

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-27684 of 2015

Date of Decision: December 8, 2015

Amit

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.R.S. Rai, Sr. Advocate with
Mr. Gautam Dutt, Advocate
for the petitioner.

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M.M.S. BEDI, J.

This order will dispose of a petition filed under Section 482 Cr.P.C. for quashing order dated April 30, 2015 (annexure P-10) framing charges under Sections 313, 419, 420, 498 A, 406, 493, 495 IPC read with Section 120B IPC, in the exercise of powers under Section 216 Cr.P.C.

Brief facts relevant for the decision of the present case are that the wife of the petitioner has lodged an FIR No. 535 dated July 9, 2012 alleging that she was married to the petitioner on March 18, 2009 on the representation made by the parents of the petitioner that their son was

unmarried and that he would take her along to Australia. The marriage was registered on March 15, 2010 on the pretext of arranging visa and other documents whereas the marriage was solemnized on March 18, 2009. The complainant came to learn that the petitioner was already married to Seema Chauhan but he obtained divorce on November 26, 2009 after the solemnization of marriage. The complainant was physically abused when she was pregnant. On the basis of report of determination of sex of the child, she was sent to India on August 1, 2011. As she was expecting a female child, it was got aborted in Hospital at Kurukshetra on August 3, 2011 without her consent.

Learned counsel for the petitioner has contended that at present the complainant is living in Australia and that in May 2012, the petitioner had filed a divorce petition in Australia which after contest by the complainant was allowed on June 12, 2013 by Federal Circuit Court of Australia under Family Law Act, 1975 and marriage was terminated w.e.f. July 13, 2013. Counsel for the petitioner has submitted that the application under Section 216 Cr.P.C. for alteration of charge was filed alongwith two other applications which are not relevant for the decision of the present petition. He contended that earlier also the complainant had filed an application under Section 216 Cr.P.C. for charging the petitioner under Section 376 IPC. Said application was dismissed. Against that order, a revision petition was filed before the High Court. While deciding the said petition, a liberty was granted to the complainant to avail the remedy that

may be available to her strictly in terms of the provisions of Cr.P.C. The statement of the complainant was recorded thereafter. She has stated on oath that accused persons had deceitfully concealed the fact of earlier marriage of petitioner with Seema Chauhan and he had obtained divorce after her marriage with the complainant and that accused had developed sexual relationship with the complainant knowing fully well that he was not her lawful husband . She sought framing of charge under Section 376 IPC.

The trial Court observed that charge under Section 375 (4) IPC was not made out, however, the Court observed that the reading of the allegations that the petitioner had concealed the earlier marriage from the complainant attracts offence under Section 495 IPC. The trial Court observed that Darshani Devi and Anchal Singh were aware of the factum of earlier marriage of Amit as such they willfully concealed the said fact and they misrepresented before the parents of the prosecutrix and have by impersonation cheated the prosecutrix for dishonestly inducing delivery of property i.e. dowry and have committed offence under Section 419 and 420 IPC. The Court also formed an opinion that offence under Section 493 IPC is also prima facie made out.

I have carefully heard learned counsel for the petitioner and with his assistance gone through the record.

Counsel for the petitioner has submitted that an application for amendment of charges was filed under Section 216 Cr.P.C. but was

withdrawn on April 11, 2014 and that a similar application could not be subsequently allowed as has been done by the trial Court.

I have also gone through the report under Section 173 (2) Cr.P.C. A perusal of the record indicates that a new story has been flouted to bring the case within the ambit of Section 420 IPC to the effect that the complainant was persuaded to part with dowry articles on the basis of misrepresentation that petitioner had obtained divorce from his first wife prior to entering into the bond of marriage with the complainant. I do not find any ground to interfere in the order framing additional charge under Sections 493 and 495 IPC but so far as addition of charge under Sections 419 and 420 IPC is concerned, the order annexure P-10 deserves to be set aside to that extent.

The order annexure P-10 framing charges under Sections 419 and 420 IPC is hereby set aside as necessary ingredients of cheating by any misrepresentation or deceit is not made out. However, the remaining part of the order annexure P-10 so far as consideration of the application under Section 216 Cr.P.C. is concerned, is upheld.

Petition is partly allowed and charges framed under Sections 419 and 420 IPC are set aside. However, nothing said in this order will prejudice the continuation of proceedings under other Sections.

December 8, 2015
sanjay

(M.M.S.BEDI)
JUDGE