

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Misc. No.M-15419 of 2014
Date of Decision : 11.12.2015

Darshan Singh and anotherPetitioners

Vs.

Charanjit Kaur @ Manpreet KaurRespondent

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CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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Present : Mr. Vivek Goel, Advocate for the petitioners.
Mr. N.S. Sodhi, Advocate for the respondent.

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

RAMESHWAR SINGH MALIK, J

Petitioners, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seek quashing of complaint No.71 dated 31.3.2009 (Annexure P-1), summoning order dated 11.2.2012 (Annexure P-2) and the revisional order dated 13.11.2013 (Annexure P-3), the petitioners being parents-in-law of the complainant-respondent.

Notice of motion was issued vide order dated 6.5.2014 and pursuant thereto, learned counsel for the respondent appeared on 22.7.2014. However, the respondent has chosen not to file any reply to the instant petition, despite having been granted more than five opportunities.

Learned counsel for the petitioners submits that petitioners are the parents-in-law of the complainant-respondent. The marriage between the

complainant and Gurpreet Singh son of the petitioners was performed way back on 26.1.1998. Ms. Prabhjot Kaur daughter and Master Jagdeep Singh son were born out of this wedlock. Some temperamental differences arose between husband and wife. The complainant-wife left the matrimonial home on her own and started living with her parents leaving behind both the children with the petitioners. Accused no.1 in the complaint (Annexure P-1), who is husband of the complainant and son of the petitioners is also not living with the petitioners. Husband and wife both are living separately, but they are hardly concerned about their children and it is the petitioners, who are bringing up their grand children with all love and affection.

He also refers to the ration card (Annexure P-6), which contains only four members of the family headed by petitioner no.1. Remaining 3 members are petitioner no.2 Smt. Manjit Kaur wife of petitioner no.1., Ms. Prabhjot Kaur grand daughter of the petitioners and Jagdeep Singh grand son of the petitioners. Learned counsel for the petitioners would next contend that as per public notice (Annexure P-4) and newspaper clip (Annexure P-5), they have already disinherited their son namely Gurpreet Singh for his misconduct and unwarranted activities. He prays for quashing the impugned complaint, summoning order as well as the revisional order, by allowing the present petition.

On the other hand, learned counsel for the complainant-respondent vehemently contended that petitioners are trying to play smart. They allegedly disinherited their son vide Annexures P-4 and P-5 only after filing of the impugned complaint against them. He further submits that the ration card (Annexure P-6) was prepared by the petitioners only to show that the grand children were living with them, because the ration card came to be

issued on 7.3.2010. He tries to justify the impugned orders passed by the learned trial court as well as the revisional court, contending that the learned courts below did not exceed their jurisdiction, while passing the impugned orders and the same deserve to be upheld. He prays for dismissal of the present petition.

Having heard learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that keeping in view the totality of facts and circumstances of the case noticed herein above, petitioners have been found entitled for invoking the inherent jurisdiction of this court under Section 482 Cr.P.C. and the instant petition deserves to be accepted, for the following more than one reasons.

It is a matter of record that the averments taken by the petitioners in their petition have gone un rebutted, because the complainant-respondent has not filed any reply, despite having been granted sufficient time. It is not even the argued case on behalf of the complainant-respondent that children are not living with the petitioners. Perusal of the ration card (Annexure P-6) would at least prima facie show that children are living with the petitioners. No contrary document has been placed before this court by way of reply on behalf of complainant-respondent or during the course of hearing.

Similarly, the fact regarding disinheritance of Gurpreet Singh by the petitioners, vide Annexures P-4 and P-5 have gone un rebutted. Both these documents are dated 7.5.2008, whereas the impugned complaint (Annexure P-1) came to be filed much later because the same is dated 31.3.2009. Although, learned counsel for the complainant has tried to controvert this fact, however, he was unable to substantiate his argument in the absence of any

document to support his contention. Having said that, this court feels no hesitation to conclude that the impugned complaint, summoning order as well as the revisional order, atleast qua the petitioners, are the result of blatant abuse of process of court and the same cannot be sustained.

A bare combined reading of both the impugned orders would show that the learned courts below have contradicted themselves about the custody of the children. In opening para of the impugned summoning order at page 17 of the paper book, the learned trial court has observed that the complainant was turned out of the matrimonial home alongwith children, after giving beating, whereas the learned revisional court in para 5 of the impugned order at page 21 of the paper book, has specifically recorded that the complainant was driven out of matrimonial home, keeping behind children in March 2008. Since the complainant has not come forward to instruct learned counsel for the complainant properly, he was found fully justified not to claim the custody of the children. In such a situation, it can be safely concluded that neither the father nor mother were interested in their children, who are being brought up by the petitioners-grand parents.

Further , a bare reading of the allegations levelled in the impugned complaint would make it crystal clear that the complainant has tried to implicate maximum members of the family of the husband. The learned trial court was justified, while declining to summon accused nos.4 and 5, however, it fell in serious error of law, while summoning the petitioners. Similarly, the learned revisional court failed to appreciate the above said factual as well as legal aspect of the matter, while dismissing the revision petition filed by the petitioners, vide impugned order (Annexure P-3), thus, the impugned complaint as well as both the orders passed by the learned courts below cannot

be sustained, for this reason also.

In view of what has been observed herein above, there is no room for doubt that the petitioners have been made the victim of a growing tendency to implicate maximum members of the family of the husband at the hands of the complainant-wife, in the cases arising out of matrimonial dispute. Petitioners being the parents-in-law of the complainant would have hardly any role to play, particularly in the given fact situation of the present case. Had the petitioners been at fault, they would not have taken the responsibility for bringing up the children of the complainant, who have left them in the lurch for years together. The allegation levelled against the petitioners in the impugned complaint does not appeal to reason at all and the impugned complaint, summoning order as well as the revisional order cannot be sustained, for this reason as well.

The above said view taken by this court also finds support from numerous judgements of the Hon'ble Supreme Court as well as this court, including the following judgments :-

- 1) G.V.Rao, Vs. LHV Prasad, 2000 (3) SCC 693
- 2) Manjula Sinha Vs. State of U.P. and others, 2007(3) RCR (Crl.) 778,
- 3) Sundar Babu and others Vs. State of Tamil Nadu, 2009(14) SCC 244
- 4) Preeti Gupta and another Vs. State of Jharkhand and another, 2010 (7) SCC 667
- 5) Geeta Mehrotra Vs. State of U.P. And another 2012 (10) SCC 741
- 6) K. Srinivas Rao Vs. D.A.Deepa 2013 (5) SCC 226

7) Sushil Kumar Sharma Vs. Union of India and others 2005 (6)
SCC 281

8) Madan Lal and others Vs. State of Punjab (P&H) 2012 (8)
RCR (criminal) 428

9) Gurdial Singh and another Vs. State of Punjab and others
decided by this court in CRM No.M-36189 of 2010.

10)Rajiv Mehta and another Vs. State of Punjab and others (CRM
No.M-8495 of 2014) decided on 17.8.2015.

11) Sarla Devi and another Vs. State of Haryana and another
(CRM No.M-15435 of 2014) decided on 18.9.2015.

The relevant observations made by the Hon'ble Supreme Court
in para 20, 21 and 24 of its judgment in **Geeta Mehrotra's case** (supra),
which can be gainfully followed in the present case,read as under:-

*“It would be relevant at this stage to take note of an apt
observation of this Court recorded in the matter of G.V.
Rao vs. L.H.V. Prasad & Ors. reported in 2000 (2) RCR
(criminal 290; (2000) 3 SCC 693 wherein also in a
matrimonial dispute, this Court had held that the High
Court should have quashed the complaint arising out of
a matrimonial dispute wherein all family members had
been roped into the matrimonial litigation which was
quashed and set aside. Their Lordships observed therein
with which we entirely agree that:*

*“there has been an outburst of matrimonial dispute in
recent times. Marriage is a sacred ceremony, main purpose
of which is to enable the young couple to settle down in life*

and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.” The view taken by the judges in this matter was that the courts would not encourage such disputes.

*In yet another case reported in AIR 2003 SC 1386 in the matter of **B.S. Joshi & Ors. vs. State of Haryana & Anr.** it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife under Section 498A against the husband and his relatives and subsequently she*

has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power.

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However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognisance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the

complainant-wife. 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 of 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.”

Similarly, the observations made by the Hon'ble Supreme Court in par 28 and 30 to 35 of its judgement in **Preeti Gupta's case (supra)**, which aptly apply to the facts of 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.

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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 to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court in the cases referred to herein above, it is unhesitatingly held that continuation of the

criminal proceedings arising out of impugned complaint would amount to further abuse of process of court and the same cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that since the impugned order, summoning order as well as the revisional order has been found contrary to the law laid down by the Hon'ble Supreme Court in the cases referred to herein above, the same are liable to be quashed, with a view to prevent further abuse of process of court and also to secure the ends of justice.

Consequently, the impugned complaint (Annexure P-1), summoning order (Annexure P-2) as well as the revisional order (Annexure P-3) are hereby ordered to be quashed, however, only qua the petitioners.

Resultantly, with the above said observations made, instant petition stands allowed, however, with no order as to costs.

11.12.2015
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(RAMESHWAR SINGH MALIK)
JUDGE