

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-12551-2012
Date of decision:3.9.2015

Kuldip Singh Jaswal and others

...Petitioners

Versus

Jaspal Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.A.S.Syan, Advocate for the petitioners.
Mr.Vijay Lath, Advocate for respondent No.1.
Mr. Daljeet Singh Virk, AAG, Punjab.

RAMESHWAR SINGH MALIK, J. (Oral)

Petitioners, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C' for short), seek quashing of impugned complaint No. 316/108 filed on 28.7.2007 titled as (Jaspal Singh v. Kuldip Singh Jaswal and others), pending in the court of learned Additional Chief Judicial Magistrate, SBS Nagar (Nawanshahar) Annexure P-4, summoning order dated 6.2.2009 (Annexure P-5), order dated 16.1.2012 (Annexure P-6) declaring the petitioners as proclaimed offenders and order dated 14.3.2012 (Annexure P-8) attaching the property of the petitioners, as well as the consequential criminal proceedings arising therefrom.

Notice of motion was issued and interim order was passed.

Respondent No.1 filed his reply, whereas a separate reply was filed on behalf of the State of Punjab.

Learned counsel for the petitioners submits that institution of the impugned complaint and continuation thereof as well as the criminal proceedings arising therefrom, amount to glaring misuse of process of Court. He further submits that in the present case, marriage took place on 15.1.2004 at Nawanshahr. Petitioner No.1-husband, who was already staying in Canada at the time of his marriage, left for Canada in March 2004. Out of this wedlock, a female child was born on 4.11.2004. He sponsored his wife Parampreet Kaur Jaspal and she also went to Canada on 2.8.2006. Husband and wife along with their child stayed happily together from 2.8.2006 up to 28.7.2007. However, differences arose between husband and wife. Wife of petitioner No.1 filed a complaint in the court of competent jurisdiction in Canada on 9.8.2007.

During this period, the impugned complaint (Annexure P-4) came to be filed in India by respondent No.1-father of Parampreet Kaur Jaspal, against as many as 11 persons including three petitioners, who are husband, father-in-law and mother-in-law of Parampreet Kaur Jaspal, daughter of respondent No.1-complainant. The impugned summoning order dated 5.2.2009 (Annexure P-5) came to be issued only against first three accused-petitioners herein, and the remaining 8 accused Nos. 4 to 11 were not summoned. He further submits that since the complainant-respondent intentionally gave incorrect and only Indian addresses of the petitioners, despite knowing fully well that petitioners were residing in Canada, the impugned order dated 16.1.2012 (Annexure P-6) also came to be issued, declaring the petitioners as proclaimed offenders. He would next contend

that complainant-respondent intentionally concealed another material fact from the notice of the learned trial Magistrate that in the meantime, wife of petitioner No.1 filed her detailed affidavit dated 28.9.2009 in the Supreme Court of British Columbia at Annexure P-1, which is available from pages 25 to 33 of the paper-book. Respondent No.1 further concealed that on the basis of affidavit of his daughter (Annexure P-1), all the disputes between husband and wife were resolved vide orders Annexures P-2 and P-3, including issuing the certificate of divorce, maintenance for the child and all other claims of the wife were granted to her, in accordance with law of the said country. He concluded by submitting that after getting divorce from petitioner No.1, daughter of the complainant-respondent performed her re-marriage and staying there, in Canada itself.

However, the complainant is still bent upon to cause maximum harassment to the petitioners, because of his malafide intention which amounts to clear abuse of process of law. Learned counsel for the petitioners, on the issue of maintainability of the present petition through attorney, places reliance on a judgment of the Hon'ble Supreme Court in **Rayullu Subba Rao and others v. Commr. of Income-tax, Madras, AIR 1956 SC 604** and a judgment of **Andhra Pradesh High Court in Dr.Sudhakar Babu v. Duwuru (Murala) Negeswaramma and another, 2005 (1) CCR 230**. He prays for setting aside the impugned complaint and all the consequential criminal proceedings arising therefrom, including the above-said orders contained in Annexures P-5, P-6 as well as order dated 14.3.2012, by allowing the present petition with costs.

Learned counsel for the State fairly states that since the issue was a matrimonial one and petitioners were seeking quashing of private

complaint and proceedings arising therefrom, State had hardly any role to play and the matter may be disposed of, by passing appropriate orders.

However, learned counsel for the respondent-complainant vehemently opposes the present petition, contending that since it has been filed by the petitioners through attorney and not by themselves, it was not maintainable as such and liable to be dismissed for this reason alone. In this regard, he places reliance on the following judgments:-

- 1. Harishankar Rastogi v. Girdhari Sharma and another, AIR 1978 SC 1019;**
- 2. Janata Dal v. H.S.Chowdhary and others, 1991 (3) SCC 756;**
- 3. Simranjit Singh Mann v. Union of India and another, AIR 1993 SC 280; and**
- 4. Amit Ahuja v. Gian Parkash Bhambri, 2010 (3) RCR (CrI.) 586 (P&H).**

Learned counsel for the complainant-respondent further submits that in spite of the fact that all the disputes between petitioner husband and his wife might have been settled in Canada, respondent-complainant was competent to file, maintain and pursue the impugned complaint as well as criminal proceedings arising therefrom, against the petitioners. He refers to allegations levelled in the complaint, to contend that petitioners have committed the offences alleged against them and in such a situation, the impugned complaint was rightly filed by the respondent-complainant. He concluded by submitting that since the learned trial Court has rightly issued the summoning order, the order declaring the petitioners as proclaimed offenders as well as the order for attaching their

property, present petition is liable to be dismissed. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the given fact situation of the case referred to hereinabove, instant one has been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

Taking first, the issue of maintainability of the present petition filed through attorney, when a pointed question was put to the learned counsel for the respondent-complainant to refer to any statutory bar provided by the legislature in the Code of Criminal Procedure or any Statute for that purpose, he had no answer and rightly so, it being a matter of record. So far as the judgments relied upon by the learned counsel for the respondent-complainant on this issue are concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, none of them has been found of any help to the respondent-complainant, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others,**

2002 (3) SCC 533

So far as the peculiar fact situation obtaining in the present case is concerned, respondent-complainant seems to be obsessed about the maintainability of the present petition, altogether ignoring as to whether the complaint, in the peculiar facts and circumstances of the case, was maintainable or not, particularly when his daughter has already settled not only the matrimonial dispute but other ancillary disputes as well, with her husband in Canada and thereafter living happily there in Canada itself, after performing her second marriage. No doubt, although this Court, would insist that any petition under Section 482 Cr.P.C for quashing of the FIR or complaint and the consequential proceedings arising therefrom, should be normally filed by the accused persons themselves, yet there cannot be and should not be laid down a straight jacket formula in this regard, leaving this issue to be considered and decided as per the peculiar facts and circumstances of each case. It is so said because there is no statutory bar in this regard provided under the Code of Criminal Procedure. So far as the present case is concerned, petitioners have specifically authorized their power of attorney holder, to file any such petition before this Court qua the impugned complaint. Having said that, this Court feels no hesitation to over rule the preliminary objection raised by the learned counsel for the respondent-complainant and it is held that in the given fact situation of the present case, instant petition is maintainable through the attorney.

Coming to the merits of the case, a bare reading of the impugned complaint (Annexure P-4), summoning order (Annexure P-5), order declaring the petitioners as proclaimed offenders as Annexure P-6, order attaching the property of the petitioners (Annexure P-8), affidavit of

the wife of petitioner No.1 (Annexure P-1) and orders passed by the competent court of Canada at Annexures P-2 and P-3 including the divorce certificate, leaves no manner of doubt that although the parties to the marriage have settled all their disputes, following appropriate process of court, yet the complainant, who is father of former wife of petitioner No.1, is still bent upon to cause maximum harassment to the petitioners, with a view to wreck his vengeance, which clearly amounts to glaring misuse of process of court.

In fact, in the peculiar facts and circumstances of the case, his complaint was not even maintainable. It is so said, because the impugned complaint was based on mala fide intention of respondent No.1-complainant, whereby he sought to implicate as many as 11 accused, including distant relatives of the petitioners, thus, complainant-respondent cannot be said to be a genuine and honest litigant. His intentions were not bona fide right from day one. He has launched frivolous litigation for extraneous considerations, with a view to black mail the petitioners. Such kind of frivolous litigation cannot be permitted to continue, for twin reasons and purposes, namely to prevent any further abuse of process of the court and also to secure the ends of justice.

A bare combined reading of detailed order dated 22.9.2010 (Annexure P-2), passed by the Supreme Court of British Columbia, would show that custody of the child was granted to the mother, namely Parampreet Jaswal-former wife of petitioner No.1, with visiting rights to the father-petitioner No.1. Petitioner No.1 has been directed to pay different amounts. The relevant part of the order reads as under:-

“Pursuance to section 15.1 (1) of the Divorce Act

(Canada), the defendant shall pay to the Plaintiff, the Guideline amount of \$ 383.00 per month for the support of the Child, payable on the 1st day of each month, commencing May 1, 2010, and continuing for so long as the child is no longer "child of the marriage" as defined in the Divorce Act(Canada) or are no longer defined as "child" under the Family Relations act.

Pursuant to section 7 of the Federal child Support Guidelines, the Defendant shall pay to the plaintiff 50% of the costs associated with the Special and Extraordinary Expenses relating to the Child, to include the following:

- a. Effective April 1, 2010, the Defendant shall pay to the plaintiff \$ 71.50 per month, representing one-half of the Child's daycare expenses, until September 1, 2010;*
- b. Effective September 1, 2010, the Defendant shall pay the sum of \$125.00 per month to the Plaintiff, representing one-half of the Child's daycare expenses;*
- c. Should daycare fees change, the Defendant will continue to pay to the plaintiff 50% of such costs, upon the plaintiff providing proof of such change; and*
- d. The Plaintiff will forward to the Defendant receipts of daycare fees alongwith records of subsidy amounts relating to such costs.*

Pursuant to section 15.1. (5) of the Divorce Act (Canada), the Plaintiff and the Defendant having agreed to a fixed amount of \$2000 owing by the Defendant as arrears of Child support, the defendant shall pay to the Plaintiff, the amount of \$ 100 per month towards such arrears, in addition to the basic Child support amount and Section 7 Expenses as described in paragraphs 5 and 6;

Pursuant to sections 64, 65 and 66 of the Family Relations Act, the Defendant shall pay to the Plaintiff, the sum of \$ 500.00 in full and final satisfaction of her claims for spousal support.

Pursuant to Sections 64, 65 and 66 of the Family Relations Act, the Defendant shall pay to the plaintiff, the sum \$4000.00 plus interest to be calculated from July 31, 2007 to the date of payment, with such interest being \$253.15 calculated at the current Bank of Canada interest rate, and such payment shall be in full and final satisfaction of property settlement issues;

Certificate of Pending Litigation No.BB15701 registered by the Plaintiff against property legally described as PID 001-908-197 Smara Lot 123 Section 20 Township 16 New Westminster District Surata plan NW1689 Together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown in Form I, shall be cancelled.”

Further, the certificate of divorce (Annexure P-3) between Parampreet Jaswal and her husband-petitioner No.1, reads as under:-

“This is to certify that PARAMPREET JASWAL and KULDEEP SINGH JASWAL who were married on January 15, 2004 were divorced under the Divorce Act (Canada) by an order of this Court which took effect and dissolved the marriage on October 23, 2010.

Given under my hand and the seal of this Court the 3rd day of November, 2010.

01 Nov. 10

Digitally signed

Field Shelley

Registrar”

Complainant-respondent No.1 did not feel satisfied in spite of the above-said orders having been passed by the court of competent jurisdiction. Not only that, Parampreet Jaswal has performed her second marriage in Canada itself and even now she is staying there. Despite knowing fully well, complainant concealed all these facts from the notice of

learned court below that the proceedings have culminated into the above-said orders (Annexures P-2 and P-3), besides the fact that all the three petitioners were living in Canada for the last very many years. Respondent-complainant intentionally concealed these facts from the notice of the learned trial Magistrate and got the petitioners declared proclaimed offenders vide order dated 16.1.2012 (Annexure P-6). Thereafter, he moved an application (Annexure P-7) for getting the property of the petitioners attached and the same was ordered to be attached by the learned Magistrate vide order dated 15.3.2012 (Annexure P-8). This was the maximum which the complainant-respondent could have done, to cause maximum harassment to the petitioners, by misusing the process of Court.

Had the complainant-respondent brought these material facts to the notice of the learned Magistrate, there was no scope for passing these impugned orders, at the hands of the learned Magistrate. However, since respondent-complainant was pursuing dishonest litigation, he withheld the material information from the notice of the Court, so as to get favourable orders. Thus, respondent-complainant did not show any respect to the justice delivery system, while playing fraud with the court. Such kind of frivolous litigation is liable to be dealt with by the courts with strong hand, so as to send a loud and clear message to such type of dishonest litigant that nobody is above the law and such kind of frivolous litigation has no place in the court of law.

The allegations leveled by the complainant in the impugned complaint were so absurd and baseless that the trial Magistrate issued the summoning order only qua the petitioners, whereas there were as many as

11 accused in the impugned FIR. It clearly goes to show that the

complainant-respondent could not make out even a prima facie case against 8 accused out of total 11 implicated by him in his complaint and he did not challenge the order of the learned Magistrate for not summoning the remaining 8 accused, for the reasons best known to him. In such a situation, it can be safely concluded that the complainant-respondent has shown no respect for the law and he was proceeding on his malafide approach by misusing the process of Court. Thus, the impugned complaint, summoning order dated 6.2.2009 (Annexure P-5), order dated 16.1.2012 (Annexure P-6), declaring the petitioners as proclaimed offenders and order dated 14.3.2012 (Annexure P-8) attaching the property of the petitioners, as well as all the consequential criminal proceedings arising therefrom, cannot be sustained, for this reason also.

The above-said view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court and this Court:-

- 1) G.V.Rao, Vs. LHV Prasad, 2000 (3) SCC 693;**
- 2) Sundar Babu and others Vs. State of Tamil Nadu, 2009 (14) SCC 244;**
- 3) Preeti Gupta and another Vs. State of Jharkhand and another, 2010 (7) SCC 667;**
- 4) Geeta Mehrotra Vs. State of U.P. And another 2012 (10) SCC 741;**
- 5) K. Srinivas Rao Vs. D.A.Deepa 2013 (5) SCC 226;**
- 6) Sushil Kumar Sharma Vs. Union of India and others 2005 6) SCC 281;**
- 7) Madan Lal and others Vs. State of Punjab (P&H) 2012;**
- 8) Gurdial Singh v. State of Punjab and another (CRM-M-36189-2010), decided on 31.7.2015.**

The relevant observations made by the Hon'ble Supreme Court

in para 28 and 30 to 35 of its judgment in **Preeti Gupta's** case (supra), which can be gainfully followed in the present case, read as under:-

“It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

xxx xxx xxx xxx
xxx xxx xxx

It is a matter of common experience that most of these complaints under section 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.

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 under section 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.

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.

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.

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.

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."

Reverting back to the fact situation of the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court, in the judgments referred to hereinabove, it is unhesitatingly held that complainant-respondent has been misusing the process of law for his ulterior motives and the same cannot be permitted to continue any further, so as to prevent any further abuse of process of court and to secure the ends of justice.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noticed above, coupled with the reasons aforementioned, this Court is of the considered view that present petition deserves to be accepted with costs, which are quantified at Rs.50,000/-.

Consequently, the impugned complaint (Annexure P-4) summoning order dated 6.2.2009 (Annexure P-5), order dated 16.1.2012 (Annexure P-6), declaring the petitioners as proclaimed offenders and order

dated 14.3.2012 (Annexure P-8), attaching the property of the petitioners, as well as the consequential criminal proceedings arising out of the impugned complaint, are hereby ordered to be quashed.

Respondent-complainant is directed to deposit the amount of costs of Rs.50,000/- within a period of two months with the Secretary, Punjab State Legal Service Authority, Chandigarh, failing which the said amount shall be recovered by the Collector, Nawanshahar (SBS Nagar), as arrears of land revenue, in accordance with law and thereafter shall deposit the same with the Secretary, Punjab State Legal Service Authority, Chandigarh. Registry is directed to supply a copy of this order to the Collector, Nawanshahar for compliance thereof.

Resultantly, with the above-said observations made and directions issued, the present petition stands allowed with costs, as indicated above.

3.9.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE