

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

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Crl. Misc. M 41542 of 2015
Date of decision: 21.03.2017

Kashmir Singh and another *Petitioners*
Versus
State of Punjab and another *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. B S Jaswal, Advocate
for the petitioners

Mr. Mikhail Kad, AAG, Punjab

Ms Richa Mittal, Advocate
for respondent No. 2

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Rekha Mittal, J.

By invoking Section 482 of the Code of Criminal Procedure (in short, Cr.P.C.), the petitioners pray for quashing of FIR No. 103 dated 04.12.2013 for offence punishable under sections 406 and 498-A of the Indian Penal Code (in short, IPC) registered at Police Station Fattu Dzinga, District Kapurthala and proceedings emanating therefrom including order dated 30.01.2015 (Annexure P6) framing charge.

Counsel for the petitioners has submitted that marriage of the complainant was solemnized with their son Balraj Singh on 12.05.2001 and out of the wedlock, two children were born. The complainant and her husband were living separately in a part of property bearing No. 59 Phase 2,

Rishi Vihar, Majitha Road, Amritsar as petitioner No. 1 disowned them vide notice dated 04.06.2005. The petitioner No. 2 filed a civil suit against the complainant and her husband on 12.05.2007 seeking eviction of the complainant and her husband from a part of the property belonging to petitioner No. 2. The suit was decreed on 16.05.2009 by the Civil Judge (Junior Division) Amritsar vide judgment (Annexure P2). The complainant/respondent No. 2 filed a suit against the petitioners but in the said suit, there were no allegations regarding any harassment for demand of dowry or criminal breach of trust in regard to articles of *istri dhan*. The suit was dismissed in default on 07.04.2008. It is vehemently argued that the very fact that the respondent/complainant did not raise any allegations of sections 406 and 498-A IPC in any of the proceedings that remained pending between the parties is sufficient to show that the complainant has lodged a false FIR as she developed differences with her husband. It is further submitted that in the FIR, the complainant has levelled allegations that her husband is an addict and had been beating her under influence of liquor.

Another submission made by counsel is that the complainant filed a petition under Sections 12 and 17 of the Protection of Women from Domestic Violence Act on 31.03.2009 and the application was dismissed in default vide order dated 30.10.2009 (Annexure P5). She also initiated proceedings under section 125 Cr.P.C but the same were also dismissed for want of prosecution. In addition, it is argued that Parveen and others, filed a petition CRM M 22286 of 2014 for quashing of aforesaid FIR and subsequent proceedings and the petition was decided by this Court in favour

of petitioners No. 2 and 3 therein and petition qua Parveen, petitioner No. 1 was dismissed who was not challaned by the State. It is further argued that the complainant raised similar allegations against the petitioners as were raised against her sisters-in-law in whose favour the proceedings have been quashed on 12.10.2015.

Counsel for the complainant/respondent No. 2, on the contrary, has submitted that the petitioners being parents-in-law of the complainant stand on a different footing than that of married sisters-in-law of the complainant, therefore, they cannot derive any advantage to their contentions from order dated 12.10.2015. It has further been argued that since in the civil litigation, the question before the Court was with regard to entitlement of the complainant to retain possession of part of a property bearing No. 59 Phase 2, Rishi Vihar, Majitha Road, Amritsar, there was no occasion for the complainant to raise any such allegations with regard to demand of dowry or harassment in connection thereof. The last submission made by Counsel is that as the petitioners raise disputed questions of fact, the Court in exercise of jurisdiction under Section 482 Cr.P.C cannot go into question of truth or falsity of the allegations and the same are left to be decided by the trial Court on the basis of evidence to be adduced by the parties.

Counsel for the State has echoed the arguments advanced by counsel for the complainant.

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

Be that as it may, it is undisputed position of the case that marriage of the complainant with Balraj Singh son of the petitioners was

performed in the year 2001. It is also not denied that the complainant and her husband had been residing separately from the petitioners in a part of property bearing No. 59 Phase 2, Rishi Vihar, Majitha Road, Amritsar. In the year 2007, Smt. Dalbir Kaur-petitioner No. 2 filed a suit for mandatory injunction directing the complainant and her husband to vacate and hand over possession of a part of the property, depicted in the site plan, i.e. house No. 59 Phase 2, Rishi Vihar, Majitha Road, Amritsar. Balraj Singh did not contest the proceedings but the complainant filed the written statement contesting claim of petitioner No. 2 wherein she averred that at the instigation of the plaintiff, defendant No. 1 (husband of the complainant) has filed a petition under Section 13 of the Hindu Marriage Act against her for bringing inadequate dowry. However, she did not rake up an issue that the mother in-law either caused harassment or cruelty in connection with dowry or misappropriated her *istridhan* despite the fact that she had developed differences with her husband and he had filed a petition for divorce. Though it is not clear as to the date, month and year of the written statement but the suit was finally decided in the year 2009. The respondent filed civil suit against the petitioners and her husband in May 2007, her prayer for interim injunction was rejected vide order dated 20.11.2007 (Annexure P3) and the suit was eventually dismissed under Order 9 Rule 8 of the Code of Civil Procedure on 07.04.2008 (Annexure P4). Another litigation under Sections 12 and 17 of the Protection of Women from Domestic Violence Act was filed on 31.03.2009 and dismissed for non-prosecution on 30.10.2009 (Annexure P5). Application filed under Section 125 Cr.P.C. was also dismissed. Despite multiple litigations from 2007

onwards, the complainant did not make any complaint for offence under sections 406 and 498-A IPC till the lodging of instant FIR in December 2013. Long silence of the complainant speaks volumes that criminal proceedings are nothing short of abuse and misuse of process of law initiated as a measure of vendetta and wreck vengeance by levelling allegations against all the family members because the husband filed a petition for divorce.

For the foregoing reasons, the petition is allowed, FIR No. 103 dated 04.12.2013 for offence punishable under sections 406 and 498-A IPC registered at Police Station Fattu Dzinga, District Kapurthala and proceedings emanating therefrom including order dated 30.01.2015 (Annexure P6) framing charge are ordered to be quashed qua the petitioners.

However, nothing stated herein-before would cause prejudice to case of the complainant against other accused facing trial.

(Rekha Mittal)
Judge

21.03.2017
mohan bimbira

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