

In the High Court of Punjab and Haryana at Chandigarh

Date of decision: 1.4.2015

CRM-M No. 58478-M of 2005 (O&M)

Karnail SinghPetitioner

Versus

State of PunjabRespondent

CRM-M No. 809-M of 2004 (O&M)

Balbir Kaur and othersPetitioners

Versus

State of PunjabRespondents

CRM-M No. 7443-M of 2004 (O&M)

Karnail Singh and othersPetitioners

Versus

State of PunjabRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.K.S.Dadwal, Advocate,
for the petitioners.

Mr.Varun Sharma, AAG, Punjab.

RAJ MOHAN SINGH, J.

Vide this order aforesaid three petitions are being disposed of as all the petitions have common origin.

Common facts involved in all the three petitions are that

Major Singh was married to Gurbax Kaur on 5.4.1996. Both were

living in England. Matrimonial discord took place and as a result of that FIR No. 85 dated 15.11.2000 under Sections 406, 498-A, 120-B IPC was registered in Police Station Dhilwan District Kapurthala by Santa Singh, father of Gurbax Kaur.

Santa Singh has expired and there is nobody present on behalf of Gurbax Kaur to pursue the criminal case in India. The FIR was got registered against the parents and married sisters of Major Singh. Name of Major Singh was not shown in the FIR according to the petitioners.

Petitioners in all the three petitions have alleged that conflict arose between the couple when they were living in United Kingdom (hereinafter referred to as U.K.). The factum of earlier marriage of Gurbax Kaur on two occasions came to the knowledge of Major Singh as she was having children from earlier wedlock. All these facts were statedly concealed by Gurbax Kaur, therefore misunderstanding cropped up between the couple. Both are living in U.K. since 1998. It has been alleged that Gurbax Kaur is a lady of modern thinking and Major Singh used to oppose her misdeeds. Due to this, he was thrown out of the house and it was only with the help of police of U.K. that he got back his belongings from the house of Gurbax Kaur and thereafter he started living separately since 3.4.2000. Even both the parties got divorce from U.K.Court.

The aforesaid FIR was investigated by police and the married sisters, namely, Balbir Kaur, Gurvinder Kaur, Gurbax Kaur and Randhir Kaur were put in column No.2. Only the parents and one another family member were chargesheeted.

Report under Section 173 Cr.P.C. was filed. Nothing incriminating was alleged against Major Singh. An application was filed for summoning the married sisters of Major Singh and vide order dated 6.10.2001, they were ordered to be summoned. An application was filed by the married sisters of Major Singh for dropping the proceedings against them and to recall the summoning order dated 6.10.2001. The said application alongwith application of the prosecution to summon Major Singh was dismissed by the Judicial Magistrate, Ist Class Kapurthala on 9.5.2002. The application for summoning Major Singh as an accused was dismissed on the ground that if something comes out against him after leading the evidence then he can be summoned. At that stage, it was thought appropriate not to summon Major Singh.

Against the charge so framed, the married sisters of Major Singh went in revision petition before the Additional Sessions Judge, Kapurthala and the same was dismissed vide order dated 13.10.2003. This is how, CRM-M No.809-M of 2004 was filed by married sisters of Major Singh and is listed before this Court for disposal.

Karnail Singh and others seek quashing of FIR in question along with order of charge dated 9.5.2002 and revisional order dated 13.10.2003 passed by Additional Sessions Judge, Kapurthala in CRM-M No. 7443 of 2004. In CRM-M No. 58478 of 2005, petitioner Karnail Singh (father of Major Singh) seeks quashing of order dated 4.8.2005, vide which Major Singh has been summoned under Section 319 Cr.P.C. in the case after leading of

evidence by the prosecution.

Learned counsel for the petitioners states that the marriage was solemnized between Major Singh and Gurbax Kaur in India on 5.4.1996 and thereafter both went to U.K. The alleged cruelty and misappropriation of articles took place in England only. Dispute arose between the couple in 2000 when the factum of earlier marriage of Gurbax Kaur came to the knowledge of Major Singh. All the allegations pertained to U.K. and the lodging of FIR by father of Gurbax Kaur in India is totally without jurisdiction and is the result of abuse of process of law.

Learned counsel further states that all the married sisters, who were married even prior to marriage of Major Singh have been illegally arrayed as accused. There was no incriminating allegations against Major Singh in the FIR, nor in the challan. In the challan submitted, only allegations were made against parents of Major Singh, namely, Karnail Singh and Jit Kaur and brother of Major Singh, namely, Girdawar Singh. Names of all the four married sisters of Major Singh were initially put in column No.2 of the challan and even at one point of time, application to summon Major Singh was declined for want of prosecution evidence to that effect. Learned counsel further submits that there is no material on record to sustain framing of charge against the petitioners in the aforesaid petitions.

During the pendency of aforesaid petitions, this Court, vide order dated 15.3.2007 in CRM-M No. 58478 of 2005, passed the following order:-

“The criminal prosecution was launched by Santa Singh,

who is stated to have expired. Gurbax Kaur, the daughter of Santa Singh residing abroad, has in her affidavit before a Court in USA in divorce petition submitted that she does not have any proceedings pending in India. Counsel for Gurbax Kaur seeks time to place on record affidavit or to produce Gurbax Kaur on next date of hearing.

For arguments, now to come up on 24.5.2007.”

A perusal of aforesaid order shows that Gurbax Kaur has filed an affidavit in foreign Court in divorce petition that she does not have any pending proceedings in India. Learned counsel for Gurbax Kaur was given time to place on record affidavit or to produce Gurbax Kaur on the adjourned date to controvert the aforesaid assertion. Thereafter, needful was not done for seven years and the court vide order dated 27.10.2014 observed in the following manner:-

“On March 15, 2007, time was sought by counsel for Gurbax Kaur either to place on record her affidavit or to produce her on the next date of hearing. In spite of lapse of more than seven years, order dated 15.3.2007 has not been complied with. However, counsel for Gurbax Kaur has been seeking time for quite some time to make an application to implead said Gurbax Kaur as a party to the present proceedings. Even that has not been done so far. It seems that the only effort of the aforesaid Gurbax Kaur is to delay the disposal of the present proceedings, otherwise she does not seem to have any

interest in the proceedings. In these circumstances, counsel for Gurbax Kaur is disallowed from appearing on her behalf in the present proceedings.

Post for hearing on 15.1.2015.”

Neither Gurbax Kaur has been impleaded as party to the present proceedings after the death of her father Santa Singh (complainant), nor her affidavit was filed in compliance of previous order, nor she was produced in Court. Faced with this situation, the Court observed that Gurbax kaur does not seem to have any interest in the present proceedings and resultantly, learned counsel for Gurbax Kaur was disallowed from appearing in present proceedings.

During the course of arguments, it was not shown by either of the parties that the order dated 27.10.2014 has been assailed by Gurbax Kaur in any Court.

In view of aforesaid it has to be taken that after the death of Santa Singh (complainant), there is nobody on behalf of the complainant to pursue the case on behalf of Gurbax Kaur. Only incriminating material is the witnesses, namely, Mohinder Singh (PW-1) and Gurdev Singh (PW-2) examined before summoning Major Singh as accused in this case.

Learned counsel for the petitioners has assailed the impugned proceedings on the ground of jurisdiction and proceedings being abuse of process of law in ropping even the married sisters by the complainant in respect of alleged cruelty and misappropriation having been committed in foreign country. The order of summoning of Major Singh under Section 319 Cr.P.C. has also been assailed on

the ground that no material exists on record warranting his summoning with the aid of Section 319 Cr.P.C..

Learned counsel cites Ismail vs. State of Kerala, 1999 (2) RCR (Crl.) 314 to the effect that the offence committed outside India shall not be inquired and tried in India except with previous sanction of Central Government as proviso to Section 188 Cr.P.C. is mandatory in nature. Learned counsel also relies upon Fatma Bibi Ahmed Patel vs. State of Gujrat and another, 2008 (3) RCR (Crl.) 135 in the aforesaid context. Secondly, the territorial jurisdiction of the Court, trying the present case in India has been assailed on the strength of Section 177/178 Cr.P.C. by citing Harman Preet Singh Ahluwalia and others vs. State of Punjab and others, 2009 (2) RCR (Crl.) 956. Thirdly, summoning of accused with the aid of Section 319 Cr.P.C. is being assailed on the ground that the evidence on record is not sufficient for ultimate conviction of the petitioners and, therefore, provision under Section 319 Cr.P.C. should not have been pressed into service and the Court should have rejected the prayer for summoning the accused. Lastly, learned counsel assails the order of charge by saying that charge is also a material stage and the order of summoning should not be passed in routine and the court should have scrutinized the evidence, particularly in view of the attending circumstance of the case particularly the factum of divorce in foreign Court and the affidavit filed by the wife that no proceedings are pending in India. Thereafter for seven years, wife did not prefer either to file affidavit in the present proceedings or to get herself

impleaded as complainant. Learned counsel relied upon M/s Pepsi

Foods Ltd. vs. Special Judicial Magistrate, 1997 (4) RCR (Crl.)

761 and also cited **Shlok Bhardwaj vs. Runika Bhardwaj and others, 2015 (1) RCR (Crl.) 249** to contend that once a divorce has been granted thereafter, wife is estopped from continuing any criminal proceedings.

Apparently, wife has not come forward despite specific order passed by this Court seven years ago to know whether she is interested in pursuing the litigation and to endorse the alleged culpability arising out of FIR in question and for that she was required to file affidavit or she was required to come present in person in the present proceedings. In view of non-observance of the obligation, the Court vide order dated 27.10.2014, disallowed the counsel for Gurbax Kaur from appearing in the present proceedings.

On the other hand, learned State counsel relied upon **Hardeep Singh vs. State of Punjab and others, 2014 (1) RCR (Crl.) 623** to support the order of summoning on the ground that in the aforesaid judgment of the Hon'ble Apex Court, question No.5 in terms of powers under Section 319 Cr.P.C. extendable to summon a person not named in the FIR has been observed to the effect that a person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person, who has been discharged can be summoned under Section 319 Cr.P.C., provided that from the evidence it appears that such person can be tried along with accused persons facing the trial. Learned counsel further relied upon **Sherish Hardenia and others vs.State of M.P. and another**

2015 (1) SCC (Crl.) 381 to support that when prima facie case is

made out, even though there are no likelihood of conviction, FIR should not be quashed.

Learned State counsel on the strength of observations made by the Court in para No.3 of the aforesaid judgment, contended that it is only where in the absence of prima facie case, the Court would be justified in cancelling the FIR or quashing the chargesheet or declining the summoning under Section 319 Cr.P.C. but where the material suggests prima facie nature of evidence, then even if there is no likelihood of ultimate conviction, FIR should not be quashed.

This Court has considered the contentions and rival contentions of both sides and with able assistance of both the counsels, this Court has also perused the material on record. It is found that the marriage was solemnized on 5.4.1996. Thereafter, the couple went to U.K. and started living there. The controversy between the couple led to matrimonial discord in the year 2000 and it is an admitted fact by now on record that the divorce was granted by foreign Court and the parties started living separately thereafter.

The complainant, father of Gurbax Kaur, has already expired and in view of nature of orders passed by this Court from time to time even the counsel for Gurbax Kaur has been restrained from appearing in the present proceedings. As on date it will be made out that there is no complainant on record. No affidavit by Gurbax Kaur has been filed, nor she has appeared in person in these proceedings. Looking to the nature of orders passed by the Court from time to time, it is made out that the entire family including

married sisters of Major Singh have been arrayed as accused, even though they were found innocent by the police in investigation and were summoned by the Court later on. Name of Major Singh was not given in the prosecution version and nothing incriminating was found against him in the challan and even at first point of time when application of the prosecution under Section 319 Cr.P.C. was dismissed. It is only with the aid of PW-1 and PW-2, namely Mohinder Singh and Gurdev Singh, he has been summoned under Section 319 Cr.P.C. as an accused to face trial.

Looking to the attending circumstances of the case, this Court is of the considered view that inherent powers under Section 482 Cr.P.C. can be invoked to prevent abuse of process of law and to achieve ends of justice. This Court is sanguine of the fact that powers under Section 482 Cr.P.C. are to be sparingly exercised and not in routine manner. The foremost consideration for invoking powers under Section 482 Cr.P.C. is to prevent abuse of process of law. Even if the revision against charge has been dismissed by the Additional Sessions Judge, Kapurthala and the same order is under attack in CRM-M No. 809 of 2004, this Court in number of cases has come to the rescue of near relatives of husband, wherein, they have been targeted with some allegations arising out of matrimonial tie between the couple. An estranged wife can go to any extent to implicate all the family members of husband to salvage some thing to her satisfaction even though on wrong premise. In the present situation, this Court considers that it will be in fitness of things in case CRM-M No. 7443 of 2004 and CRM-M No. 809 of 2004 are allowed

to the extent of petitioners therein leaving the husband Major Singh to seek his remedies in law as the order of summoning under Section 319 Cr.P.C. has been assailed by his father on his behalf, which according to this Court is not maintainable.

With these observations, CRM No. 7443-M of 2004 and CRM-M No. 809 of 2004 to the extent of petitioners therein are allowed and prosecution against them is quashed. So far as CRM-M No. 58478 of 2005 is concerned, the same is dismissed leaving Major Singh to avail his remedies in accordance with law, if so desired.

(RAJ MOHAN SINGH)
JUDGE

April 01, 2015
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