

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

CRM-A-281-MA of 2012

Date of Decision: November 09, 2017

Balwinder Kaur

...Petitioner

Versus

Amarjit Singh and another

...Respondents

CRM-M-20438 of 2010

Balwinder Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present:

Mr. Manish Dadwal, Advocate
for the petitioner (in both matters)

Mr. APS Gill, DAG, Punjab.

Mr. Mohd. Yousaf, Advocate for
respondent No.1 (CRM-A-281-MA of 2012)
& for respondents No.2 to 8 in(CRM-M-20438 of 2010)

FATEH DEEP SINGH, J.

Since both these matters have arisen in the same very criminal case got registered by way of an FIR No.94 dated 25.10.2006 under Sections 498-A,494 IPC pertaining to Police Station, Maqsudhan, Jalandhar got registered by one complainant Balwinder Kaur, besides the fact that these three matters Amarjit Singh vs. State of Punjab; State vs. Bhupinder Singh and others and Balwinder Kaur vs. Punjab State and others were conjointly decided through the impugned judgment dated 22.3.2010 by the Court of learned Additional Sessions Judge, Jalandhar by singular

judgment, thus, are being taken up and disposed off together.

Heard, learned counsel for the parties and perused the records of the case.

The brief background of their origin stems from case bearing No.CRM-M-38688 of 2006 filed by complainant Balwinder Kaur against accused and consequent upon holding of enquiry, the present case was got registered against husband-Amarjit Singh @ Amarjeet Singh, besides his relations, Bhupinder Singh, Malkiat Singh, Kewal Singh, Balvir Kaur @ Paramjit Kaur, Charan Kaur and Sarwan Singh. The brief allegations levelled by complainant-wife are that she got married to Amarjit Singh on 09.08.1987 and, thereafter, in the year 1990 Amarjit Singh went to Canada from where he was deported in the year 2006 and instead of coming to her and residing together, Amarjit Singh started living with another lady in Chandigarh, who happens to be from Canada. Besides this, there were allegations that after marriage she was thrown out of her matrimonial home for bringing less dowry and demand of Rs.2 lacs in cash was made earlier which had enabled husband-Amarjit Singh to go to Canada. She has claimed that in the Panchayat convened on 28.11.2005 her father-in-law had assured her that he will give share of the land of his son to her, however, in the month of December 2005 her father-in-law transferred the total land in the name of other sons Malkiat Singh and Bhupinder Singh. Further the complainant claims that her husband has solemnized second marriage in Canada and has a daughter also.

The prosecution at the trial examined complainant Balwinder Kaur as PW1, Jarnail Singh as PW2, Jaswinder Singh as PW3,

ASI Kulwant Singh as PW4 and, thereafter, closed the evidence. The accused in their stand taken under Section 313 Cr.P.C denied the allegations and in defence examined DW1 Amarjit Singh, DW2 Surinder Pal and, thereafter, closed their evidence. The Court of learned Judicial Magistrate 1st Class, Jalandhar through judgment dated 17.12.2008 convicted Amarjit Singh for commission of offence under Section 498-A IPC and acquitted him of other charges, besides acquitting remaining accused. It is out of this very finding, three legal recourses were filed. The same were decided through common judgment dated 22.3.2010, whereby, the Court of learned Additional Sessions Judge, Jalandhar through impugned findings accepted the appeal of convict-husband Amarjit Singh, thereby, acquitting him and also dismissed the other matters instituted against the acquittal of the co-accused. Both the present petitions have come about by the aggrieved wife.

It is the golden principle of Criminal Jurisprudence that onus to prove its case always rests upon prosecution which is supposed to prove the same beyond the shadow of reasonable doubt. Going through the arguments, the very stand and testimony of complainant-Balwinder Kaur reflects that her testimony is based merely on hearsay than of any direct evidence. It is her own case that upon marriage in the year 1987, the husband left for Canada in the year 1990 and since then till his deportation in the year August, 2006 there has never been any cohabitation nor she ever made any such complaint as to harassment for the dowry, asking of money or was physically tortured by the accused side and her allegation of bigamy stems from her accusation that when she gave a telephonic call, a lady had picked up the phone and told that she is wife of Amarjit Singh and that she

nowhere claims that she has ever accosted or met the lady or has shown proof of solemnization of this alleged second marriage. None of her witnesses could materially prove or corroborate that Amarjit Singh had undergone second marriage with another lady during the existence of his first marriage with the present complainant and which was legal and valid. Even otherwise, the wife does not dispute the fact that her husband has got divorced from her and which document is Ex.PB, thus, question of relationship of being legally wedded wife does not arise at all and, therefore, puts a big question mark over the very credibility of her testimony that having slept over the matter for long period of time she had suddenly woken up from her slumber and levelled insinuations against the husband and his family members. Though, much vehemence has sought to be put forth by the learned counsel for the petitioner to the documents Ex.PA, Ex.PB and Ex.PC to show that compromise was effected between the two sides, however, it has rightly controverted by the private respondents that there is nothing suggestive that Amarjit Singh ever was a signatory to these documents which is between Balwinder Kaur and other family members of Amarjit Singh-accused. The mere fact that the father-in-law backed out of his promise made before the Panchayat does not even otherwise in view of the arguments put forth by the two sides bring within its ambit offence of cheating defined under Section 415 Cr.P.C. The own document of the prosecution written by complainant shows that she had mere suspicion which could not take the place of proof.

What one can perceive from her averments and allegations that the complainant aggrieved over her denial to property has

chosen a way to rake her vengeance against Amarjit Singh and his family members and, therefore, question that they have gone back from the compromise does not falls within the terminology of cheating and her claim that a lady had telephonically claimed her to be the wife of Amarjit Singh certainly does not take place of a legal and legitimate evidence.

In the impugned findings, the Court below has rightly concluded that the marriage between Amarjit Singh and alleged Sukhwinder Kaur has not been legally proved and, therefore, no offence under Section 494 IPC was made out and has held it so and further that there is no direct evidence to show that any cruelty was heaped upon the complainant which could fall within the compass of Section 498-A IPC. Merely, after the marriage, the husband has gone abroad and on his return as is the own stand of the wife he started living in Chandigarh and mere non-cohabitation when actually there is a divorce between them as has been held by the Court below does not tantamount to any cruelty nor it is her case in her testimony.

In the totality of these discussions, there is not even an iota of truth much less proof by the prosecution against any of the accused. The Court below has rightly drawn the conclusion and the impugned judgment certainly needs to be upheld. Thus, both these petitions being devoid of any merits stand dismissed.

(FATEH DEEP SINGH)
JUDGE

November 09, 2017

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