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In the High Court of Punjab and Haryana at Chandigarh

CRM-M- 33186 of 2015
Date of Decision:25.5.2017

Jatinder Kumar Sharma and others

---Petitioners

vs.

Balram

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Zorawar Singh Chauhan, Advocate
for the petitioners.

Mr. Tarun Singla, Advocate
for the respondent

Rekha Mittal, J.

By invoking Section 482 of the Code of Criminal Procedure (in short “Cr.P.C.”) the petitioners have prayed for quashing of Criminal Complaint No. 28 of 2015 dated 14.5.2014 titled “Balram Kumar vs. Anoop Kumar and others” pending in the Court of Sub Divisional Judicial Magistrate, Phillaur, summoning order dated 1.8.2014 (Annexure P-3) whereby the petitioners have been summoned under Sections 406, 498-A of the Indian Penal Code (in short “IPC”), order dated 19.8.2015 dismissing the application under Section 198-A read with Sections 244, 245 and 246

Cr.P.C. and proceedings emanating therefrom.

The present litigation is the result of marital dispute between Anoop Kumar, non-petitioner and Sunaina Sharma who performed marriage on 17.8.2010 at Jalandhar. The petitioners are the parents in law and brother in law of Sunaina Sharma.

Counsel for the petitioners has submitted that Sunaina Sharma came to India for solemnization of marriage with Anoop Kumar. After the marriage was performed on 17.8.2010, she resided with Anoop Kumar for one week and thereafter went back to USA. She completed all the formalities to call Anoop Kumar to USA and he (Anoop Kumar) went to USA on spouse visa. Anoop Kumar and Sunaina Sharma lived happily in USA for quite sometime. Due to temperamental differences between them, they separated on 30.3.2013 i.e. four years and three months after marriage. During these years, none of the petitioners went to USA nor they interfered into married life of Anoop Kumar and Sunaina Sharma. The husband and wife decided to get divorce by mutual consent in USA and the same was granted vide order dated 14.2.2014 (Annexure P-2). As per the order, Anoop Kumar was directed to pay 15,000 U.S.Dollars to Sunaina Sharma as a settlement. It is argued with vehemence that criminal proceedings initiated at the instance of the respondent, alleging himself to be maternal uncle of Sunaina Sharma, are nothing but an abuse and misuse of process of law and liable to be quashed.

In order to assail summoning of the petitioners for offence punishable under Section 498-A IPC, counsel has two fold submissions to make. The first submission made by counsel is that as Sunaina Sharma

stayed at her matrimonial home just for a period of one week immediately after her marriage and she did not make any complaint against the petitioners or her husband, the respondent cannot be allowed to invoke jurisdiction of the Indian Court for any thing what had happened between the husband and wife during their stay in USA. It is further submitted that had Sunaina Sharma any grievance to express against her husband and his family members during her short stay in India, there was no reason for her to complete the formalities for facilitating Anoop Kumar to go to USA on spouse visa.

Another submission made by counsel is that Balram Kumar is not competent to file a complaint under Section 498-A IPC in view of provisions of Section 198-A Cr.P.C. that provides for that a complaint for offence under Section 498-A IPC can be made by the person aggrieved of the offence or by her father, mother, brother, sister or her father's or mother's brother or sister or with the leave of the Court by any other persons related to her by blood, marriage or adoption.

With regard to offence under Section 406 IPC, counsel has urged that the criminal prosecution for the said offence is barred by limitation under Section 468 Cr.P.C. In this regard, it is argued that as per allegations made in the complaint, entrustment of alleged dowry articles was made to the petitioners in August 2010 but the complaint has been filed after expiry of more than four years from the date of alleged entrustment, therefore, proceedings were initiated after expiry of more than three years from the date of alleged commission of offence.

Counsel for the respondent, on the contrary, has supported the

impugned orders with the submission that in exercise of jurisdiction under Section 482 Cr.P.C., the court cannot examine truth or falsity of the allegations set out in the complaint. It is further argued that the respondent being cousin brother of mother of Sunaina Sharma falls within the purview of any other person related to the aggrieved person by blood, therefore, he is competent to maintain the proceedings under Section 498-A IPC. The offence under Section 406 IPC is a continuing offence till the goods entrusted to an accused are returned and plea of petitioners qua limitation is misconceived.

I have heard counsel for the parties and perused the paper book.

There is no dispute that Sunaina Sharma (alleged aggrieved person) performed marriage with Anoop Kumar on 17.8.2010 at Jalandhar. It is also not denied that Sunaina Sharma came from USA for marriage with Anoop Kumar and she went back just after one week of the marriage. In para 5 of the complaint, it has been alleged that soon after marriage, accused started taunting Sunaina Sharma that she is not beautiful, active and has not brought dowry to their expectation. They also taunted that parents of Sunaina Sharma had not given Mercedes car in marriage. They treated her with cruelty i.e. physical, mental and also gave beatings. They did not allow her to use dowry articles and have misappropriated the same.

No doubt, under Section 482 Cr.P.C., this Court cannot examine truth or falsity of the allegations levelled by the complainant/prosecution. However, Hon'ble the Supreme Court of India in *State of Haryana vs. Chaudhary Bhajan Lal AIR 1992 SC 604* has laid down certain guiding principles for quashing of criminal proceedings and

one of the principles culled out by the Apex Court is to the following effect:-

“where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;”

Indisputably, Sunaina Sharma went back to USA after a short stay of one week at her matrimonial house. She did not express any grievance against her husband and his family members during her stay in India. Conversely, she completed the formalities for facilitating spouse visa for her husband. There is no challenge to the allegations raised in the petition that Sunaina Sharma and Anoop Kumar lived together as husband and wife till they got separated on 30.3.2013 i.e. four years and three months after marriage. A decree of divorce was passed by a USA Court on 14.2.2014. The very fact that Sunaina Sharma had not made any complaint against alleged misconduct of her husband or/and his family members during her stay in India, facilitated visa for her husband to join her company in USA coupled with their having stayed together for certain years in USA, justify to conclude that allegations raised by the respondent with regard to any harassment or cruelty caused to the alleged aggrieved person during her stay in India are nothing but absurd which a person of reasonable prudence would not accept. It further appears to the Court that as Anoop and Sunaina Sharma could not carry on with the matrimony during their stay in USA, resulting in a decree of divorce passed on 14.2.2014, one of the relatives of Sunaina Sharma lodged the criminal proceedings under Section 498-A IPC

as well with an intent to wreak vengeance. In this view of the matter, I find merit in contentions of the petitioners that order passed by the court below summoning the petitioners to face trial under Section 498-A IPC cannot be allowed to sustain and liable to be set aside.

So far as the plea with regard to competency of respondent to file a complaint on behalf of Sunaina Sharma, in my considered opinion, the expression 'by any other person related to the aggrieved person by blood' should receive liberal interpretation so that grievance of the aggrieved person is duly vindicated. However, any other person related to the aggrieved person by blood, marriage or adoption can launch prosecution for offence under Section 498-A IPC only with the leave of the Court. Counsel for the respondent has failed to point out if any such permission was granted to the respondent to file a complaint on behalf of Sunaina Sharma. Examined from any angle, order summoning the petitioners to face trial under Section 498-A IPC is liable to be set aside.

This brings the Court to summoning of the petitioners for offence under Section 406 IPC. In order to constitute criminal breach of trust defined under Section 405 IPC punishable under Section 406 thereof, there must be (1) entrustment of any person with property, or with any dominion over property (2) person entrusted (a) dishonestly misappropriates or converts to his own use that property, or (b) dishonestly uses or disposes of that property or wilfully suffer any other person so to do (i) in violation of any direction of law prescribing the mode in which such trust is to be discharged, or (ii) of any legal contract made touching discharge of such trust. Entrustment of any person with property, or with any dominion over

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property is one of the essentials of the offence and the other ingredient is dishonestly misappropriating or converting to his own use that property by the person to whom it was so entrusted. In the case at hand, it is the plea of the respondent that the property belonging to the aggrieved person was entrusted to the accused on 17.8.2010 but its retention/misappropriation by the accused is continuing till returned, therefore, provisions of Section 468 Cr.P.C. are not attracted to extend benefit of bar of limitation, in favour of the petitioners.

No other point has been raised.

For the foregoing reasons, the petition is partly allowed, orders impugned with regard to summoning of the petitioners and subsequent proceedings for offence under Section 498-A IPC are set aside. It is clarified that nothing stated hereinbefore shall cause prejudice to either of the parties at the time of disposal of the case on merits.

(Rekha Mittal)
Judge

2.6.2017
paramjit

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