

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

**Criminal Appeal No. S-2225-SB of 2016 (O&M)
Date of decision: 03.06.2016**

Sarabsimrat Kaur Bhullar

..Appellant

Versus

Manpreet Singh and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Present: Mr. H.R. Bhardwaj, Advocate
for the appellant.

Daya Chaudhary, J.

CRM-18665 of 2016

There is delay of 34 days in filing this appeal.

An application has been filed under Section 5 of the Limitation Act for condonation of delay of 34 days in filing this appeal and the same is supported by the affidavit of the applicant-appellant.

Application is allowed as per the grounds mentioned therein and delay of 34 days in filing this appeal is condoned.

CRA-S-2225-SB of 2016

This appeal has been filed to challenge impugned judgment dated 17.02.2016 passed by the Sessions Judge, Chandigarh, whereby, the application moved by the appellant under Section 340 Cr.P.C. has been

dismissed without making any inquiry as to whether any offence under Section 195(b)(i) Cr.P.C. is committed or not.

Briefly, the facts of the case are that appellant-Sarabsimrat kaur Bhullar was married to respondent No.1-Manpreet Singh on 23.01.2000. Her parents spent huge amount of money on marriage. Immediately after four days of marriage, she came to know that her husband was divorcee and this fact was never disclosed to her or her parents. The appellant made all efforts to cope up with the circumstances arisen in the family life but she was also being harassed for demand of dowry and was humiliated and tortured by her husband's family. FIR No.93 dated 25.10.2012 was registered in this regard under Sections 406, 498-A IPC at Police Station Women Cell against both the respondents. Subsequently, she came to know through the certificate of marriage of respondent No.1 with one Raveena issued by Gurudwara Shri Guru Teg Bahadur Sahib (Regd.), Defence Colony, Sector-34, Teg Bahadur Marg, Chandigarh. In the said certificate of marriage dated 20.10.2012, the date of marriage of respondent No.1 and said Raveena was shown as 18.11.1998 whereas in the petition filed under Section 13-B of the Hindu Marriage Act, 1955 (for short 'the Act') before District Judge, Chandigarh, their date of marriage was shown as 16.11.1997.

The appellant filed an application under Section 340 Cr.P.C. alleging therein that respondent No.1 in connivance with respondent No.2 not only kept the District Judge, Chandigarh in dark but had also misled the Court by producing false petition along with an affidavit mentioning fake date of marriage. It was also mentioned in the application that the documents i.e., petition, judgment dated 15.02.1999 and certificate issued

by Gurudwara Shri Guru Teg Bahadur Sahib (Regd.) reveal that the respondents had intentionally and illegally mentioned wrong date of marriage just to take the undue advantage and to get their marriage dissolved by way of mutual consent. Accordingly, a prayer to issue direction to get the FIR registered against the respondents was made out but said application filed under Section 340 Cr.P.C. was dismissed vide order dated 17.02.2016, which is subject matter of challenge in the present appeal.

Learned counsel for the appellant submits that the impugned order has been passed without going through the ingredients of the section and without making any inquiry as to whether any offence under clause (b) of sub section 1 of Section 195 Cr.P.C. is made out or not. The application moved by the appellant was dismissed only on the ground that the appellant kept mum for a long period and she lived with respondent No.1 peacefully after compromising with every situation. Learned counsel further submits that respondent No.2 has also approached this Court by way of filing Criminal Misc. No. M-21499 of 2015, which was dismissed on 12.10.2015 and the said order was not taken into consideration while dismissing the application. Learned counsel also submits that the Sessions Judge did not take into consideration the fact that respondent No.1 along with said Raveena had filed a false affidavit along with petition filed under Section 13-B of the Act before the District Judge, Chandigarh subsequent whereupon an offence under Section 193 IPC was made out. At the end, learned counsel for the appellant submits that the impugned order is liable to be set aside as the same has been passed without appreciation of provisions of law and without conducting any inquiry, which is required

under law.

Heard arguments of learned counsel for the appellant and have also perused the impugned order as well as other documents available on the file.

The marriage of appellant with respondent No.1 is not disputed. After marriage, the dispute arose between the parties and FIR No.93 dated 25.10.2012 was also registered under Sections 406 and 498-A IPC against both the respondents. Thereafter, the appellant came to know regarding earlier marriage of respondent No.1 with one Raveena on verification of documents of marriage, divorce decree and certificate of marriage. In the certificate of marriage dated 20.10.2012, the date of marriage of respondent No.1 with Raveena was shown as 18.11.1998 whereas in the petition filed under Section 13-B of the Act, the date of marriage was shown as 16.11.1997. The appellant moved an application under Section 340 Cr.P.C. because of difference in two dates of marriage, which was dismissed on 17.02.2016. Said order has been challenged by way of filing the present appeal on the ground of two contradictory dates of marriage have been mentioned in two different documents just to mislead the Court and to get undue benefit in the petition filed for grant of divorce with mutual consent. It was also the argument of learned counsel for the appellant that even no inquiry was conducted while passing the impugned order.

Now the issue for determination before this Court is as to whether any action can be taken against the respondents under Section 340 read with Section 195(b)(i) Cr.P.C.

For facilitation, Section 340 Cr.P.C. is reproduced as under:-

“340. Procedure in cases mentioned in section 195.

(1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section

(1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,—

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section, "Court" has the same meaning as in section 195."

Section 195 Cr.P.C. is also relevant for resolving the controversy in hand, which is reproduced as under: -

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence –

(1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal

Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that

Court, or of some other Court to which that Court is subordinate

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a Court for the purposes of this section

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from appealable decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is

situate:

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed”

The allegations levelled in the application are that in the petition filed under Section 13-B of the Act, the date of marriage of respondent No.1 with Raveena has been shown as 16.11.1997 whereas the in the certificate of marriage, the date of marriage has been mentioned as 18.11.1998. It is not disputed that the marriage of appellant was solemnized with respondent No.1 on 23.01.2000. It is also not disputed that the differences arose between the parties and FIR was also registered under Sections 406 and 498-A IPC. The application under Section 340 Cr.P.C. was filed in the year 2014 and no explanation whatsoever has been given as to why she did not bother to take any action or file any petition.

Moreover, the appellant challenged the order passed by Permanent Lok Adalat whereas as per provisions of Section 22-E(4) of the Legal Services Authority Act, 1987. Any order passed by the Permanent

Lok Adalat cannot be called in question in any original suit, application or execution proceedings. The application under Section 340 Cr.P.C. was filed after a long delay and the same has not been explained. The appellant herself has stated in the application moved under Section 340 Cr.P.C. that she came to know about the divorce of her husband after four days of marriage whereas the said application was moved approximately after 15 years of her marriage.

Learned counsel for the appellant has not been able to show as to how it was a case of forging and fabrication any document. It has also not been explained as to what undue benefit has been taken by the respondents by changing the date of marriage. The only allegation against the respondents is that the date of marriage in divorce petition filed under Section 13-B of the Act is different from the date of marriage as mentioned in the certificate of marriage dated 20.10.2012.

Hon'ble the Apex Court in **Iqbal Singh Marwah vs. Meenakshi Marwah 2005 AIR 2119** has observed as under:-

“The protection engrafted under Section 195(i)(b)(II) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it had been produced or given in evidence in proceeding in any court i.e. during the time when the document was in custodia legis. Where the forgery was committed before the document was filed in the Court, the High Court was held not justified in quashing the

prosecution of the accused under Section 467, 468, 471, 472 and 477-A of IPC on the ground that the complaint was barred by the provisions of Section 195(i)(b)(ii) of Cr.P.C.”

In the present case, complainant came to know about the divorce of her husband after four days of her marriage, whereas the application under Section 340 Cr.P.C. was filed approximately 15 years of her marriage, which was hopelessly time barred. Nothing has been shown as to how it is case of forging of documents or what benefit has been taken by giving different dates of marriage. Moreover, there was a divorce between the parties with mutual consent. The order of Permanent Lok Adalat cannot be callenged in view of provisions of Section 22-E(4) of Legal Services Authority Act, 1987.

In view of the facts and law position as discussed above, there is no illegality and infirmity in the impugned order and as such, the appeal being devoid of any merit is hereby dismissed.

03.06.2016
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(DAYA CHAUDHARY)
JUDGE