

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

**Crl. Misc. No.M-16362 of 2009
Date of decision : 22.03.2016**

Mandeep Singh and another

.....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. H.S. Thiara, Advocate
for the petitioners.

Mr. VPS Sidhu, AAG, Punjab.

Mr. Amaninder Preet, Advocate
for respondent no.2.

ANITA CHAUDHRY, J(ORAL)

The petitioners seek quashing of FIR No.41 dated 11.03.2008, registered under Sections 420, 498-A, 34 IPC at Police Station Banga, District Nawanshahar and all the proceedings emanating there from.

Mandeep Singh petitioner no.1 was married to respondent no.2-Baljit Kaur on 10.03.2002. Due to temperamental differences they were unable to pull on. The petitioners have pleaded that a decree of divorce was passed on 15.10.2004, Annexure P-1. (Annexure P-1 is the copy of the FIR. It appears that there is a

mistake. The extract of decree of divorce consisting of one page is Annexure P-2). The petitioner has pleaded that the allegations made in the FIR were wrong and the FIR had been registered after six years of the marriage just to extract money as they were NRIs. It was pleaded that after the divorce, there was no relationship and the allegations were false. It was pleaded that in order to bring the case within limitation Section 420 and 494 IPC had been added. It was pleaded that the petitioner no.1 had performed second marriage after getting divorce. It was averred that the proceedings were an abuse of the process of law.

Upon notice, the State in its reply had submitted that there were specific allegations against the petitioners regarding entrustment and criminal misappropriation of Istridhan and demand of a Safari car and after investigation challan had been presented and since the petitioners were evading arrest, they were declared proclaimed offenders on 06.09.2008, after adopting due procedure. The proceedings were consigned to the records under Section 299 Cr.P.C. It was pleaded that merely because the marriage had been dissolved, could not be a ground for quashing and the petitioners should have been surrendered to face the trial.

Respondent no.2 in her reply had submitted that the petitioners were declared proclaimed offenders and in the Crl. Misc.M- No.7788 of 2009, directions had been given and they were to surrender before the trial Court and the trial Court was directed to release them on bail and a number of dates were taken by the

petitioners for appearance and they were evading trial. It was pleaded that she had come to know about the so-called divorce when Crl. Misc. M No.7788 of 2009 had been filed. It was pleaded that there was a demand of Safari car and they had spent more than Rs.10 lacs on the marriage and dowry articles and they had arranged the highest paid Caterer and a number of guests had come from abroad. It was denied that she had knowledge about the divorce or that she had accepted 4,000 pounds from the petitioners. It was pleaded that she had never appeared before any Court in United Kingdom nor had signed any document and the relationship still subsisted and the petitioners had cheated her and her Istridhan was misappropriated and petitioner no.1 had performed second marriage of which she came to know only on 07.12.2007 and thereafter, the FIR was lodged.

The petition was taken up for the first time on 10.07.2009. The counsel for the petitioners had stated that the parties had divorced. Notice was issued to the other side and proceedings qua the petitioners were stayed. The complainant side filed an application for modification of the order and for direction to the Court to proceed with the trial. It was made clear on 01.06.2012 that there was no stay order and the trial Court was at liberty to proceed. The petitioners had been seeking adjournments and on 25.10.2013 it had been stated that there were chances of amicable settlement and the matter was ordered to be listed before the Mediation and Conciliation Centre but the petitioners failed to appear and the file was sent back.

The counsel for the petitioners contended that a decree of divorce had been passed and it was a contested petition and the complainant had received 4000 pounds in lieu of her rights and the FIR had been lodged subsequently just to extract more money. The petitioners were asked to place on record the copy of the divorce decree. Annexure P-4 a typed copy was placed on record on 17th November, 2014.

The counsel for the petitioners had submitted that the Court has no jurisdiction and the couple had lived abroad after marriage and there was no entrustment. It was urged that though the marriage was solemnized in India but they lived abroad and the complaint had been filed after divorce and the FIR should be quashed as it was an abuse of the process of the Court. It was urged that the wife had received 4000 pounds and the papers were signed by her. Reliance was placed upon ***Harmanpreet Singh Ahluwalia and others Vs. State of Punjab and others 2009 CriLJ 3462, Satwant Singh and others Vs. State of Punjab and another 2008(4) RCR (Crl.) 429, T. Venkateshwarlu and others Vs. State of A.P. and others 1999 CriLJ 39, Satyan Shantigram and others Vs. State of Karnataka and another 2009(5) RCR (Crl.) 275, Bahadur Singh and others Vs. State of Punjab and another 2010(4) AICLR 91 and a judgment of this Court in Narinder Singh and anr. Vs. Sonia Tripat Kaur Likhari and another in Crl. Misc. No.M-8032 of 2011, decided on 18.11.2013.***

The submission on the other hand was that the petitioners did not place the divorce decree on the file and a single typed page was placed along with the petition and it was after six years when the Court had directed and a typed copy of the extract was placed on record and it bears no signatures. It was urged that the complainant was restricting her right to challenge the decree separately. It was urged that even otherwise the decree was not valid in India. It was urged that when the parties marry according to Hindu Rights and when they travel abroad, they carry their personal laws and the matter has to be adjudicated by the Courts in India and not by the foreign Court. It was urged that in *Rupak Rathi's* case (*supra*) all the issues have been examined and the ground raised by the petitioner was not valid under the Hindu Marriage Act nor the marriage could be dissolved and it is the Courts in India who would decide on the issue. Reliance was placed upon ***Rupak Rathi Vs. Anita Chaudhary 2014(3) PLR 407, Arnesh Kumar Vs. State of Bihar and another, CRA No.1277 of 2014 @ SLP (Crl.) No.9127 of 2013, D.O.D.02.07.2014,***

It is necessary to first notice the grounds under which the FIR can be quashed. The matter was examined in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, AIR 1992 SC 604, which read as under:-

"105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this

Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. Do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- 3. Where the un-controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose*

the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The wife has lodged an FIR against her husband and parents. The police had investigated and had filed the challan. The petitioners are proclaimed offenders. A separate petition for quashing

of the proclamation proceedings had been filed which has been dismissed vide separate order of today. The petitioners have failed to return to the country despite assurances. The complainant had pleaded that no decree was passed. The petitioners failed to file the copy of the divorce decree along with the quashing petition. It was in 2014 that a typed copy had been filed. The copy of the decree placed on file does not indicate whether it was an ex parte decree or contested. No document has been filed to show that any amount was paid for final settlement.

The petitioner is seeking quashing of the FIR on the ground that a decree of divorce had been passed. The decree is disputed. In the FIR there are allegations of cruelty and harassment. Respondent no.2 has levelled allegations that the decree was obtained by fraud. The allegations in the FIR *prima facie* constitute an offence and they are no grounds for setting aside the FIR. The allegations cannot be said to be frivolous. It cannot be said that the FIR had been filed with a oblique motive. It is for the trial Court to determine on the basis of the evidence that would be led before it. The petitioners are abroad and are proclaimed offenders. They had failed to comply with the orders of the Court. No ground for quashing is made out. The case even otherwise does not fall under any of the principles laid down in *Bhajan Lal's* case.

The petition is dismissed.

22.03.2016

sunil

(ANITA CHAUDHRY)
JUDGE