

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-22018-2015

Date of Decision : 04.12.2015

Sukhbir Singh and another

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the digest?**

Present: Mr. R.S. Mamli, Advocate
for the petitioners.

Mr. Munish Sharma, Astt. Advocate General,
Haryana for respondent No.1 & 2-State.

Ms. Ashima Mor, Astt. Public Prosecutor
for respondent No.3-U.T., Chandigarh.

Mr. Gaurav Jain, Advocate
for the respondent Nos.6 to 9

FATEH DEEP SINGH, J.

Petitioners-Sukhbir Singh and Sukhwinder Singh both have invoked the jurisdiction of this Court in terms of Section 482 Cr.P.C., seeking directions to official respondents No.2 to 5 for registering an FIR under the provisions of Section 340 Cr.P.C., on account of concealment of material facts from

this Court by the petitioners in their petition bearing No.CRM-M-19226 of 2015 under Section 482 Cr.P.C. seeking protection of life and personal liberty at the hands of private respondents.

The facts that needs to be recapitulated are that one Promila and her husband-Sampat Singh, respondents No.6 and 7 before this Court, entered into a wedlock against the wishes of girl's family and as a consequence of which they filed a petition i.e. ***CRM No.19226 of 2015*** titled as ***Promila Rani and another versus State of Haryana and others***, under Section 482 Cr.P.C., seeking protection to their life and personal liberty which was at peril at the hands of respondents No.4 to 7. In the said petition, copy of which is Annexure P1, it was alleged by father of the girl-Sukhwinder Singh/respondent No.4 in the previous protection petition (Annexure P1) by way of his affidavit (Annexure R1) that his daughter on 3rd June, 2014 had gone to meet her maternal grandmother in village Beerabadi, Fatehabad and while on her way to Haspur, she went missing, regarding which the family of the girl had lodged FIR No.338 dated 4th of June, 2014 with Police Station Ratia, alleging that her daughter Promila was already married with one Sukhbir and without dissolving the first marriage, had undergone second marriage with Sampat Singh and has relied on Election Commission Identity Card (Annexure R3),

Ration Card Copy (Annexure R4), Photograph (Annexure R-5) and Marriage Certificate (Annexure P-9).

It is contended that subsequently in the protection petition Promila gave an affidavit (Annexure R-6) that she had married Sampat and on the date of the deposition so made by her on 6th June, 2015, there was no threat to her life and personal liberty and she did not want any protection from the family and to the similar effect is the affidavit of Sampat Singh (Annexure R-7) and, thus, had sought withdrawal of her previous application for seeking protection to the Superintendent of Police, Fatehabad (Annexure R-8) which claim need not be addressed.

It is during the course of events, the alleged husband-Sukhbir Singh moved an application dated 02.07.2015 (Annexure P10) to Superintendent of Police, U.T., Chandigarh, Superintendent of Police, Panchkula and Superintendent of Police, Fatehabad for registration of the case against Promila and Sampat also referred to as Sampat Singh claiming that all the documents were forged as Promila was already married to him.

The main grouse of the petitioner-Sukhbir Singh so claimed husband, and Sukhwinder Singh father of Promila is that the affidavits given by Promila and Sampat before this Court earlier are false and so the documents to this subsequent marriage were also false and fabricated and, thus, sought initiation of action

in terms of Section 340 read with Section 195 Cr.P.C..

Heard Mr. R.S. Mamli, Advocate for the petitioners, Mr. Munish Sharma, Astd. Advocate General, Haryana for respondents No.1 & 2-State, Ms. Ashima Mor, Astd. Public Prosecutor for respondent No.3-U.T., Chandigarh and Mr. Gaurav Jain, Advocate for the respondent Nos.6 to 9 and perused the record of the case.

None of the private respondents have filed any reply to the petition. The stand of the official respondents whereby they have denied the fact having any knowledge of the previous marital status of Promila or her subsequent marriage as alleged and, thus, in the tersely worded reply denied the allegations and sought dismissal of petition.

Appreciating the arguments of the two sides, the provisions of section 195 Cr.P.C. have been enacted for the sole purpose of prosecution for contempt of any lawful authority of public servant regarding offences against public justice and documents given in evidence whereas Section 340 Cr.P.C. lays down the procedure for initiating action by virtue of exercise of provisions of Section 195 Cr.P.C. As per the procedure prescribed under Section 340 Cr.P.C., the Court on receipt of an application cannot straightaway proceed to issue notice to a person against whom the application is made and it contemplates

holding of an inquiry prior to initiation of any such process against the other side, thus, the most imminent pre-requisite of Section 195 Cr.P.C., in respect of any offence is that law can only be set into motion only through the Court of law or the public authority before whom these were filed.

Thus, from it all, it is amply clear that the word “The Court” refers to the Court which initiates proceedings under this Section and the offence must have been committed in a proceeding in that Court or in relation to such a proceeding and further the provisions amply make it clear in Clause (b)(ii) of Section 195 (1) Cr.P.C. that the offence is connected not with the proceeding but with the document produced or given in evidence in that proceeding and it is by now well settled position of law that for prosecution under Section 340 Cr.P.C., mere production of document which has not been proved as forged one, cannot be the basis for ordering prosecution under this provision.

Reverting back to the instant case, the petitioners in the protection matter namely Promila Rani and Sampat Singh had only sought protection of their life and personal liberty by virtue of Article 21 of the Constitution of India. The mere fact, as is contended by the petitioners counsel, that in the said affidavit false averments have been knowingly made by the petitioners seeking protection to their life and liberty and they have undergone

marriage when during the subsistence of her first marriage with Sukhbir Singh, she could not undergo another marriage. In view of the powers enshrined in Section 5 of the Hindu Marriage Act, 1955, the same has been rightly controverted by the State Counsel that neither the said original affidavit has been placed before this Court nor the same formed part of consideration by the Court in grant of the relief in the earlier protection. Though on behalf of the present petitioners learned counsel has cited **Perumal Vs. Janaki, 2014(1) RCR (Criminal) 851** and **CTR Manufacturing Industries Ltd. Vs. Sergi Transformer Explosion Prevention Technologies Pvt. Ltd. And others, 2014(1) R.C.R.(Criminal) 131** to hammer home the point that, the then petitioners by filing a wrong and incorrect affidavit had committed perjury but neither its original has been placed before this Court much less any prima facie evidence of such perjury of having knowingly made a false declaration before the Court. Thus, nothing is suggestive prima facie that by what express provision of law the petitioners in the earlier petition were bound to make a statement which was relied upon by the Court and what is highlighted by the State is that it was only to the effect that she had undergone marriage with Sampat and therefore facts in the cited ratio **Perumal Vs. Janaki, 2014(1) RCR (Criminal) 851** and **CTR Manufacturing Industries Ltd. Vs. Sergi Transformer Explosion Prevention Technologies Pvt.**

Ltd. And others, 2014(1) R.C.R.(Criminal) 131, are not applicable to the case in hand. More so, it is nobody's case that it was on the basis of the said affidavit filed by the then petitioner, has led to the passing of the orders and, therefore, the petitioners in that case have misled the Court on the basis of these documents. The alleged orders dated 4th June, 2015 placed on the record by the State by way of **CRM-M-19226-2015** titled as **Promila Rani and another Vs. State of Haryana and others** decided on 04.06.2015 shows that the Court has observed that

...in view of this, the petition is disposed of with a direction to respondent No.2 to look into the allegations as contained in the petition personally and take necessary steps in accordance with law if the situation so warrants....

And thus, amply demonstrates as is revealed from these observations

.....this order shall not be construed to be conferring the legitimacy or authenticity to the factum of marriage having been performed as well as the age, as the Court is clearly deprived of any means to determine the aforesaid facts.....

Neither any legitimacy is given to this marriage nor any factum has been considered on the basis of this affidavit by the

Court. Way back in the case of **Bhagat Singh Vs. Emperor (3) Crl. General Law 1930**, Hon'ble Lahore High Court appreciating this aspect that in ordering prosecution for perjury the nature of the statement said to be false must be taken into consideration that the statement must be of such a nature that it may directly or indirectly affect decision of the case and, thus, this essential element is certainly missing in the present allegation as well as the petition.

Moreover, the affidavit in question if any, as per the allegations of the petitioners has been executed or sworn before the Notary/Oath Commissioner and not before the Court and, thus, the false averments, if any, had been made much before the document was actually produced in a court of law and since the same has never been considered as evidence in proceeding in this Court leading to the passing of the said order of protection and mere protection petition cannot attract the provisions of Section 195 Cr.P.C. when the same has never been the point of evidence influencing the order. Thus, no cause to hold that any offence affecting administration of justice has been committed in respect of a document produced in a Court or given in evidence in a proceeding in that Court.

Thus, to the mind of this Court, the offences about which this Court alone, to the exclusion of the aggrieved private parties,

is clothed with the right to complaint may therefore, be appropriately considered to be only those offences committed by a party to a proceeding in that Court, the commission of which has a reasonable close nexus with the proceedings in that Court. Thus a need only arises to embark upon completely independent and fresh inquiry satisfactorily by reference principally to its records shows expediency of prosecuting the delinquent party. Thus, what one could gather from the circumstances involving the dispute between the parties, there being a marriage to the displeasure of the girl's parents who are out and out to wreck personal vengeance upon the couple. The Court's responsibility in exercising circumspection and care in directing prosecutions in such cases is rather heavy on the ground because the offence is against public justice and it flows that this process is to be utilized never as a means of satisfying of private grudge. Therefore, the Courts have to be cautious to ensure that there ought to be no abuse of the administration of criminal law else it is likely that a successful litigant would be permitted to use penal law merely to satisfy his personal ends and personal spite and thus, cause misuse of the process of law. Even otherwise apparently the Election Commission Identity Card (Annexure R3), Ration Card Copy (Annexure R4), Photograph (Annexure R-5) and Marriage Certificate (Annexure P-9), does not in any manner substantially

establish that respondent No.6- Promila was earlier married with Sampat Singh and if there is any such grouse, the petitioners are well within their rights to initiate appropriate prosecution for the allegations of bigamy. Thus, on the face of this all, the petitioners do not bring out prima facie convincing reasons to hold inquiry and to initiate appropriate action so sought to be prayed. The petition as such stands dismissed.

December 04, 2015
Dpr

(FATEH DEEP SINGH)
JUDGE