

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-27555 of 2013

Date of Decision:03.07.2015

SURJIT SINGH AND ORS

.....Petitioners

Vs

STATE OF PUNJAB AND ANR

.....Respondents

Present: Mr. Rahul Rampal, Advocate,
for the petitioner.

Mr. Arshdeep S. Kler, DAG, Punjab

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

1) Petitioners seek quashing of FIR No.69 dated 21.11.2010 under Section 420, 406, 506, 120 B IPC, Police Station Jodha, District Ludhiana along with entire subsequent proceedings in respect thereof.

2) Aforesaid FIR was registered at the instance of respondent No.2. The allegations made by respondent No.2 are that she is resident of village Nangal Kalan, Tehsil Raikot, District Ludhiana. Her marriage was solemnized with Surjit Singh on 26.01.2008. Parents of the complainant gave dowry beyond their

capacity. Just after 10 days of marriage, husband ran away from house without informing the complainant. Complainant informed her parents that her husband Surjit Singh had left home as he is medically unfit. When the parents of the complainant, villagers and Panchayat came to know about mental state of affair of Surjit Singh, then they decided that Surjit Singh will be called back and 10 kanals of land will be transferred in favour of complainant so that she can maintain herself. On 25.08.2008, 10 kanals of land was transferred in the name of Manpreet Kaur (complainant) and possession was accordingly delivered. She had sown wheat crop but the accused harvested the same. Complainant came to know about the same when the accused had harvested the crop. Application was moved to the SSP, which was marked to the police station Jodha. Complainant alleged that her grievance was not redressed by the police and thereafter she moved application to the DIG, Ludhiana which was marked to DSP, Jagraon. DSP summoned the Panchayat and got the matter compromised. They backed out from the compromise. Information was given to DSP who assured the complainant for taking suitable action. Thereafter, no action was taken and the complainant was not allowed to enter the land. Apprehension was shown by the complainant that the accused may not harvest the crop again. With this background, FIR came to be registered.

3) After the marriage, petitioner No.1 went abroad. Under the garb of getting some affidavits for going abroad, respondent No.2 got fabricated gift deed alleged to be executed by Bhagwan Singh (father of the petitioner No.1) qua the land measuring 10 kanals allegedly registered on 01.09.2008.

4) On coming to know about fraud, Bhagwan Singh filed civil suit and also sought interim order, restraining the defendant Manpreet Kaur from alienating the suit land.

5) Thereafter, intervention of Panchayats and respectable, both the parties came to amicable settlement on 09.06.2010. It was settled that out of 10 kanals of land, 6 kanals will be retained by respondent No.2 and it was also agreed that 4 kanals of land will be given back to Bhagwan Singh (father of the petitioner No.1). It was decided between the parties that both the parties will get divorce mutually and will withdraw cases pending against them. An amount of Rs.65,000/- was agreed to be paid along with acceptance of bore (tubewell) to respondent No.2. The said amount was duly paid in compliance of terms and conditions of the compromise.

6) It is alleged by the petitioner despite compliance of the compromise made by the petitioners, respondent No.2 got the present FIR registered.

7) That earlier FIR No.64 dated 02.11.2010 under Section 379, 447, 511 IPC, Police Station, Jodha, District Ludhiana was

registered. In the said FIR, compromise was effected between the parties before the Mediation and Conciliation Centre of High Court. It was agreed between the parties that respondent No.2 would withdraw all the pending proceedings between the parties and would also file petition for grant of decree of divorce on mutual consent. Accordingly, joint petition was filed and decree for divorce was passed on 20.07.2011 and petitioners also transferred 6 kanals of land in favour of respondent No.2 towards maintenance from the share of petitioner No.1. Consequently, FIR No.64 dated 02.11.2010 was quashed by the High Court on 20.12.2012. Before quashing of aforesaid FIR by the High Court, a duly sworn affidavit dated 18.12.2010 was submitted by the respondent No.2 for cancellation of the present FIR before the police authorities. Now after getting 6 kanals of land, respondent No.2 has started pursuing the present FIR.

8) Petitioners alleged that respondent No.2 with all evil designs and in order to extract illegal gains from the petitioners is pursuing the FIR without having any lawful entitlement and after compromise and grant of decree of divorce by mutual consent.

9) Respondent No.2 had agreed to appear before the Court and to make statement for withdrawal of FIR No.69 dated 21.11.2010, but now she has turned hostile and has refused to appear before the Court. Petitioners alleged that continuation of

criminal proceedings after the compromise and grant of divorce on mutual consent, is an abuse of process of law.

10) Earlier petition filed by the petitioners, entailed in withdrawal of the same as police intended to file cancellation report. Liberty was given to the petitioners to file afresh in case, cancellation report is not accepted.

11) In the present FIR No.69 dated 21.11.2010, cancellation report, was submitted by the police but vide order dated 06.02.2013, Magistrate ordered further investigation of the case. Respondent No.2 is not appearing in the case. On 26.08.2013, at the time of issuance of notice, this Court passed the following order:-

“Learned counsel for the petitioners has referred to the order dated 20.12.2012, whereby the dispute between the parties had been amicably resolved and settled before the Mediation and Conciliation Centre. On the same set of allegation, FIR No.69 was registered, in which cancellation report was prepared, but vide order dated 16.02.2013 (Annexure P-8), further investigation has been ordered.

Notice of motion for 21.01.2014.

In the meantime, operation of the impugned order shall remain stayed.”

12) Respondent No.2 preferred not to appear in the case despite service. The present FIR has been registered of the

offences under Sections 420, 406, 506, 120B of the IPC. In the previous FIR No.64 dated 03.11.2010, offence under Section 379, 447, 511 IPC were alleged. The said FIR was quashed on the basis of compromise which ultimately resulted in mutual divorce also. The compromise was effected before the Mediation and Conciliation Centre on 17.03.2011 and it was agreed that petition under Section 13B of Hindu Marriage Act would be filed and FIR along with contempt petition shall be withdrawn after the grant of divorce. When notice was given to the complainant, none appeared before this Court. Learned counsel appearing on behalf of State submitted that the parties had mutually agreed before the Mediation Centre and divorce was granted accordingly. The FIR No.64 dated 03.11.2010 for the offences under Sections 379, 447, 511 IPC, Police Station, Jodha was quashed. Complainant also executed affidavit dated 18.12.2010, endorsing the pendency of present FIR and intention of the complainant not to proceed with the FIR on the basis of compromise. Para No.1 and 2 of the affidavit are reproduced here as under:-

“1. That on the submission of application by me No.271-P dated 4.10.2010, a case No.69 dated 21.11.2010, U/s 420/406/506/120B was registered against Surjit Singh s/o Bhagwan Singh, Bhagwan Singh s/o Bant Singh, Baljinder Kaur w/o Bhagwan Singh and Jaswinder Singh s/o Bhagwan Singh, Sarabjit Kaur w/o Jaswinder

Singh and Sh. Harinder Singh s/o Jaswinder Singh r/o Village Jodhan, in Police Station Jodhan.

2. That now a compromise has been effected between both the parties. On account of this I do not want to pursue any further proceedings in the above said case. Therefore, cancellation proceedings should be initiated and I would have no objection to that.”

13) After the compromise, cancellation was duly prepared and at that stage, petitioner sought to get present FIR quashed by way of filing CRM. M. No.8342 of 2012. With the filing of untraced report, the petition was ordered to be infructuous, however the liberty was given to the petitioners to file fresh petition for quashing, in case, cancellation is not accepted. The order was passed on 30.07.2012 by this Court in CRM M.No.8342 of 2012.

14) Thereafter, Judicial Magistrate Ist Class, Ludhiana ordered further investigation in the case on the basis of protest petition filed by the complainant. It is relevant to state here that initially 10 kanals of land was given to her. In view of compromise, the entitlement of the complainant was reduced to 6 kanals of land. Even the respondent No.2 has sold away 6 kanals of land and 4 kanals of land is still with her. In this way, she has swallowed the land more than her entitlement and is still pursuing the FIR in question despite compromise and grant of divorce on the basis of mutual consent.

15) After settling the matter and taking benefit out of said settlement including grant of divorce on the basis of mutual consent and after filing affidavit for getting the FIR quashed, respondent No.2 is estopped from continuing criminal proceedings.

16) Respondent No.2 by taking benefit of mutual settlement took divorce by mutual consent. Now she cannot be allowed to breathe hot and cold in the same breath after having availed benefit of settlement between the parties. Even the ingredients of the present FIR that is offence under Section 420, 406 IPC in the light of allegations of theft and trespass cannot constitute allegations of wrongful loss and ditching. Similarly, booty of theft cannot be considered as an entrustment of the same to the accused. Therefore, even the ingredients of Section 420 and 406 IPC are not attracted. The offence of 506 IPC is the related allegation in both the FIRs and has its own background in the matrimonial relationship of petitioner No.1 with respondent No.2.

17) In **“Shlok Bhardwaj Versus Runika and others”** **2015 (1) RCR Criminal, 249**, the Hon'ble Apex Court has also held that criminal proceedings filed for grant of divorce by mutual consent are to be quashed and wife is estopped from continuing the same once the matter was settled between the parties and the settlement was given effect to in the form of divorce by mutual

consent. No further disputes survived between the parties even though it was not expressly recorded in order. No liberty was reserved by the wife to continue further proceedings against the husband in the said settlement. Thus, the wife is estopped from continuing the proceedings, after settling the matter.

18) Respondent No.2 opted not to appear in the case despite service. The respondent No.1 in the reply has endorsed the factual as well as factum of filing cancellation and direction by the trial Court to further investigate the same. Respondent No.2 has not turned up despite further investigation and the State has filed reply to this effect that the proceedings of further investigation has been stalled at this stage.

19) Looking to the entirety of the facts and circumstances of the case, it is made out that the respondent No.2 cannot be allowed to misuse the process of law by pursuing the matter even after settlement which was duly given effect in the form of grant of divorce by mutual consent. Having availed the benefit of settlement, respondent No.2 cannot be permitted to wriggle out of the consent and cannot be permitted to misuse the process of law.

20) Accordingly, allegation of wife along with entire subsequent proceedings are ordered to be quashed. It would be in the interest of justice and to prevent misuse of process and to achieve ends of justice. Resultantly, FIR No.69 dated 21.11.2010

registered under Sections 420, 406, 506, 120-B IPC at Police Station Jodha, District Ludhiana and all consequential proceedings arising therefrom are hereby quashed.

**(RAJ MOHAN SINGH)
JUDGE**

July 03, 2015
SwarnjitS