

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

**CRM No.M-8849 of 2011 (O&M)
Date of Decision: January 30, 2015**

Parminder Singh and others

.... Petitioners

vs.

State of Punjab and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Bhriugu Dutt Sharma, Advocate for the petitioners.

Mr. Nikhil K. Chopra, Deputy Advocate General, Punjab.

Mr. Ranjan Lakhanpal, Advocate for respondent No.2.

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh J.(Oral)

Petitioners, who happened to be ex-husband, father-in-law and mother-in-law of respondent No.2 Pushwinder Kaur, divorced wife of Parminder Singh (petitioner No.1) have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for the quashing of the FIR No.82, dated 11.05.2007, under Sections 406 and 498-A of the Indian Penal Code, 1860 (in short 'IPC') read with Section 3 & 4 of the Dowry Prohibition Act, 1961, registered at Police Station Balachaur, District Nawanshahar along with all the consequential proceedings. Also challenged the order dated 15.01.2011 (Annexure P-13) passed by the trial court, whereby

cognizance of the case has been taken despite the fact that in separate police investigations, the petitioners were found innocent.

As per averments made in the FIR, complainant-respondent No.2 was married to petitioner No.1 on 26.01.2003 at Saini Palace, Balachaur, District Nawanshahar. The complainant-respondent No.2 was NRI and settled in Australia. It is stated that engagement ceremony was taken place on 21.01.2003. There are allegations of handing over of gold ornaments and spending money on the marriage. It is also alleged that gold ornaments were taken away by her mother-in-law and that she was maltreated. She was asked to bring a car and ₹10,00,000/-.

It is stated that then husband of complainant-respondent No.2 (petitioner No.1) went to Australia on 23.02.2003. The complainant sent \$ 2100 to petitioner No.1 on 23.05.2003. Thereafter, the husband (petitioner No.1) of the complainant came to Australia on spouse visa on 03.09.2003 and then they started living in a flat on rent. Then there are allegations that the complainant was asked to send \$ 1000 each to her parents-in-laws. It is further alleged that on the visa sponsored by the complainant, her parents-in-laws visited Australia in August 2004 and stayed there for about three months. During their stay at Australia, she gave \$ 3000 to them. In October 2005, her husband Parminder Singh got permanent residency in Australia. On 08.02.2006, her husband Parminder Singh ran away from the house along with all the jewellery, cash and other documents. The complainant along with her father came to India on

22.02.2006 and met her husband Parminder Singh and his family. They were told that Parminder Singh wants to settle in U.S.A. with his brother. The complainant consented that Parminder Singh may do so and once, he will settle in U.S.A., then she will join him there. But Parminder Singh could not settle in U.S.A. and came back to Australia in June 2006. On 16.02.2007, the complainant along with her husband Parminder Singh scheduled to come to India. After security check at airport, Parminder Singh asked the complainant to pay ₹10,00,000/-. It is stated that even when she reached at Amritsar Airport, her in-laws threatened her and asked her to pay money. It is stated that on 17.02.2007, her father along with his brother came to her matrimonial home at Phagwara. It is alleged that the complainant was pushed out of the house. The accused had misappropriated the dowry articles. It is stated that due to strained relations between the couple, the matter was taken up before the Family Court, where the settlement (Annexure P-2), was arrived between them. The parties agreed to fair and equitable distribution of their assets as outlined in the terms of settlement. Petitioner No.1 Parminder Singh owned a lot 305, Sorento Drive, Glenwood in the State of New South Wales in Australia, transferred to the complainant. Complainant-respondent No.2 agreed not to seek return of any dowry. The transfer deed (Annexure P-3) was accordingly executed. The certificate of divorce (Annexure P-4) was granted. The present FIR was filed on 11.05.2007 to harass the petitioners.

It is further alleged that in the inquiry, the petitioners were found innocent and cancellation report was submitted. However, the same was opposed. The cancellation report was sent to the S.H.O. for further investigation and even during further investigation, the petitioners were found innocent. However, learned Sub Divisional Judicial Magistrate, Balachaur, did not agree with the cancellation report and passed the summoning order dated 15.01.2011.

The State in the reply stated that after conducting the inquiry by the Superintendent of Police, Headquarter S.B.S. Nagar, the cancellation of the FIR was recommended vide report dated 15.09.2007. The cancellation report was accordingly submitted but the complainant-respondent No.2 opposed the said cancellation report and same was not approved by the court. Vide order dated 20.10.2009, a direction was given to the police to conduct further investigation. After further investigation, report dated 19.08.2010 was again submitted but again the complainant-respondent No.2 was not agreed with the cancellation report and consequently, the learned Sub Divisional Judicial Magistrate, Balachaur vide order dated 15.01.2011 (Annexure P-13) summoned the petitioners under Sections 406 and 498-A IPC.

Complainant-respondent No.2, who submitted reply through special power of attorney, admitted her marriage with petitioner No.1 and reiterated the allegations made in the FIR in question. The compromise in Australia was not denied. The divorce was also not denied.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the petitioners has argued that the marriage took place on 26.01.2003. The wife left for Australia after twenty five days i.e. on 23.02.2003. Therefore, there is no question of harassment on account of dowry to a newly wedded NRI wife. It is stated that the facts as detailed in the FIR itself would show that husband Parminder Singh was called to Australia on spouse visa. This indicates that the relations between the parties were still cordial. Even the in-laws were sent the visa and called to Australia, where they stayed for three months.

Learned counsel of the petitioners has taken this Court to the terms of settlement (Annexure P-2) filed before Federal Magistrates Court of Australia at Sydney, showing that the parties had separated on 16.02.2007 and that parties had agreed to settle their dispute and transfer the properties equitably in terms of the settlement. The house was transferred in the name of the complainant-respondent No.2, vide transfer deed (Annexure P-3). The copy of the divorce proceedings (Annexure P-4) before the said Australian Court, shows that the marriage was dissolved on 16.02.2009, which is effective from 17.03.2009. In this way, all the disputes were settled. The present FIR was registered on 11.05.2007.

It has been stated that during the two investigations by the police, it was found that the allegations levelled against the

petitioners are false. This Court has been further informed that the parties have remarried. Now the question would arise as to whether after divorce and settlement in Australian Court, in which all the disputes etc. were settled, the present FIR could be continued? In view of the divorce settlement referred above, all the matrimonial disputes and dowry disputes were settled. Once all the disputes are settled, the continuation of the present FIR and the summoning order are nothing but the misuse of the process of the court.

Accordingly, the FIR in question along with the summoning order dated 15.01.2011 (Annexure P-13) along with all consequential proceedings stand quashed.

Thus, petition stands allowed.

January 30, 2015
sarita

(KULDIP SINGH)
JUDGE