

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

Date of Decision: 28.02.2017

1. CRM-M No.37964 of 2016

Pooja Pal and othersPetitioners

Versus

State of Haryana and others ... Respondents

2. CRM-M No.5149 of 2017

Maya Devi and another Petitioners

Versus

State of Haryana and another ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. P.C. Chaudhary, Advocate
for the petitioners.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. S.P. Singh, Sr. Advocate with
Mr. Harneet S. Oberoi, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CRM-M No.37964 of 2016 titled Pooja Pal and others Vs. State of Haryana and others and CRM-M No.5149 of 2017 titled Maya Devi and another Vs. State of Haryana and another are being disposed of.

[2]. Vide order dated 20.02.2017, CRM-M No.5149 of 2017 was ordered to be heard along with CRM-M No.37964 of 2016.

[3]. Petitioners have filed this petition under Section 482 of

the Code of Criminal Procedure for quashing of FIR No.481 dated 31.08.2015 registered under Sections 120-B, 494, 420 IPC and Section 495 IPC (added later on) at Police Station DLF-II Gurgaon, District Gurgaon along with entire subsequent proceedings including the chargesheet under Section 173 Cr.P.C.

[4]. On the basis of complaint made by respondent No.2- Prashant Parkash, the FIR in question came to be registered. Complainant/respondent No.2 alleged that he had given an advertisement of his marriage on Simply Marry. Com in the year 2014 by giving his full details. Parents of Smt. Pooja Pal and her brother-in-law came to the house of the complainant at Gurgaon on 14.04.2014 and projected Smt. Pooja Pal as unmarried. The accused party came to the house of the complainant and settlement of marriage was finalized and accordingly marriage of the complainant was solemnized with Pooja Pal. After the marriage, couple went to Mansoori and Nainital, where behaviour of Pooja Pal was noticed to be hostile towards the complainant. Matrimonial relationship could not be established between them. Complainant became suspicious about the behaviour of Pooja Pal as she was found calling some person in the name of Shubham while sleeping. After some time, Pooja Pal went to her parental house without telling the complainant.

Complainant had a talk with father of Pooja Pal on telephone, who confirmed that Pooja Pal was with them. Complainant went to his in-laws house at Najibabad to bring Pooja Pal back. Accused had threatened the complainant that until he deposit an amount of Rs.5 lacs in the name of Pooja Pal, she would not go back with him. Pooja Pal also stated that if the amount of Rs.5 lacs is not deposited, she will involve the complainant in false case of dowry. On 25.08.2014, the applicant got NSC of Rs.3 lacs in the name of Pooja Pal. Thereafter on 19.09.2014, Pooja Pal came to the house of the complainant in Gurgaon and lived with him. Due to fear, the complainant had to deposit an amount of Rs.3 lacs in the name of Pooja Pal and thereafter, many a times, Pooja Pal had gone to her parental house without telling the complainant and after repeated requests of the complainant, she used to come to Gurgaon and live with him.

[5]. On 24.05.2014, Pooja Pal was packing her clothes and jewellery in a bag and on the asking of the complainant, she cried and stated that she was leaving the house and going to her brother-in-law and sister's house as she had already conveyed that she would leave in the month of May because she had already married with one Shubham and she would live with him. Pooja Pal left the house and the complainant could not understand anything. On inquiries, complainant came to know

that Pooja Pal had already married with one person namely Shubham on 01.01.2012 prior to marriage with the complainant. Pooja Pal and Shubham had lived together as husband and wife for a sufficient long period. Pooja Pal had contracted marriage with Shubham after running from the house. Family of Pooja Pal had got registered FIR No.338 of 2012 under Sections 363, 366 IPC at Police Station Nazibabad, District Bijnor against family members of Shubham.

[6]. Pooja Pal and Shubham had filed a petition for quashing of aforesaid case in the High Court of Allahabad, where they showed themselves to be married couple. Complainant got the proof of marriage after receipt of documents from High Court, Allahabad on 01.06.2015 and 04.06.2015. The relatives of the complainant and his friends came to know about Pooja Pal's first marriage and the complainant felt insulted amongst relatives and friends and also got mentally disturbed being insulted before the society. The accused having colluded with each other, fraudulently represented Pooja Pal as unmarried and married her with the complainant by concealing the factum of her earlier marriage so as to extract money from the complainant. The marriage of Pooja Pal was solemnized with the complainant during subsistence of earlier marriage by showing fraudulent status of

Pooja Pal as unmarried on Simply Marry. Com. With this background, complainant-respondent No.2 got the FIR registered.

[7]. I have heard learned counsel for the parties.

[8]. After registration of the case, the police has prepared the report under Section 173(2) Cr.P.C and filed the same in the Court. Learned counsel for the petitioners vehemently argued that the alleged offence under Section 420 IPC was committed at Dehradun and police at Gurgaon has no jurisdiction. The ingredients of offence under Section 494 IPC are not proved as the alleged first marriage was not proved and the offence being non-cognizable in nature could not be raked up in the FIR.

[9]. Learned counsel further submitted that alleged first marriage was solemnized on 01.01.2012 with Shubham Prajapati. On 03.01.2012, Shubham Prajapati made an application under Section 4 of the Special Marriage Act before the Special Marriage Officer, Bijnor seeking declaration. Pooja Pal and her family members denied the same on 19.03.2012. The same was dismissed as withdrawn. Shubham Prarjapati also filed an application under Section 98 of the Code of Criminal Procedure. The Court sought report of police on that application and police ultimately found that there was no marriage. On 06.05.2012, application was dismissed by the

Magistrate. On 06.06.2012, Pooja Pal was abducted by Shubham Prajapati for which mother of Pooja Pal lodged FIR under Sections 363, 366 IPC in Police Station Nazibabad, District Bijnor against Shubham and his family members.

[10]. Shubham Prajapati and his family members filed CRWP No.7325 of 2012 in Allahabad High Court for quashing of FIR, in which interim protection was ordered. Pooja Pal was recovered on 02.07.2012 and her statement under Section 164 Cr.P.C was recorded. Medico legal report of Pooja Pal was also prepared on 03.07.2012. The police filed challan against all the accused on 11.07.2012 and they were chargesheeted and the trial is pending. An effort was made to get the charge altered for adding the offence under Section 376 IPC, but the same was not allowed for which a revision is pending. Habeas Corpus petition as well as quashing of FIR registered under Sections 363, 366 IPC were dismissed.

[11]. Learned counsel also submitted that on 18.07.2015, a certificate was issued in respect of registration of marriage of Shubham Prajapati with one Priyanka Rani. FIR No.716 under Sections 467, 468, 471, 500, 306/511, 197, 420, 504, 506 IPC was got registered by Pooja Pal on 23.12.2015 against Shubham and others. Police got compared the signatures of the petitioner and were found to be forged on the marriage

certificate. Police has filed the challan against the accused in the said FIR.

[12]. Primarily, learned counsel submitted that the present case is fixed for framing of charges and Gurgaon Court has no jurisdiction in respect of offence under Section 420 IPC inasmuch as that originals of NSC are still with the complainant/respondent No.2. Only photostat copies were recovered at Dehradun, therefore, in terms of Section 177 Cr.P.C, jurisdiction of Gurgaon Court is barred. If the offence under Section 420 IPC is deleted, the offence under Sections 494 and 495 IPC being non-cognizable would be of no consequences.

[13]. Learned counsel emphasized that in terms of Sections 182(2) and 198 Cr.P.C, the launching of prosecution at Gurgaon is wholly without jurisdiction. NSC were purchased on 25.08.2014 and thereafter, Pooja Pal lived and co-habitated with the complainant for one year, therefore, the act if any, stood condoned and offence under Section 420 IPC is not made out. No dishonest intention and inducement coupled with delivery are proved. The offence in terms of Section 494 I.P.C remains a cognizable offence. The alleged marriage was on the basis of certificate which was relied. The certificate itself was based on the entry in the register. No register, nor any entry of such

register of Arya Smaj Mandir was made part of the challan. Learned counsel at last submitted that same issue was involved in matrimonial proceedings and lodging of FIR is the counter blast. The allegations of offence under Section 120-B IPC are discrepant viz. date, time and manner of occurrence.

[14]. By referring to **Dipanker Dutt Gupta Vs. State of Bihar, 2007 CRLJ 4360 (SC), Naresh Prasad Singh @ Naresh Singh and others Vs. State of Bihar and another, 2014(11) RCR (Criminal) 559 (Patna), Jenabai Narayan Kale Vs. Naryana Hari Kale and others, 1991(1) HLR 427, Bhura Ram and others Vs. State of Rajasthan and another, 2008(2) RCR (Criminal) 761** and **Y. Abraham Ajith and others Vs. Inspector of Police, Chennai and another, 2004 (3) RCR (Criminal) 988**, learned counsel stressed upon an argument that in any case, Court at Gurgaon has got no jurisdiction.

[15]. Learned counsel further submitted that though the powers under Section 482 Cr.P.C are to be exercised very sparingly and that too, in the rarest of rare case, but when the FIR does not disclose any cognizable offence and the allegations are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there is sufficient ground for proceeding against the

accused, where there is an expressed legal bar engrafted in the Code and where a criminal proceeding is manifestly attended with *mala fide* or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused, then the powers under Section 482 Cr.P.C can be exercised. In support of aforesaid contention, learned counsel relied upon **Manoj Kumar Sharma and others Vs. State of Chhattisgarh and another, 2016(4) RCR (Criminal) 144.**

[16]. Learned counsel also submitted that in order to prove bigamy in terms of Section 494 IPC, necessary ceremonies of marriage are required to be proved in terms of *Homa Datta* and *Saptapadi*. The accused cannot be convicted for the offence under Section 494 IPC even on the basis of admission. By referring to **Bhaurao Shankar Lokhande and another Vs. State of Maharashtra and others, 1965(2) SCR 837, P. Satyanarayana Vs. P. Mallaiah, 1996(3) RCR (Criminal) 809** and **Smt. Priya Bala Ghosh Vs. Suresh Chandra Ghosh, 1971 CurLJ 496**, learned counsel emphasized upon the aforesaid prepositions that for proving the marriage, essential ceremonies constituting the same have to be proved on record.

[17]. On the other hand, learned counsel for the respondent vehemently submitted that marriage of Pooja Pal with Shubham

Prajapati in the High Court at Allahabad is not relevant. The allegations and counter allegations in respect of first marriage are not related to respondent No.2. Respondent No.2 is a qualified person and is living in Gurgaon. He was approached by family members of Pooja Pal and a very rosy picture was projected in Gurgaon. Earlier marriage was concealed. Such non-disclosure was at Gurgaon.

[18]. Learned counsel contended that the precedents cited by learned counsel in the context of offence under Section 494 IPC are related to final verdict of the case. At the stage of filing of challan, no such meticulous examination of prospective evidence can be taken into consideration by the Court while exercising inherent powers under Section 482 Cr.P.C. Inherent jurisdiction of the Court can be resorted to only in the rarest of rare case. Such a power can be exercised very sparingly. By citing **Chand Dhawan Vs. Jawahar Lal, 1992(3) RCR (Criminal) 534, Teeja Devi @ Triza Devi Vs. State of Rajasthan and others, (2014) 15 SCC 221** and **HMT Watches Limited Vs. M.A. Abida and another, (2015) 11 SCC 776,** learned counsel submitted that powers under Section 482 Cr.P.C cannot be exercised at the stage of filing challan and the affected party can resort to proceeding in accordance with law.

The powers under Section 482 Cr.P.C can only be pressed into service where there is a total abuse of process of law and for achieving ends of justice.

[19]. By citing **Syed Askari Hadi Ali Augustine Imam and another Vs. State (Delhi Admn.) and another, 2009(2) RCR (Criminal) 520** and **Amit Kapoor Vs. Ramesh Chander and another, 2012(4) RCR (Criminal) 377**, learned counsel submitted that criminal and civil proceedings can go simultaneously. The criminal proceedings can only be quashed where allegations are so predominately of civil nature that it would have eliminated criminal intent and liability. At this initial juncture, no such opinion can be formed as evidence has to come on record at the relevant stage.

[20]. Learned counsel for the respondent further submitted that recovery of memo of marriage certificate of Arya Smaj Mandir has been prepared by the police on 07.09.2015. Said certificate has not been rescinded so far. In the Court of Special Marriage Officer, Bijnor, Pooja Pal and Subham Prajapati filed the application on 03.01.2012. In an application to the Superintendent of Police, Bijnor (Annexure P-2/E-8) attached with the petition, Pooja Pal herself in para No.1 stated that she is a student of M.A. First Year in Gurukul University, Haridwar

and being an adult, she with her own will and without any pressure had submitted an application dated 03.01.2012 in the Court of Special Marriage Officer, Bijnor to marry with Shubham Prajapati, though in a subsequent paragraph, the allegations were made against her parents, Mosa Tilak Ram, Maternal uncle Mahender Pal and maternal grandfather Harprashad Pal. CRWP No.7325 of 2012 was filed by Pooja Pal and others before the Division Bench of Allahabad High Court where Pooja Pal was identified by her counsel before the Court. It was mentioned that she had contracted marriage with Shubham Prajapati, out of her own free will and both were major. The Division Bench of Allahabad High Court passed an order dated 18.06.2012. At last, learned counsel for the respondent submitted that at this initial stage, the inherent powers under Section 482 Cr.P.C cannot be invoked when facts are disputed and evidence is yet to be led on record.

[21]. I have considered the submissions made by learned counsel for the parties.

[22]. It is a settled principle of law that powers under Section 482 Cr.P.C can be exercised very sparingly and that too, in the rarest of rare case. The powers can be exercised only in order to prevent abuse of process of law and to achieve ends of justice. Such a power cannot be exercised at initial stage where

both the parties are yet to lead evidence on record. The quashing of FIR can only be done where the FIR is taken on its face-value and perusal thereof, does not reveal any commission of offence. The standard of quashing with reference to parameters was well defined by Hon'ble Apex Court in **State of Haryana Vs. Bhajan Lal, 1991 (1) RCR 383.**

[23]. At this juncture, no final opinion can be made. The point of jurisdiction viz-a-viz the Court at Gurgaon or Dehradun would be appreciated by the Court at the relevant stage. The defence as projected by learned counsel for the respondent is to the effect that in the context of marriage of Pooja Pal with Shubham Prajapati, respondent No.2 figured nowhere. It was only the contact which was made by the parents of Pooja Pal with respondent No.2 at Gurgaon that gave rise to cause of justice in the context of offence under Section 420 IPC. Even otherwise, at this initial stage, where only a challan has been presented in the Court, in my considered opinion invoking of powers under Section 482 Cr.P.C would be totally far-fetched and pre-matured.

[24]. Taking into consideration the facts and circumstances of the case, it would be highly pre-mature to observe anything on merits, lest it may prejudice the case of either side at the

trial. Without forming any opinion on merits, I deem it appropriate to reject the contention of the petitioners at this stage. However, both the parties would be at liberty to lead evidence at the relevant stage. The trial Court shall not be influenced by any observation made by this Court while deciding the present case.

[25]. In view of above, I do not see any justification to interfere in the present petitions and the same are accordingly dismissed.

28.02.2017
prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No