

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

Date of decision: 04.07.2017

CRM-M No.15113 of 2017

Surinder Singh @ Surinder Kumar & others ...Petitioners

Vs.

Ankit & another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rakesh Nagpal, Advocate, for the petitioners.

Mr. Charanjit Lal, Advocate, for respondent No.1.

Mr. Surender Singh, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. The petitioners seek the quashing of the order dated the 21st February, 2017 (Annex P-5) passed by the learned Additional Sessions Judge, Kurukshetra, dismissing the revision petition arising out of the order dated the 8th April, 2016 (Annex P-3) passed by the Judicial Magistrate 1st Class, Kurukshetra vide which the petitioners were summoned to face trial under Section 417/494/495 IPC in a complaint case filed by the respondent.

2. As per the allegations levelled in the complaint, marriage of the 1st respondent was solemnized with Kusum (non-petitioner) on the 6th of February, 2013 at Gurudwara Sahib Patshahi, Kurukshetra according to Sikh rites and ceremonies. Post marriage, both parties resided together and to them a male child was born on the 17th day of December, 2013, who they named Vansh Singhmar. The 1st respondent has alleged that in August,

2014, he came to know that Kusum had solemnized second marriage with him during the subsistence of her first marriage with one Hardeep Singh son of Rajpal. He further alleged that on 8th of August, 2012, Kusum and Hardeep Singh filed a petition for divorce by mutual consent under Section 13-B of the Hindu Marriage Act which was granted by the learned Civil Judge (Senior Division), Kaithal on the 17th day of April, 2013. Thus, 1st respondent – complainant filed a complaint against the petitioners and Kusum for hiding the factum of previous marriage.

3. The complainant examined three witnesses and on the basis of the preliminary evidence led before the Judicial Magistrate Ist Class, Kurukshetra, who summoned all the accused, namely, Kusum – wife; Chander Pati, mother of Kusum; Krishan Punia; Mahindero Devi; Vanita and Surinder Singh, their neighbours. All the petitioners except Vanita, challenged the summoning order by way of a revision petition, which was dismissed by the learned Additional Sessions Judge, Kurukshetra on 21st February, 2017.

4. Now only four of the petitioners, namely, Surinder Singh @ Surinder Kumar; Krishan Punia; Mahindero Devi, who are stated to be neighbours and Chander Pati, mother of Kusum, have filed this petition under Section 482 Cr.P.C for quashing the complaint and the summoning order.

5. Mr. Rakesh Nagpal, learned counsel appearing on behalf of the petitioners, submits that petitioners 1 to 3 are not related to Ankit (respondent No.1) or Kusum (non-petitioner) in any manner, while petitioner 4 is the mother of Kusum. No offence is made out against the neighbours

and mother merely because they attended the second marriage. It is contended that no offence regarding fraud or cheating was committed by the petitioners, as the factum of first marriage as well as regarding pendency of divorce petition with Hardeep was in the knowledge of the 1st respondent prior to the solemnization of marriage with Kusum. The said fact finds mention in the petition instituted under Section 12 of the Hindu Marriage Act, 1955 for annulment of marriage of respondent 1 – Ankit and Kusum. Thus, the question of fraud or cheating by the petitioners is not even prima facie made out just because they participated in the marriage and therefore does not arise.

6. On the other hand, Mr. Charanjit Lal, learned counsel representing respondent 1, submitted that the material brought on record by the petitioners cannot be looked into in a petition under Section 482 Cr.P.C. and the accused can raise their respective defence pleas at the time of framing of charge/s.

7. Having heard the learned counsel for the parties at some length, I proceed to examine the contentions raised by the respective counsel and which side merits acceptance.

8. It is not disputed that respondent-husband has brought out some documents on record to show that Kusum (non-petitioner) was earlier married to some other person and his marriage with her took place during the existence of the first marriage. However, the fact that the 1st respondent knew about the earlier marriage of Kusum with Hardeep stands established from the fact that in the petition under Section 12 of the Hindu Marriage Act filed on behalf of respondent 1, he admits that he was in the knowledge of

first marriage of Kusum with Hardeep Singh. Thus, no offence punishable under Section 417 IPC is made out against the petitioners, as there was no concealment on their part.

9. Similarly, offence under Sections 494 and 495 IPC can only be made out against the husband and wife and not the mediators and any relation who can be held guilty. [See Smt. Chand Dhawan Vs. Jawahar Lal & other, 1992 (3) RCR 534 (SC)]. Thus, no offence is made out against the petitioners. It cannot be presumed that the petitioners by their presence alone would have arranged or facilitated the solemnization of the second marriage. The relatives of the wife 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 the petitioners 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 husband has implicated not only the wife, but also his mother and neighbours. The impugned summoning order cannot be sustained in law so far as the petitioners are concerned and a trial against them would be an abuse of the process of law. Even the Additional Sessions Judge has rightly concluded in Para.9 of the order dated 21.02.2017 that accused persons other than accused No.1 could not have been summoned for the offences punishable under Sections 494 & 495 IPC. Arranging of marriage will not amount to abetment. Participating and arranging a matrimonial alliance will not amount to abetment deserving summoning under Section 109 IPC and to that extent the learned Additional Sessions Judge is not correct.

10. No doubt, it is true that the powers provided by Section 482 Cr.P.C. have to be exercised sparingly, especially when the second revision is barred under the Criminal Procedure Code, 1908. 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. However, keeping in view the special facts and circumstances of this case, I am inclined to think, notwithstanding the legal position, that the present is fit case where the powers under Section 482 Cr.P.C. should be exercised to avoid a miscarriage of justice and the abuse of the process of court.

11. Consequently, while allowing the instant petition, the order dated the 21st of February, 2017 (Annex P-5) passed by the learned Additional Sessions Judge, Kurukshetra as well as the criminal complaint and the summoning order passed thereon by which the petitioners were summoned to stand trial stand quashed in *toto*.

04.07.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

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