife to have the same collected. It was also pointed out that left with no alternative, the husband instituted a petition for divorce in May, 1989 and during the pendency of that petition he made an application to direct the wife to collect dowry items lying with him. It was argued that when the husband was all along keen to return the dowry items to the wife, the Court could not read any dishonest intention on his part and the non-return of the dowry items in the circumstances could not furnish any handle to the wife to involve the husband in criminal proceedings u/s 406 of the Penal Code, what has been contended may or may not be acceptable to the Court, it is only for the trial Court to go into and decide this question. If the High Court were to go into such disputed questions of fact this will amount to a mini-trial being held before the regular trial. This cannot be permitted. It is to avoid such a situation that for purposes of such petitions u/s 482 of the Code, the averments made in the FIR or the complaint have to be broadly accepted as true.

8. Lastly, it was argued that no specific allegation had been made with regard to entrustment of the dowry articles to mother-in-law, sister-in-law and sister-in-law's husband i.e. petitioners 4, 3 and 2 respectively. Even otherwise, it was clearly improbable that the dowry items were entrusted to a married sister of Vishwa Mitter or to her husband. The above contention assumes added significance because there was no specific averment in the complaint regarding entrustment of dowry items either to the mother or married sister or married sister's husband of the bridegroom. In so far as allegations of harassment u/s 498A are concerned, it could not be shown why the FIR should be quashed especially against the husband.

9. After careful consideration and for the reasons mentioned above, the FIR against Rakesh Kumar Verma, Tirlochan Kumari wife of Rakesh Kumar and Ram

Lubhai wife of Diwan Chand is hereby quashed. The petition is allowed to the extent mentioned above. The remaining parties through their counsel are directed to appear in the trial Court on 5-10-1989 for further proceedings according to law.