

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-22651 of 2009

Date of decision : August 03, 2015

Parshini @ Chhino Devi and Ors.

... Petitioners

vs.

Balbir Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Hitesh Kaplish, Advocate
for the petitioners.
Mr. S.K. Sharma, Advocate
for the respondent.

Surinder Gupta, J

Learned counsel for petitioners submits that during pendency of this petition, petitioner No.7-Karam Chand Balsi @ Karam Chand Kalsi has died and seeks permission to withdraw this petition qua petitioner No.7.

In view of submissions made by learned counsel for petitioner, this petition, qua petitioner No.7, is dismissed as withdrawn.

Respondent filed complaint against petitioners for offence under Sections 498-A/406/420 IPC. The case of complainant, in brief, is that she married Rajinder Singh (accused No.1 in complaint) on 11.4.1994 at village Attowal. In marriage, a sum of ₹70,000/- were spent on dowry articles by her family but the accused family was not happy with the dowry given. Accused No.8 Karam Chand (petitioner No.7 herein, who has since died) was the mediator of the marriage but he did not disclose that accused No.1 was a divorcee. The complainant-respondent was also widow before her marriage with accused No.1 and was having a son from her first marriage. She has levelled the allegations against accused No.1 that he was addicted to drinking and other drugs and under the effect of intoxicants, used to beat her mercilessly. He evaded his responsibility to maintain son of complainant from her first marriage. She alleged that before Diwali, in the year 2001, accused No.1 to 8 gave her merciless beatings when she was family way. The accused No.1 also levelled allegations against her by disowning the child in her womb terming him as "*haramjada*". All this happened at the instance of accused No.2 to 8. The petitioner No. 8 and 9

who were living near the house of respondent, used to instigate her husband to divorce her. She was ultimately shunted out from her matrimonial house on 11.9.2002 by giving beatings. The matter was reported to the police but no action was taken, hence, this complaint.

After recording preliminary evidence, the trial order ordered the summoning of all the petitioners for offence punishable under Sections 498-A/420 IPC.

Learned counsel for petitioners argued that all the allegations in the complaint were against accused No.1. It was the second marriage of accused No.1 and respondent. Even the trial court while passing the summoning order had reached the conclusion that there was no sufficient material on record to believe that dowry articles were lying in the house of accused persons, as such, no summoning order was passed under Section 406 IPC. He has further argued that attempt was made by respondent to falsely implicate the petitioners because of her strained relations with Rajinder Singh her husband. The petitioner No.1 is the mother-in-law of respondent, while petitioners No.2 and 4 are the brothers of husband of respondent; petitioners No.3 and 5 are the wives of petitioners No.2 and 4 respectively. The petitioner No.6 is the sister of the husband of respondent while petitioner No.7 is her husband. Petitioner No.8 is the cousin of Rajinder Singh and Bimla Devi is the wife of petitioner No.8. Before filing this complaint, the complainant had moved application before Senior Superintendent of Police, Hoshiarpur wherein she had not levelled any allegations against the petitioners and that complaint was also enquired into and it was found that the respondent did not want to live with her husband for which she could pursue the legal remedy available to her.

Learned counsel for respondent has argued that specific allegations of instigation were levelled against the husband of the respondent. It was also mentioned in the complaint that the respondent was given beatings by all the petitioners as such prima facie case is made out against all the petitioners.

On perusal of the paper book, I find that this case is a clear example of attempt made by respondent to implicate as many relations of her husband as possible by misusing the process of law. Her first version

regarding her grievance find mentioned in the complaint dated 25.4.2003 filed by her before Senior Superintendent of Police, Hoshiarpur. The instant complaint in court was filed later on i.e. on 4.11.2003. It will be relevant to reproduced the contents of the complaint dated 25.4.2003 (Annexure P9), which reads as follows :-

“It is requested that I Balbir Kaur wife of Rajinder Singh resident of Village and P.O. Attowal, Tehsil and Distt. Hoshiarpur and my marriage took place with Rajinder Singh S/o Sh. Kartar Chand around 10 years ago and this is my 2nd marriage. My 1st husband has died and my parents married me 2nd time to Rajinder Singh and immediately after marriage my husband and his family started troubling me. Roop Lal cousin brother of my husband is also doing service here and he indulges in fighting with me and it is on his and his wife's instance that my husband beats me up and troubles me.

That on 11.9.2002 my husband turned me and my 17 years old son from my 1st marriage out of the house at night after beating me. When I told the officers they also did not pay any heed to my complaint and also said that he is mental and you should sit at home and take the p ay have food but Rajinder Singh does not allow me and my previous son to live in the house and always beats me up and fights with me.

That now from the last month I am living with my parents and along with me my one year child is also staying with me at my parents house and my husband and his family turned me out of my house after beating me. My 17 years old son is also with me. This is my husband's 4th marriage and m y 2nd marriage. My husband is not ready to keep my 17 years old son with him and that's why he beats me and my kids.

That's why I request you to take legal action against him and get me justice.”

Perusal of the above complaint clearly shows that the respondent had no grouse whatsoever against any of the petitioners and had not levelled any allegations as contained in this complaint. In complaint

(Annexure P/9) she had named one Roop Lal cousin of her husband and his wife as instigator to her husband at whose instance he (her husband) fight with her and gave her beating but he was not arrayed as accused in this complaint.

The petitioner had also filed divorce petition on 22.10.2003, which was allowed vide judgment dated 3.1.2004. Even in that petition she had levelled allegations against her husband and not against the other petitioners. The trial court while passing the summoning order of the petitioners has also not looked into any specific allegations or evidence against the petitioners and has casually ordered their summoning for facing trial.

In view of the above facts, the instant petition is allowed and the impugned complaint RBT No.11 of 2005 (Annexure P-1) and the order dated 18.5.2009 (Annexure P-2) are quashed qua the petitioners. It is, however, made clear that nothing observed in this order shall be treated as expression of opinion on merit or shall be of any help to the husband of respondent who is facing trial.

(Surinder Gupta)
Judge

August 03, 2015
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