

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

**Crl. Misc. No.M-31002 of 2016 (O&M)
Date of Decision: August 21, 2017.**

Pratima Sharma

.....PETITIONER(s).

VERSUS

State of Punjab

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Veneet Sharma, Advocate
for the petitioner (s).

Mr. Ajay Pal Singh Gill, D.A.G., Punjab.

Mr. Vaibhav Narang, Advocate
for the complainant.

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner Pratima Sharma, who got married on 13.12.2009 with Harjinder Singh, brother of complainant, who is resident of Australia and after three months of his marriage had gone there.

FIR No. 0093 dated 27.06.2016 was got registered for the offences punishable under Sections 418, 420, 406 read with Section 120-B of Indian Penal Code, at Police Station Gate Hakima, District Amritsar City on the complaint of Kulwinder Singh brother of Harjinder Singh, wherein he has alleged that after marriage with petitioner, his brother had gone to

Australia and from there he had been sending money for further education of the petitioner. He had also purchased one plot on Airport Road for the petitioner. Vide order dated 25.01.2016 passed by District Judge, Ferozepur, the petitioner took ex parte divorce without informing her husband and kept on getting money from him. She had taken divorce by giving the address of her husband in India while he was living in Australia. She kept her contacts with her husband upto 10.04.2016. His brother had tried to arrange visa for petitioner 3-4 times but could not be successful. The complainant has grouse that petitioner had taken money and plot from his brother despite taking divorce from him.

At the very outset, it was inquired from learned State counsel appearing for complainant as to whether the complainant has any authority on behalf of Harjinder Singh to file complaint and lodged the FIR against the petitioner.

On perusal of the police file, it transpires that no such authority was given to Kulwinder Singh and he has not lodged the complaint against the petitioner on the basis of any authority given to him by his brother/complainant.

Learned counsel for the complainant has argued that petitioner was married with his brother Harjinder Singh and she had asked him to send money from time to time from Australia. She had concealed the factum of ex parte divorce taken by her from his brother Harjinder Singh. The fraud with Harjinder Singh was in fact fraud with his family, as such, FIR has been got recorded by duly authorised person.

Learned counsel for the petitioner submits that petitioner got

married with Harjinder Singh on 13.12.2009. Harjinder Singh had tried several times to arrange for her visa so as to take her to Australia but could not succeed for one reason or the other. Thereafter, Harjinder Singh and his family took the decision to send the petitioner to Australia on study visa and this is why the divorce petition was filed at Ferozepur by father of Harjinder Singh. The notice of the divorce petition was sent by the Court which was served upon Harjinder Singh through his brother Kulwinder Singh-complainant himself and this fact is clear from the report of Process-server, which has been placed on file as Annexure P-5. Thereafter, again the summons were sent and process server contacted father of complainant, who refused to accept the summons. This shows that they were well aware of the divorce petition. Even otherwise, petitioner is resident of Amritsar and her marriage was also solemnized at Amritsar, she has no reason to go to Ferozepur to get ex parte divorce but she remained in contact with her husband, who is residing in Australia and her husband had no grouse against her. It was due to avarice that father of Harjinder Singh, who is a police officer got this FIR registered through his other son Kulwinder Singh.

Now, the question to be seen at this stage is as to what fraud or cheating has been committed by the petitioner with the complainant. All the allegations are of fraud and cheating with Harjinder Singh husband of petitioner, who is neither a complainant nor has appeared during investigation to get his statement recorded. On inquiry, learned State counsel has stated that investigating officer has not even recorded statement of Harjinder Singh in this case. The sending of money from Australia to his

wife i.e. petitioner and purchasing of plot in her name is a matter inter se petitioner and her husband (erstwhile husband by now). Petitioner had remained in custody for four months and after completion of investigation, police has already presented the challan.

At this stage, learned counsel for the complainant has argued that counsel for the petitioner had submitted before this Court on 08.09.2016 when the petitioner was allowed interim bail that the petitioner is ready to return the amount which she has received on the date of filing of the divorce petition. She has not complied with that order, as such, she should not be allowed the benefit of regular bail.

On giving a careful thought to the submissions of learned counsel for the parties and keeping in view the facts and circumstances discussed above, I find that if any money which the petitioner had received from Harjinder Singh, it is to be returned to him and not to the complainant or his father, as such, complainant, who has not paid any money to petitioner is not entitled to recover the same from her.

This petition has merits and is allowed. Bail bond and surety bond furnished by the petitioner as per order dated 08.09.2016 are made absolute till the final conclusion of the case, subject to the following conditions:-

- a. The petitioner shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- b. In the event of her absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial Court shall be competent to cancel her bail bond and surety bond and proceed to procure her presence in accordance with law. In that eventuality the petitioner shall have to apply

for bail afresh.

- c. She shall not leave the country without the prior permission of the Court.

(SURINDER GUPTA)
JUDGE

August 21, 2017
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***