

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-25189 of 2015 (O&M)
Date of Decision: March 22, 2016

Gurbax Kaur @ Baksho

...Petitioner

VERSUS

Kuljit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Amardeep Singh Gill, Advocate
 for the petitioner.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of the impugned order dated 06.12.2013 passed by learned Sub Divisional Judicial Magistrate, Nakodar, vide which the accused were discharged and the judgment dated 02.12.2014 passed by learned Addl. Sessions Judge, Jalandhar, vide which revision filed by petitioner was dismissed.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that Gurbax Kaur @ Baksho filed a complaint against Kuljit Kaur and other accused under Sections 465, 419, 420, 467 and 471 IPC. The brief facts of the case as stated in the complaint are that complainant's brother Jagir Singh married with Kuljit Kaur on 01.03.2012, according to Sikh Rites and Rituals at

Sultanpur Lodhi. Soon after the marriage, Jagir Singh went to England and Kuljit Kaur applied to go to England but her case was unsuccessful and she could not go to England. It is also in the complaint that with the common intention, accused Kuljit Kaur along with Didar Singh and Gurmit Kaur, approached the complainant and stated that there is no likelihood of Kuljit Kaur going abroad, so she asked the complainant to break the marriage with Jagir Singh. It is further stated that on 25.12.2003, a meeting of common relatives and friends took place in which a customary divorce took place in between Kuljit Kaur and Jagir Singh. In that customary divorce, complainant put her signature being the attorney of Jagir Singh and the marriage was dissolved subject to payment of ₹5 lacs as lumpsum maintenance. It was also stipulated that Kuljit Kaur and Jagir Singh will file the petition under Section 13-B of the Hindu Marriage Act for dissolution of marriage on the basis of mutual consent. ₹5 lacs was received by accused No.1 Kuljit Kaur. Accused No.1 along with her parents assured that it is a divorce deed and the deed is final and also agreed to give the statement in petition under Section 13-B. The date for filing the petition was fixed for 02.01.2004 but the accused did not turn up. So, all the accused breached the contract or agreement which was made in between the complainant and accused at the time of execution of divorce deed and they have misappropriated the amount given by the complainant to accused No.1 to 3 on the surety and guarantee of accused No.4 to 6. So, all the accused had played a fraud and cheating upon the complainant.

The accused were summoned under Section 420 IPC. On the basis of pre-charge evidence produced by the complainant, learned SDJM, Nakodar, discharged the accused vide order dated 06.12.2013. A revision was filed by the petitioner and learned Addl. Sessions Judge, Jalandhar, dismissed the revision petition vide judgment dated 02.12.2014.

Aggrieved from the above-said order and judgment, present petition has been filed.

After going through the contents of the complaint as well as the judgments passed by the Courts below, I find that learned Magistrate has discussed the ingredients of Section 415 IPC and has held that no offence is made out. Otherwise also, ₹5 lacs was given as per the complainant, at the time of customary divorce. There is nothing on the record that from the very beginning, there was any intention to cheat the complainant. The complainant has brought General Power of Attorney from her brother and money was paid by complainant on behalf of her brother. It was agreed that both the parties will file petition under Section 13-B of the Hindu Marriage Act, but as admitted at the time of arguments, no petition under Section 13-B has been filed. In this way, Kuljit Kaur is still wife of Jagir Singh, as divorce as per law, has not been taken.

The Court below has rightly held that there was no inducement on behalf of the accused to deliver ₹5 lacs with the intention to cheat. The Court also discussed that ₹5 lacs has been received by Kuljit Kaur as lumpsum maintenance and in lieu of her

dowry articles. In this way, no offence of cheating is made out. The perusal of the record shows that no prima facie case is made out from the averments and it has been duly discussed by the Courts below. However, the finding of the Court below that evidence on record would be sufficient, if it remains unrebutted, for the purpose of conviction, is not as per law as at the time of framing of charge, even in the complaint case, the Court is only to see whether prima facie case is made out or not. But that reasoning of the Court below, though given wrongly, has no affect in the present case, as no prima facie case is made out, rather, no case is made out under Section 420 IPC or under any other offence from the evidence produced on the record and from the averments of the complaint.

In view of the above discussion, I do not find any merit in the present petition, therefore, the same is dismissed.

March 22, 2016
Vgulati

(INDERJIT SINGH)
JUDGE