

CRM-M No. 42884 of 2014

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M No. 42884 of 2014

Date of decision : 09.08.2016

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Sushil Kumar

.....Petitioner

Versus

State of Punjab and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Sandeep Wadhwan, Advocate for the petitioner.

Mr. J.S Riar, AAG, Punjab.

Mr. P.K Kataria, Advocate for respondent no.2.

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RITU BAHRI, J

The petitioner has filed present writ petition for quashing of the FIR bearing No. 46 dated 17.3.2012 (Annexure P-10) registered under Sections 498-A, 494, 506 IPC at police station Chheharata, Amritsar City and all other consequential proceedings arising therefrom.

The marriage of the petitioner was solemnised with Reena Sharma-respondent No. 2 on 03/03/1995 and from this wedlock, one child namely Sanjay alias Sanju was born. In the year 1998 respondent No. 2 filed

a criminal complaint against the petitioner and his family members under Sections 323, 506, 406, 498A, 34 IPC in the court of Judicial Magistrate First Class. A compromise was effected in the year 2002 and as per the compromise, petitioner has given a house situated at Gali Bhalianwali, Amritsar of the value of Rs. 3,50,000 to respondent No. 2 along with cash amount of Rs. 1 lakh for her maintenance as well as maintenance of the minor child. In view of the aforesaid compromise, respondent no.2 made a statement before the court where criminal complaint was pending and vide order dated 16.5. 2002 (Annexure P-2) the said criminal complaint was dismissed as withdrawn. In the year 2004 the respondent No. 2 again made a complaint against the petitioner to his department that he has conducted a second marriage without getting divorce. On the basis of this complaint, a departmental inquiry was conducted by the Health Department and the petitioner was found innocent. In this enquiry respondent No. 2 gave an affidavit to the effect that the petitioner has not conducted any 2nd marriage and the respondent No. 2 is residing with him. However, thereafter a complaint was made to the police authorities and after enquiry the petitioner was again found innocent. In the year 2008 she again made an application before the Department that the petitioner has conducted 2nd marriage with one Balwinder Kaur, Staff Nurse, PHC, Kasel. An enquiry was conducted against the petitioner and one Balwinder Kaur, Staff Nurse. Petitioner filed a civil suit against the Department and the Court of Additional Civil Judge, Senior Division, Pathankot stayed the enquiry proceedings. In the meantime, respondent No. 2 again filed an affidavit before the Court that the petitioner has not conducted any 2nd marriage. Vide order dated 13.2.2010

the stay granted in favour of the petitioner against the said enquiry proceedings initiated by the Department of the petitioner was confirmed. Balwinder Kaur had also filed a civil suit in the court of Civil Judge, Senior Division, Tarn Taran and the same was decreed in her favour vide judgment dated 2.6.2009 but the appeal against the said judgment was dismissed by the Additional District Judge, Tarn Taran on 10.3.2010. Aggrieved thereof, the Health Department through State of Punjab had filed a Regular Second Appeal No. 3517 of 2010 before this court which was dismissed on 7.4.2011. A finding was given by a Co-ordinate bench of this Court that the complaint moved by Reena Sharma was false and in these circumstances the trial court rightly held that in such a situation a second enquiry on the same set of facts was not competent. Finally it was agreed between the parties to file a divorce by mutual consent. Accordingly compromise deed was executed between the petitioner and respondent No. 2, whereby, entire matter was settled for a sum of Rs. 3,75,000 as permanent alimony in a full and final settlement. A divorce petition under section 13-B of the Hindu Marriage Act for dissolution of the marriage was filed on 13/06/2011 (Annexure P-6). Statements of the petitioner and respondent No. 2 were recorded (Annexures P7 and P8 respectively). Respondent No. 2 did not appear on the 2nd motion and the petition was dismissed in default for want of prosecution on 19.1.2012 (Annexure P-9). Thereafter respondent no.2 filed another false complaint against the petitioner and F I R No. 46 dated 17.3.2012 (Annexure P-10) under Sections 498-A, 494, 506 IPC was registered at police station Chheharata, Amritsar City.

On notice, a reply has been filed by respondent No. 2 dated

residing with Balwinder Kaur, and they are having two children namely Ms Noor Sharma and Mr. Pratham Sharma. Both have been admitted in DAV Public School, Amritsar. As per the certificates issued by the school, the parentage of the children is SK Sharma and Balwinder Kaur (Annexures R-2/1 & R-2/2). A copy of the extract from electoral roll showing them as husband and wife has also been annexed as Annexure R-2/3. Moreover they have purchased a property jointly in their names i.e plot No. 55 measuring 105 sq. yd. at village Kala Ghanupur in Khasra no. 116-117, Sunder Nagar, Labour Colony, Amritsar and the sale deed was registered on 7.2. 2006. With regard to the compromise affected between the parties in the year 2002, she stated in her reply that she has withdrawn the complaint only with the hope that the petitioner will improve his conduct in the future. She has denied that any amount was paid to her or any house was given to her. It has been further submitted in the reply that petitioner never paid any amount nor appeared on the 2nd motion and as such the petition was dismissed in default. Respondent No. 2 further admits that in departmental enquiry, she had given an affidavit before the enquiry officer that the petitioner had not solemnised any second marriage but this step was taken to save her matrimonial life at every cost. She has again admitted that in the year 2008 an application was made to the Department that the petitioner had solemnised second marriage, where she again gave an affidavit that the petitioner had not solemnised any second marriage. This step had also been taken by respondent No. 2 to save her matrimonial life at any cost. The present FIR has been registered as the petitioner was giving threats to respondent No. 2 for giving divorce so that he could continue living with

It is stated in the preliminary submissions that complaints dated 19.12.2011 and 9.2.2012 was received from respondent No. 2 that she was being harassed by the family members of the petitioner and they were demanding money as well as dowry from her father and moreover she had been turned out of her house at night after beating her. Petitioner had illicit relations with Balwinder Kaur with whom he had married and 2 children had born out of this relationship. After registering the FIR, the challan has been submitted on 24.9.2012. No compromise between the parties has been attached with the petition. Parties were present in the court today and counsel for the petitioner has offered Rs. 10 Lacs for an out of court settlement which he is ready to pay to the complainant. However, on a specific query placed before the complainant and her son, they refused to accept this amount.

After going through the contents of the writ petition and hearing counsel for the parties, I am of the opinion, the present writ petition deserves to be dismissed

The petitioner has solemnised marriage with respondent no.2 in the year 1995 and thereafter separated from her in the year 1998. The petitioner is residing with Balwinder Kaur and they have two children from this relationship. As per the certificates issued by the school ((Annexures R-2/1 & R-2/2) and the electoral roll (Annexure R-2/3) the petitioner and Balwinder Kaur have been shown to be husband and wife. Another fact which is required to be taken into consideration is that it was agreed between the parties that Rs. 3,75,000 will be given as permanent alimony and this fact had been so stated by respondent no.2 as is evident from

and this divorce petition was dismissed for non-prosecution. No compromise alleged to be affected in the year 2002 between the parties has been placed by the petitioner. Whether a case under Section 494 is made out against the petitioner who is in living relationship with one Balwinder Kaur and has two children as well, all these facts shall be taken into consideration by the trial court. However, no case for quashing of the FIR, at this stage, is made out.

Present petition is dismissed.

09.08.2016
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No