

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

CRM M-7234 of 2015(O&M)

Date of Decision: November 9, 2015

Pakhar Singh and another

.....Petitioners

Vs.

State of Punjab and anr.

.....Respondents

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

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Present:- Mr. Ranjan Lakhanpal, Advocate  
for the petitioners.

Mr. Jashanpreet Singh, AAG, Punjab.

Mr. Rachel Kuldeep Studley, Advocate for respondent No.2.

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**M.M.S. BEDI, J. (ORAL)**

This petition has been preferred under Section 482 Cr.P.C. for seeking permission to go abroad by quashing of order dated October 30, 2014, annexure P-3 by virtue of which the Add. Chief Judicial Magistrate, Hoshiarpur in a private complaint filed in the year 2008 has refused to grant permission to Pakhar Singh and Mohinder Kaur to go abroad by releasing their passports disbelieving that Pakhar Singh was cancer patient under

treatment in Sunny Book Health Science Centre, Odette Cancer Centre, Toronto.

It is pertinent to observe here that during the pendency of this petition, Pakhar Singh has died and the petition survives only for Mohinder Kaur.

Brief facts relevant for the decision of the present petition are that Bakshish Kaur respondent No.2 had filed a private complaint under Section 406, 420, 494, 120-B IPC on November 28, 2008 in the Court of Judicial Magistrate Ist Class, Hoshiarpur to the effect that her marriage was solemnized with Pakhar Singh (now deceased) in the year 1955 in village Dakhowal. The family members of Pakhar Singh had maltreated her and turned her out of the matrimonial home as such she remained staying with her parents till 1960. Pakhar Singh had filed a petition under Section 9 of the Hindu Marriage Act which was ended in compromise in the year 1961. On re-union, a female child Kuldeep Kaur was born on October 10, 1962 at Village Dhakkowal but the complainant respondent No.2 remained at her parents house as the child was not well. Accused Pakhar Singh left India for Canada after solemnizing second marriage with Mohinder Kaur in Gurdwara Jian, Police Station Sadar, District Hoshiarpur. Accused No.3 Avtar Singh, brother of Pakhar Singh and accused No.4 Chinda Singh were present at the time of the marriage.

As per complaint, no specific date of marriage has been given but it is mentioned in para 7 thereof that brother of Pakhar Singh had put

shagun and performed ceremony of milni of accused No.1. Pakhar Singh, deceased petitioner No.1 alongwith petitioner No.2 were married in the year 1971 in Village Jian and had left for Canada by giving false information to the Canadian Embassy by obtaining Fiancee Visa. Petitioner accused Pakhar Singh purchased property in the name of his mother but later on, he transferred the same in the name of Mohinder Kaur by a Will executed by mother of Pakhar Singh. Dowry articles are in the custody of accused Nos.3 and 4.

The trial Court had summoned the petitioners as accused under Section 494 IPC read with Section 120-B IPC vide order dated July 10, 2010. They were declared proclaimed offenders having not been served being residents of Canada. Their property was attached and put to auction and was sold for consideration of Rs.43 lacs. When the petitioners visited India in order to get their property released, they were arrested by the police from the Airport and they remained in judicial custody. Thereafter they were released on bail. The petitioners were not able to leave India on account of pendency of the criminal proceedings. The petitioners moved an application in the year 2014 for permission to go abroad but the said application had been dismissed vide order dated October 30, 2014. The trial Court dismissed the application disbelieving that deceased Pakhar Singh was suffering from Cancer despite the fact that medical evidence was produced indicating that he was suffering from Multiple Myeloma Lesions in L2 and

L5 vertbral bodies. A document indicating that the deceased had an appointment with Odette Cancer Centre in Canada was also not believed.

It is pertinent to observe here that the main grievance of the complainant in the complaint filed in the year 2008 is that in the year 1971, deceased Pakhar Singh has solemnized second marriage. Date of knowledge of marriage has not been mentioned by the complainant in the complaint annexure P-1 but it is an admitted fact that the complaint was filed in the year 2008 after a period of about 37 years of the alleged offence having been committed under Section 494 IPC. It is not averred in the complaint that Mohinder Kaur had knowledge about the first marriage of Pakhar Singh. Specific day, date and time of first and second marriage has also not been given.

Counsel for the petitioners has prayed for quashing of order dated October 30, 2014, claiming that it is an abuse of the process of Court and in the interest of justice, the petitioners should have been permitted to leave India.

On the other hand, counsel for respondent No.2 has vehemently urged that petitioner No.2 had moved a misc. application for leaving India after the death of her husband Pakhar Singh which has been dismissed by an interim order dated July 30, 2015, refusing to permit petitioner No.2 to take the body of her husband to Canada on the ground that there was absolute probability that she would not return from there especially when there is no

property in her name here and all her relatives are in Canada, therefore, such permission was declined to her.

I have considered all the facts and circumstances of the case. It is also not out of place to observe here that the complainant alongwith her daughter had appeared in the Court in person alongwith their counsel at the time of hearing to inform this Court that a civil litigation is pending between the complainant and heirs of Pakhar Singh in RSA No. 37 of 2010 regarding the property of Pakhar Singh and that in case at this stage Mohinder Kaur is permitted to leave India she would fraudulently get the property of Pakhar Singh, situated in Canada, transferred in her name, prejudicing the rights of the first wife Bakshish Kaur to inherit the property as his wife would not return back.

It is not out of place to observe here that an attempt had been made by daughter of Bakshish Kaur by appearing in the Court alongwith an application for transfer of this case to another Bench with an objective to brow-beat the Court. She said that she is filing a complaint against this Court.

Such a practice is deprecated, however, this act of her has been pardoned showing magnanimity and without having any effect on the merits of the cases.

After the case had been reserved for orders after hearing arguments on October 21, 2015, respondent No.2 filed a misc. application

No. 36790 of 2015 seeking permission to place on record her reply. Misc. application is allowed and reply is taken on record.

I have heard learned counsel for the petitioners as well as counsel for the complainant and I am of the opinion that the main allegations under Section 494 IPC were against Pakhar Singh who had allegedly married Mohinder Kaur in the year 1971. The complaint admittedly had been filed after a period of about 37 years. There is no specific day, date and time mentioned in the complaint regarding first or second marriage. The culpability of petitioner No.2-Mohinder Kaur is to be determined on the basis of her knowledge of the first marriage besides the establishment of the factum of second marriage being void. The fact remains that she cannot be penalized for the delay being caused in the adjudication of the private complaint which has been filed after a gap of 37 years. The property of Pakhar Singh is situated in India. Petitioner No.2 Mohinder Kaur has got a claim in the same. The litigation regarding her property is pending. It is a settled principle of law that an accused will be deemed to be innocent till proved guilty but at the same time life and liberty of an accused has not to be prejudiced on account of any act of the Court. Maintainability of the complaint after a period of 37 years would certainly be a debatable issue. This Court is not expressing any opinion regarding the rights of the parties in the property of Pakhar Singh. Striking a balance between the liberty of petitioner No.2 and her status of innocence during the pendency of the trial vis-à-vis the right of complainant to prosecute petitioner No.2 by

establishing the allegations to logical end, I deem it appropriate to permit petitioner No.2, a lady, to leave India for a period of six months in order to enable her to visit her home in Canada. It is ordered that petitioner No.2 will be required to deposit a sum of Rs. 5 lacs with the trial Court and surety bond for a sum of Rs.1 lac to the satisfaction of the Court to return after six months which will be determined by the Court. Her passport will be released to her on furnishing the above said surety and security. It is ordered that the amount of Rs.5 lacs deposited in the Court would be released to the complainant besides the right of the State to forfeit the amount in case the conditions of the bond are violated by petitioner No.2-Mohinder Kaur and she does not return back after a period of six months.

It is further observed that any interim order passed by this Court would not effect the disposal of the complaint at final stage.

Allowed in the aforesaid terms setting aside the order dated October 30, 2014.

November 9, 2015  
sanjay

(M.M.S.BEDI)  
JUDGE