

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. No.3013/2011 & Crl.M.A.No.10624/2012

% Judgment reserved on: 16th February, 2012
Judgment delivered on: 11th April, 2012

VIJAY BAJAJ Petitioner
Through: Mr. Praveen Chauhan, Advocate

versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr. Navin Sharma, APP for the
State/respondent No.1.
Mr. Jai Bansal, Advocate for respondent
No.2.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition; the petitioner has sought to quash the FIR No.33/2009, registered at police station Bharat Nagar, Delhi for the offences punishable under Section 120B Indian Penal Code, 1860 against him, also sought to quash the consequential proceedings pending before learned Metropolitan Magistrate, Rohini Courts, Delhi.

2. The petitioner herein is the brother-in-law of respondent No.2, and is resident of Lucknow, (UP). On 31.05.2008, petitioner along with other family members visited the house of the respondent No.2 for marriage discussions of the petitioner's brother namely Pramod Kumar Bajaj @ Parmod Bajaj @ P. K. Bajaj – pursuant to the matrimonial

advertisement published on 27.04.2008 wherein the brother of the petitioner did furnish his matrimonial status as 'widowed'. Therefore, on 28.12.2008, the brother of the petitioner got married to respondent No.2 as per Hindu rites and ceremonies.

3. After the marriage, respondent No.2 joined her matrimonial house in Mumbai. However, due to some incompatibility respondent No.2 left her matrimonial home on 21.01.2009 and returned back to her parent's house in Delhi. On 26.10.2009 respondent No.2 lodged her complaint with Commissioner of Delhi Police against petitioner and his brother. Pursuant to the aforesaid complaint, Delhi Police lodged the FIR against petitioner and his family members for the offences punishable under Section 498A/406/323/506/420/120B Indian Penal Code, 1860.

4. After the investigation, the police charge-sheeted the petitioner for the offence punishable under Section 120B Indian Penal Code, 1860 only, in aforementioned FIR.

5. Respondent No.2 left her matrimonial house at Mumbai on her own will and choice, after staying a few days only. The petitioner neither visited their house at Mumbai nor talk to his brother (husband of respondent No.2) or mother over phones.

6. The allegations against the petitioner in the charge-sheet are that on 21.12.2008 Parmod Bajaj(husband of respondent No.2) alongwith petitioner /Vijay Kumar Bajaj came for marriage ceremony talks. In the meanwhile, parents of respondent No.2 visited Mumbai to confirm

the facts about him (brother of petitioner). It is further alleged that petitioner alongwith Smt.Sushila Bajaj, Smt.Kamlesh Bajaj, and his sisters had accompanied in the marriage of aforementioned Parmod Kumar Bajaj having personal knowledge that he was already married, therefore, the respondent No.1 filed the charge-sheet against petitioner for the offence punishable under Section 120B Indian Penal Code, 1860.

7. Learned counsel appearing on behalf of the petitioner submits that the ‘criminal conspiracy’ has been defined under Section 120A Indian Penal Code, 1860. For convenience, same is reproduced as under:-

“120A. Definition of criminal conspiracy.- *When two or more persons agree to do, or cause to be done,—*

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.”

8. It is further submitted that petitioner had come with his brother to fix the date of the marriage and then attended the marriage – except these allegations, respondent No.2 has not uttered any single word against petitioner, which does not make out any case of criminal

conspiracy against him. Moreso, there is no averment to the effect that the petitioner at any point of time, had misrepresented or concealed anything about his brother from respondent No.2 or to her family members.

9. It is further submitted, the respondents have not brought any evidence on record in respect of the allegations against petitioner of committing any offence punishable under Section 120B Indian Penal Code, 1860.

10. Learned counsel has relied upon the decision **John Pandian v. State (through Inspector of Police, T.Nadu): 2010 (13) JT 284** wherein the Supreme Court has observed that '*Courts below have committed an error in first holding the existence of conspiracy and proceeding on that basis and then taking tit-bits in evidence to suggest that those tit-bits would connect the accused with the conspiracy as the conspirators*'.

11. He further submitted that while deciding the law relating to criminal conspiracy, Hon'ble Supreme Court in **Kehar Singh & Ors v. State (Delhi Administration) :1988(3) SCC 609** wherein it is observed by this Court that '*The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not per se enough.*'

12. Learned counsel also relied upon the decision in **K.R. Purushothaman v. State of Kerala** : 2005 (12) SCC 631 wherein it was observed that all the conspirators need not take active part in the commission of each and every conspiratorial act but, mere knowledge, even discussion, of the plan would not constitute conspiracy.

13. He further submitted that in such a situation as mentioned above, the case of **State of Haryana v. Bhajan Lal** 1992 Supp. (1) SCC 335 wherein the Supreme Court has explained the situations under which the powers could be exercised, which reads as under:-

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a

Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

14. Learned counsel, therefore, submitted that the allegations in the complaint or in the FIR do not constitute the offence of criminal conspiracy, for which the petitioner may be punished under Section 120B Indian Penal Code, 1860, therefore, learned Magistrate erred in law and ignored the mandate, issued by the Supreme Court, as mentioned above while summoning the petitioner.

15. On the other hand, learned counsel for respondent No.2 submits that the petitioner is the real brother of husband of respondent No.2. She happens to be the fourth wife of Mr.Parmod Kumar Bajaj, IRS

officer, working as Additional Commissioner of Income Tax.

16. He further submitted that with regard to the allegations against instant petitioner - who is brother of Mr.Parmod Kumar Bajaj, the petitioner is conspirator not even in the instant case, but in the cases filed by the petitioner's brother against all his previous wives.

17. It is further submitted that the petitioner, filed a petition bearing No.11386-M for quashing of the FIR No.171/1992 of police station Civil Lines, Amritsar, Punjab before Punjab & Haryana High Court, wherein the proceedings were not quashed or stayed by the Court mentioned above. Moreso, the High Court of Punjab and Haryana has made specific observation that there is no ground to quash the proceedings as the case was of a very heinous crime committed by the petitioner / Vijay Bajaj. This established that the petitioner equally helped Mr.Parmod Kr Bajaj in committing the crimes towards all his four wives including respondent No.2, who was cheated on the pretext prior to the marriage with respondent No.2, the brother of petitioner was a widower.

18. Learned counsel informed to this Court that another case of TADA was registered against petitioner and trial thereof is still continue; however, in the instant case, the petitioner has tried to show his status that no criminal case is pending against him and he has a clean antecedents. That from the aforesaid fact, the petitioner is a regular conspirator in matrimonial crime and cheating committed by, Mr.P.K.Bajaj, towards innocent females.

19. It is submitted that the petitioner was well aware of the fact that his brother not divorced from the two previous wives namely; Smt.Renu and Smt.Sapna. Despite knowing this, he did not disclose the same during the time of preparation for marriage, marriage talks, marriage meeting, for fixing the dates of marriage and during the entire marriage ceremonies. Rather respondent No.2 was informed that brother of petitioner was a widower.

20. Learned counsel for respondent No.2 further submitted that it is a matter of record that petitioner was even a co-accused in the cases filed by the previous wife Smt.Renu Bajaj and yet he did not disclose that his brother Mr.P.K. Bajaj was yet not divorced from previous wife. Therefore, a clear cut case of conspiracy against petitioner is made-out; thus after investigation, the police has filed charge-sheet against him.

21. He further submitted that respondent No.2 is a helpless, poor lady and fourth victim of brother of petitioner, whom he married during the existence of previous wives Smt.Renu and Smt.Sapna. The petitioner's brother fraudulently married with respondent No.2 on 28.12.2008 by concealing the fact that the brother of petitioner was already having living spouse Smt.Renu and Smt.Sapna with him.

22. The petitioner's brother even in the matrimonial advertisement given his age as 42 years as on 27.04.2008 and date of birth was mentioned as 24.09.1967. The age of the brother of petitioner is contrary to the fact that the actual date of birth is in the year 1960 – as has been established by his brother's bio data – verified by the Delhi Police report dated 12.11.2009 and vigilance report dated 26.04.2010.

23. It is further submitted that petitioner's brother Mr.Parmod Kumar Bajaj @ Mr.P.K. Bajaj @ Mr.Parmod Bajaj, these are the various names against which the cases are filed in the different parts of the country. His brother filed three divorce petitions against ex wife Smt.Renu in different States of India without awaiting the decision of the first Court; where the petition was filed by the petitioner against ex wife Smt.Renu. First time, divorce filed in the Family Court, Bandra, Mumbai in the month of November, 2006, same was decided on 30.09.2008. During the pendency of the abovementioned case, brother of petition filed one more divorce petition in the year 2007 in Family Court, Lucknow, (UP) and at the same time divorce was granted from his earlier wife Smt.Renu on 27.03.2009 by High Court of Allahabad, Lucknow Bench in WPC No.1070/2008.

24. It is pertinent to mention that as per the contention of brother of petitioner, he never taken any divorce from the second wife Smt.Sapna as there was no marriage between brother of petitioner and Smt.Sapna. But on the contrary, his brother's name is mentioned as father of the child from the second wife and he has also attested the child birth certificate by stamping it in the capacity of Assistant Commissioner of Income Tax, Lucknow, UP for the reasons best known to him. However, the fact remains that the respondent was told that his brother was a widower at the time of marriage with respondent No.2.

25. Moreso, his brother in total has filed numerous cases against respondent No.2; these cases are pending before the Court of ACJM, Lucknow, (U.P.) Family Courts at Bandra, Mumbai as well as at Delhi.

Some transfer petitions are pending before the Apex Court. The details are not being reproduced as same are not disputed between the parties; however, out of total 13 cases only 04 cases are disposed of; remaining nine matters are pending or stayed at Trial Court, High Court and the Apex Court level.

26. To sum up, learned counsel for respondent No.2 submits that in the instant case there are disputed facts, which has to be proved by respective parties in trial. Therefore, at this stage, the proceedings cannot be quashed.

27. Additionally, Mr.Navin Sharma, learned APP appearing on behalf respondent No.1/State while opposing the instant petition relied upon the decision **Niaz Begum & Ors v. State & Ors: W.P. (Crl.) No.1137/2007 decided on 21.02.2011**; wherein coordinate Bench of this Court has observed as under:-

“1. This petition under Article 226 and 227 of the Constitution of India read with Section 482 Cr.P.C has been preferred by the petitioners for quashing of FIR No.363 of 2006 under Sections 498A/406/34 IPC lodged by the wife/ respondent no.3 herein and for issuance of mandamus commanding the respondents for issuance of appropriate directions to the respondents for proper investigation as well as action against erring police officials of CAW in accordance with law and directing DCP(South) to hold independent and impartial inquiry.

2. The challan in this case has already been filed after completion of investigation. The powers under Section 482 Cr.P.C for quashing of an FIR are to be exercised by the High Court in rare cases. Once investigation is complete, an FIR cannot be quashed by the High Court on the ground that FIR discloses no involvement of the accused in commission of offence. It is settled law that an FIR is not an encyclopedia of facts but it is an information to police to start investigation into the crime and to file a report. Once investigation is complete, the only option available before the petitioners is to argue on charge before the trial court concerned.

3. The petition is accordingly dismissed being not maintainable.”

28. Keeping the facts and circumstances of the instant matter into view, I am of the considered opinion that present case does not fall under any of the principles laid by the Apex Court in ***Bhajan Lal (supra)***. Therefore, I am not inclined to interfere with the same at this stage. The petitioner being real brother was aware about the marital status of his brother. He attended marriage. Participate fully, but did not disclose the correct facts to respondent No.2, therefore, he was also party, thus committed the offence.

29. Under these proceedings, this Court cannot go into the roving inquiry and the petitioner will have all the opportunity to put his case and defence before learned Trial Court either at the time of framing of charge, or at the worst against him, during trial.

30. Consequently, Crl.M.C.No.3013/2011 is hereby dismissed.

31. In view of above order, Crl.M.A.No.10624/2011 (stay) does not require further adjudication and accordingly stands disposed of.

32. Before parting with this order, it is made clear that whatever observed herein shall not be construed as opinion on the merits of the case, as same is still proved on the anvil of trial.

33. Trial Court Record be remitted back henceforth and it is expected from learned Trial Court to expedite the matter as charge-sheet was filed way back on 21.12.2010 and still the matter is pending for appearance and bail proceedings of other accused persons.

34. No order as to cost.

SURESH KAIT, J

APRIL 11, 2012

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