

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

Crl. Misc. No.M-11592-2013 (O&M)

Date of Decision: April 26, 2017

Arjan Singh and another

.....PETITIONER(s).

VERSUS

State of Punjab and another

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ramneek Vasudeva, Advocate
for the petitioner (s).

Mr. Jashanpreet Singh, A.A.G., Punjab.

SURINDER GUPTA, J.

This is petition filed by Arjan Singh and Gopal Chand seeking quashing of FIR No.368 dated 22.12.2012 registered for the offence punishable under Section 406 read with Section 34 of Indian Penal Code (for short-IPC) at Police Station Sadar Jalandhar.

2. The above FIR was registered on the complaint by respondent No.2 Reena Kumari, who was married with Krishan Lal son of petitioner No.1 and brother of petitioner No.2. It has been averred that FIR lodged by complainant is sheer misuse of process of law. Reena Kumari got divorce from her husband Krishan Lal vide judgment and decree dated 09.10.2010. It was after the lapse of more than two years thereafter that she filed a complaint before the police in order to implicate the entire family of her ex-husband. Petitioner No.1 was 78 years of age at the time of filing of petition

(now 82 years of age), while petitioner No.2 is 45 years of age and has no concern with the matrimonial life of his brother.

3. Before proceeding further, it will be relevant to have a look on the allegations levelled in the FIR lodged by respondent No.2 vide her complaint dated 09.10.2012, wherein she named her husband Krishan Lal, father-in-law Arjan Singh (petitioner No.1), mother-in-law Tarawati, brother-in-law Gopal Chand (petitioner No.2) and sister-in-law Baljinder Kaur as accused. As per the allegations in the complaint made to the police, respondent No.2 was married with Krishan Lal on 05.12.2007 and thereafter her husband went abroad i.e. Italy. After returning from Italy, he got the marriage registered in the office of Registrar of Marriages, Kharar. After sometime, he prepared a document of adoption of son of his brother and then again went abroad. Complainant alleged that after the departure of her husband, her father-in-law, mother-in-law and brother-in-law started giving beatings to her and twice attempted to kill her but she was saved by her sister-in-law Sushma Rani and her husband Baldev. Accused demanded a Honda car and other articles in dowry. She made complaint to her husband but he asked her to do everything as per the wishes of his parents, brother and bhabhi (sister-in-law). Father of complaint being a class-IV employee was not in a position to give car in dowry and the accused took her to Tehsil Kharar where her husband Krishan Lal and other accused named in the complaint obtained her signatures on some English documents on the pretext that the same are required for sending her abroad. Thereafter, her husband again went abroad and returned after five months and again obtained her signature on some English documents. After few days

thereafter, she was again taken to Tehsil Kharar and her signatures were obtained on the pretext that same are required for cancellation of adoption deed. The accused got decree of divorce in connivance with their advocate in the year 2010 but the complainant was not aware of the same and kept on living with the accused in their house till September, 2011. Thereafter, the complainant went to the house of her sister, where her husband called and informed her about the decree of divorce obtained by him and asked her not to enter their house. She alleged that all her dowry articles and academic certificates were lying in the house of her in-laws. On this complaint, police registered the FIR after taking opinion of the District Attorney (Legal).

4. From perusal of the complaint, it appears that the complainant was aggrieved by the decree of divorce under Section 13-B of Hindu Marriage Act, taken by her husband. Copy of the decree of divorce shows that the parties i.e. complainant and her husband appeared before the court on 18.03.2010 and made statement for grant of decree of divorce by mutual consent. After giving them period of six months, the Court again recorded their statements on 27.09.2010, wherein they re-iterated their earlier statement. In the petition filed on 18.03.2010, it was pleaded that complainant and her husband are living separate for more than one year before filing the petition. In her reply, complainant-respondent No.2 has nowhere alleged that she ever filed petition in the Court seeking setting aside of the decree passed under Section 13-B of Hindu Marriage Act, alleging that the same was obtained by petitioners by way of fraud.

5. File relating to the grant of decree of divorce was called vide order dated 23.07.2013 and on perusal of that file, I find that petition under

Section 13-B of Hindu Marriage Act was signed by complainant Reena Rani and her husband. Complainant had signed this petition in English. Her statement was recorded on 18.03.2010 which was also signed by her in English and countersigned by her counsel. She again appeared in the Court on 27.09.2010 and signed her statement recorded by the Court. No role of the petitioners i.e. Arjan Singh or Gopal Chand in grant of decree of divorce is made out or disclosed on perusal of the file of divorce proceedings.

6. Taking of divorce is a matter privy to complainant and her husband. Though complainant has not challenged the decree of divorce by mutual consent with the averment that it was obtained by way of fraud, still it was a matter between her and her husband and there is nothing to connect father-in-law and brother-in-law with this matter. Even otherwise, father-in-law and brother-in-law have not gained in any manner due to dissolution of matrimonial bond between complainant and her husband. A plea has been raised that the signature of the complainant at the time of divorce were obtained on some English papers on the pretext of getting her passport prepared. Copy of the passport of complainant Annexure-P7 shows that her passport was prepared in the year 2009 and she was also allowed visa for Italy valid from 01.12.2009 to 30.11.2010.

7. Perusal of the FIR shows that the allegations of maltreatment of complainant appears to be of the period after her marriage in the year 2007. The complainant has alleged that even after her husband had gone to Italy after marriage. As per complainant, even grant of decree of divorce by Court, she kept on living in the house of petitioners upto September, 2011 being unaware of decree. There is no allegation that she was maltreated

thereafter. The allegation of demand of Honda car and other dowry articles against the petitioners as levelled in the FIR are quite vague and unspecific and no period of such demand being raised by the petitioners has been given in the FIR.

8. From the above facts, it appears that after the grant of decree of divorce by mutual consent, which has not been challenged by the petitioner-respondent No.2 till date, some issue arose and the complaint in order to exert pressure on the petitioners, filed complaint with the police and got registered the FIR implicating petitioners. Even when, her complaint was sent to District Attorney (Legal) for opinion, he also took note of the fact that on enquiry, it transpired that divorce decree was passed by the competent Court with the mutual consent of complainant and her husband. Further enquiry report by Assistant Commissioner of Police (SB), Jalandhar dated 15.12.2012 disclosed that the dispute pertains to school certificates, date of birth certificate and passport, which were retained by the husband forcibly and he was not giving those documents to the complainant despite her demand. District Attorney (Legal) gave the opinion that if the “complainant feels that the divorce decree has been obtained by her husband by fraud and misrepresentation, then the only remedy available to the complainant is to challenge the said decree in the competent Court of Law, hence after giving due consideration, it transpires that her matrimonial dispute has already been settled through the Court of Law but her documents mentioned above have been retained by her husband with mala fide intention. It was with the above opinion, the case for not returning the documents of complainant was ordered to be registered for the offence

punishable under Section 406 of the IPC. The facts discussed above make it amply clear that even in the enquiry, the police did not find any substance in the allegations levelled by complainant-respondent No.2 against the petitioners.

9. On careful perusal of the final report submitted by the police under Section 173 Cr.P.C., submission of counsel for the parties and the reply filed by respondent No.2-complainant, I find that even if the allegations levelled by complainant are accepted, these do not disclose the commission of offence punishable under Section 406 IPC against the petitioner.

10. As a sequel of my above discussion, I am of the considered opinion that the registration of FIR and presentation of challan by the police against the petitioners has resulted in misuse of process of law. Husband of the complainant is living abroad and it appears that the complainant in order to put pressure, has implicated all the family members of her ex-husband while filing the complainant and the police without looking into the enquiry report and the opinion of District Attorney (Legal), filed the challan. Even in the report, it is mentioned that the police has taken into possession only educational, date of birth certificates and passport of the petitioner in possession.

11. Keeping in view the above facts, this petition is allowed and FIR No.368 dated 22.12.2012 (Annexure P-1) is ordered to be quashed qua petitioners. It is, however, made clear that the entire discussion above and reference to documents on file is only to ascertain the role of petitioners in the case and shall not be taken as expression of any opinion with regard to

the case against husband of complainant or as expression of any opinion on merit about the case against him.

April 26, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>