

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-36168 of 2016 (O&M)
Date of Decision: 07.07.2017

Sharanjit Kaur and others

..... Petitioners

versus

Nirmal Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr.Vivek K.Thakur, Advocate for the petitioners.

Mr. A.S.Khinda, Advocate for respondent No.1.

Mr.Ajay Pal Singh Gill, DAG, Punjab
for respondent No.2.

SURINDER GUPTA, J. (ORAL):

This petition has been filed by the petitioners seeking quashing of complaint titled as Nirmal Singh v. Sharanjit Kaur and others bearing registration No. COM I/46/2014 dated 22.08.2014 pending in the Court of Sub Divisional Judicial Magistrate, Sultanpur Lodhi, and summoning order dated 03.07.2015 passed by the said Court.

Before having a look at the facts of complaint it would be relevant to take a note of undisputed facts which are as follows:-

“(i) Sharanjit Kaur-petitioner No.1 got married with Dilbagh Singh son of complainant Nirmal Singh on 01.12.2008.

(ii) Due to matrimonial discord both the parties could not live together and ultimately a case bearing FIR No. 218 dated

21.11.2013 was registered at Police Station Sultanpur for offence punishable under Sections 328/498-A/34 of the Indian Penal Code (for short 'the IPC').

(iii) The matter was resolved through the compromise copy of which has been placed as Annexure P-2 which reads as follows;-

“ Sharanjit Kaur wife of Dilbagh Singh caste Sultanpur Lodhi had lodged the FIR No. 218 dated 21.11.2013 U/S 328/498-A/34 IPC against Dilbagh Singh son of Nirmal Singh, Nirmal Singh, Lakhvir Kaur wife of Nirmal Singh, Gurwinder Singh son of Nirmal Singh. Today with the intervention of the Panchayats of both the village and other relatives a compromise has been got effected and both the parties agreed to part away with each other the expenditure which has been occurred on the marriage of Sharanjit Kaur i.e. Rs. 5 lacs will be given to Sharanjit Kaur by the family of Nirmal Singh and on 18.12.13 the affidavit will be procured from the court the same be submit before the Court. Rs. 5 lacs is to be given by Nirmal Singh. Rs. 5 lacs shall be kept with a common man and after recording the statement of Sharanjit Kaur in the court the amount be given to her. As from today there is no relation exist between the parties.”

(iv) Under the compromise a sum of Rs. 5 lacs through cheque was paid to Harjinder Singh, the middle man.

(v) Sharanjit Kaur filed a divorce petition which was registered as Divorce Petition No. 185 of 02.07.2014. In that divorce petition respondent Nirmal Singh appeared as RW1 and the same was allowed vide judgment (Annexure P-6) dated

01.10.2015 passed by Additional District Judge, Kapurthala.

- (vi) Present complaint was filed by Nirmal Singh on 22.08.2014 with the allegation that Harjinder Singh had not initiated divorce proceedings as per the agreement up to 15.07.2014 or gave any decree of divorce to the complainant as such he is liable to return Rs. 10 lacs to him. Petitioners Sharanjit Kaur, Sukhwinder Kaur and Baljit Singh were also arrayed as the accused with the allegation that they have joined hands to commit fraud and deception with the petitioner.”

Learned counsel for the petitioners has argued that the complaint filed by respondent No. 1 is a sheer misuse of the process of Court as in the compromise there was no date fixed for filing of the divorce petition. Even otherwise the son of complainant was living in Italy as such joint divorce petition could not be filed. It was filed on 02.07.2014 i.e. much prior to the date i.e. 15.07.2014 mentioned by Harjinder Singh in his affidavit. As the son of the complainant-respondent No.1 was abroad, it took time to conclude the evidence and the learned Court decided the petition in October, 2015. The delay in deciding of the divorce petition cannot be attributed to the petitioners. Nirmal Singh had appeared as a witness in that petition and was aware of the filing of the petition but still opted to file this complaint.

Learned counsel for the respondent submits that Harjinder Singh, who had acted as middle man in the compromise, had given an affidavit copy of which has been placed on file as Annexure P-4 that the divorce proceedings will be finalised till 15.07.2014 and in case Sharanjit

Kaur resiled from her statement or fails to get her statement recorded and divorce is denied, he shall be liable to pay Rs. 10 lacs to the boy's side. The divorce was not allowed before 15.07.2017 and there was breach of the terms of affidavit given by Harjinder Singh.

On giving a careful consideration to the submissions of learned counsel for the parties, I find that firstly, the petitioner has no locus standi to file the complaint as the cheque of Rs. 5 lacs drawn on HDFC bank for payment to Sharanjit Kaur through Harjinder Singh was given by her husband i.e. Dilbagh Singh son of respondent No.1. If any cause of action had accrued for return of this amount, it was to Dilbagh Singh and not to the complainant-respondent No.1. Secondly, there was no term mentioned in the compromise (reproduced above) about the date by which the divorce proceedings were to be finalised. It was only in the affidavit of Harjinder Singh that he had assured that divorce proceedings will be finalised till 15.07.2014. Sharanjit Kaur filed divorce petition prior to the date settled and the Court has taken time while recording evidence and deciding the divorce petition which cannot be attributed as negligence on the part of Harjinder Singh. In the divorce petition even Nirmal Singh himself appeared as RW1 and tendered his affidavit. He was fully aware that divorce petition has been filed as such he (complainant) could not make out any lapse either on the part of Sharanjit Kaur or Harjinder Singh. This complaint whereby he attributed the commission of offence punishable under Sections 406, 409, 419, 420, 506 read with Section 34 IPC against the petitioners is a sheer misuse of the process of Court and the learned Sub Divisional Judicial Magistrate, Sultanpur Lodhi did not look into these facts while passing the summoning order dated 03.07.2015. Firstly, there is no

breach of the terms of the compromise, copy of which has been placed on file as Annexure P-2 and secondly, even if there is any breach, no criminal liability of the petitioners is attracted .

As a consequence of my above discussion, I find merit in this petition and the same is allowed. Resultantly the complaint (Annexure P-7) and the summoning order (Annexure P-8) along with all consequential proceedings arising therefrom are quashed qua the petitioners.

July 07, 2017
sunita

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No