

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

**Crl. Misc. No.M- 3525 of 2015
Date of decision : 21.01.2016**

Bhupinder Singh and others

.....Petitioner(s)

Versus

Rajinder Kaur and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sandeep Arora, Advocate
for the petitioners.

Mr. H.S. Gill, Senior Advocate with
Mr. Vivek Goel, Advocate for respondent no.1.

Mr. Sidakmeet Sandhu, AAG, Punjab.

ANITA CHAUDHRY, J.

The petitioners are seeking quashing of the order dated 17.12.2014 (Annexure P-4), passed by the Additional Sessions Judge, Hoshiarpur who dismissed the revision petition directed against the order dated 12.11.2013, passed by the Judicial Magistrate 1st Class, Dasuya, vide which the petitioners were summoned under Section 494, 120-B IPC in a complaint case filed by respondent no.1.

Rajinder Kaur was married to Bhupinder Singh on 13.07.2008. She had alleged that on 06.08.2008, she was turned out of the matrimonial home after being beaten up. Her parents made efforts to rehabilitate her but the accused refused to keep or rehabilitate her. In June, 2012 the complainant and her parents came to know from reliable source that Bhupinder Singh had solemnized second marriage with Gurpreet Kaur d/o Paramjit Singh during the subsistence of his first marriage. A complaint was given to the SSP. No action was taken and thereafter, the complaint was filed under Section 494, 109, 120-B IPC.

The complainant examined eight witnesses and on the basis of preliminary evidence led before the Court, it summoned all the accused namely the husband, his parents and other relatives. The petitioners challenged the summoning order before the Sessions Judge, Hoshiarpur. The revision was dismissed. They have now filed this petition under Section 482 Cr.P.C. and have pleaded that complainant was earlier married to Sukhwinder Singh, who had filed a divorce petition on the ground that Rajinder Kaur had performed second marriage with the petitioner no.1 during the subsistence of her first marriage and District Judge, Jalandhar, vide judgment dated 18.10.2010 dissolved the first marriage of Rajinder Kaur with Sukhwinder Singh and had observed that sufficient evidence was led to prove that Rajinder Kaur was married to Sukhwinder Singh and the fact was that she

married Bhupinder Singh (petitioner no.1 here) when her marriage with Sukhwinder Singh was subsisting. It was pleaded that the complainant had married petitioner no.1 in a fraudulent manner during the subsistence of her marriage and the present complaint was a counter blast to the earlier FIR got registered by petitioner no.1 against respondent no.1 and the marriage between petitioner no.1 and respondent no.1 was a void marriage.

Notice was given to the respondent-complainant who has appeared and filed reply. It was pleaded that there was no valid marriage between the complainant and Sukhwinder Singh. It was pleaded that the complainant along with her parents was residing in village Thakri whereas Sukhjot Singh, her brother was murdered by his cousin Avtar Singh. There were threats and pressure for compromise in that case and apprehending danger to their lives, she and her family members shifted to Jalandhar and took the house of Surjit Singh (father of Sukhwinder Singh) on rent in November 2006 and stayed there for almost a year. It was pleaded that the parents of the complainant were working and in their absence Sukhwinder Singh used to make advances and proposed marriage but she refused. It was pleaded that parents of Sukhwinder Singh were also pressurizing her to marry Sukhwinder Singh and she was kidnapped on 17.10.2007 and taken to a Gurudwara and made to sign some papers and some

photographs were taken in the wedding attire. It was pleaded that there was no consent for marriage and the contents of FIR were incorrect. It was pleaded that the case registered by petitioner no.1 was pending trial.

The State in its reply pleaded that a complaint was given by respondent no.1 which was inquired into and on the basis of the statement recorded therein, no offence was made out and thereafter respondent no.1 had filed a complaint. It was pleaded that FIR had been registered against the culprits on the strength of the statement so recorded and on the basis of the inquiries conducted by them.

The matter was referred for settlement before mediation as both the parties were facing criminal trial for the offence under Section 494 IPC. The matter could not be settled. It was reported that petitioner no.1 had submitted that he was not interested in resolving the dispute through mediation.

I have heard both the sides.

The counsel for the petitioners had urged that the marriage of petitioner no.1 was void from the very inception as the wife did not inform that she was earlier married and no divorce had taken place and it was subsequently that they came to know and an FIR was lodged under Section 420 IPC. It was urged that a divorce petition was filed by the complainant's first husband and divorce was granted and copy of the judgment is

Annexure P-6. It was urged that the plea taken by the complainant that it was void marriage, was not accepted. It was urged that divorce took place in December, 2010 and marriage between the complainant and petitioner no.1 could not take place. It was urged that the complainant in order to settle scores has not only arrayed the husband but all his relatives and they have been summoned under Section 494, 120-B IPC. It was urged that 11 persons from the family were named in the complaint. It was further submitted that the police had investigated and did not find any truth in the complaint and did not register the FIR. It was urged that if there was a subsisting marriage then no offence under Section 494 IPC would be made out. It was urged that the relatives of the husband cannot be held for abetment and the trial Court had summoned them under Section 120-B IPC and there can be no criminal conspiracy. It was contended that the second marriage during the lifetime of the living spouse would be a void and invalid marriage. It was urged that in a complaint case the relatives could not have been summoned for the offence of bigamy and the summoning order suffers from illegality and it is an abuse of the process of law. It was urged that at the most it could be a case of abetment against them under Section 109 IPC but there are no such allegations against them and the complaint and the summoning order qua the relatives should be quashed. It was urged that all the

petitioners have put in appearance before the Court below and charge has not been framed. Reliance was placed upon ***Seema Rani Vs. Gurpreet Kaur 2010(1) RCR (Criminal) 960, Deoki Panjhiyara Vs. Shashi Bhushan Narayan Azad and another 2013(2) RCR (Civil) 400, Manisha Vs. State of Haryana and another 2014(3) RCR (Criminal) 621, Sham Singh Vs. Sarbjit Kaur 1998(3) RCR (Criminal) 78, Mohan Lal Sharma Vs. Parveen 2009(4) RCR (Civil) 749, Om Parkash Sharma and others Vs. Jagatjit Singh Ahluwalia 2009(2) RCR (Criminal) 496, Balwinder Singh and others Vs. State of Punjab and another 2011(1) RCR (Criminal) 386 and Manoj and others Vs. Prem Lal 2006(3) RCR (Criminal) 941.***

The submission on the other hand was that the material brought on record by the petitioner cannot be looked into in a petition under Section 482 Cr.P.C. and the accused can raise the defences at the time of framing charges and it is that Court which will consider the material if the law permits. It was urged that a revision was filed against the summoning order which has been dismissed and this petition would amount to a second revision by the same party and Section 397(3) Cr.P.C. bars a second revision before High Court and inherent powers under Section 482 Cr.P.C. could not be utilized for exercising powers which are expressly barred by the Criminal

Procedure Code. Reliance was placed upon ***Dharampal Vs. Ramshri 1993(1) RCR (Criminal) 696, Ajay Kumar Das Vs. State of Jharkhand and another 2011(4) RCR (Criminal) 231 and Dharmender Vs. State of Haryana and others 2010(2) RCR (Criminal) 414.***

In ***Smt. Chand Dhawan Vs. Jawahar Lal and other, 1992(3) RCR 534 (SC)*** the Hon'ble Apex Court quashed the complaint under Sections 494, 109, 120-B IPC against the parents, relatives of the husband and others while coming to the conclusion that no offence under Section 494 IPC is made out against the parents and relations of the husband merely because they were present at the time of second marriage and discussed it in para no.5 as under:-

"After considering various contentions of both the sides, the Hon'ble Supreme Court was of the view that the High Court had clearly erred in reaching the conclusion that the proceedings are liable to be quashed. It was further observed that in the light of allegations made in the complaint and material produced in support of these allegations by the appellant before the Magistrate, the issue of process to respondents no.1 & 2, who are alleged to have solemnized the second marriage during the subsistence of the earlier valid marriage of the appellant, was proper and when the process had been issued the proceedings had to continue in accordance with law against respondents No.1 & 2. Regarding the other accused, it was held by their Lordships of the Supreme Court that they had been unnecessarily and vexatiously roped in. It was further held that it could not be assumed that they had by their presence or otherwise facilitated the solemnization of a second marriage with the knowledge that the earlier marriage was subsisting. Accordingly, the appeal was partly allowed and order with regard to respondents No.1 and 2 were set aside and it was held that the complaint should proceed against these two respondents in accordance with law."

Similar view was taken by this Court in the case of **Om Parkash Sharma and others Vs. Jagatjit Singh Ahluwalia, 2009(2) RCR (Criminal) 496.**

Further in the case of **Sham Singh V. Sarabjit Kaur, 1998(3) RCR (Criminal) 78**, this Court while quashing the complaint against relatives of the husband and 17 others held that Section 494 Indian Penal Code was not maintainable against the relatives.

In **State of Haryana and others Vs. Ch. Bhajan Lal and others** AIR 1992 604, the Apex Court had laid down specific guidelines and an exhaustive list of various kinds of cases wherein the power under Section 482 Cr.P.C. can be exercised:-

"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 channelised 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 uncontroverted 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.”

Keeping the aforesaid legal principles in mind, I may now proceed to examine the contentions raised by the counsels. It is true that the powers under Section 482 Cr.P.C. has to be exercised sparingly, specially when second revision is barred under the Criminal Procedure Code. Section 397(3) Cr.P.C. specifically lays down that if an application is made to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by either of them. The question is whether this is in the second revision in the garb of a petition under Section 482 Cr.P.C. It has also to be examined whether the powers under Section 482 Cr.P.C. can be exercised in exercise of the inherent jurisdiction.

The husband has brought some documents on record to show that the complainant was earlier married to some other person and his marriage with the complainant took place during the existence of the first marriage. It is not clear whether the judgment is under appeal. So far as the husband is concerned, he will have to raise all his defences before the trial Court. With respect to the others, the allegations against the relatives are of criminal conspiracy. Allegations of bigamy are levelled against the husband.

It is a fit case where the powers under Section 482 Cr.P.C. should be exercised. No offence is made out against the petitioner nos.2 to 6. It cannot be presumed that petitioners no.2

to 6 by their presence alone would have facilitated the solemnization of the second marriage. The relatives of the husband could not be summoned for conspiracy. The Magistrate did not properly consider the evidence against the relatives. They have not been accused of abetment. The order of summoning petitioner nos. 2 to 6 suffers from grave illegality and cannot be sustained in law. It is quite apparent that the Magistrate did not consider the material placed before him for summoning the other relatives. The wife has implicated not only the entire family of the husband but also his near relatives. The impugned summoning order cannot be sustained in law so far as petitioners no.2 to 6 is concerned. The impugned complaint and the summoning order qua them is quashed.

The petition is partly allowed and the complaint and the summoning order qua petitioners no.2 to 6 is quashed.

21.01.2016
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(ANITA CHAUDHRY)
JUDGE