

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

**Crl. Misc. No.M- 13588 of 2013 (O&M)
Date of decision : 20.07.2018**

Gurpreet Singh Mankoo and others

.....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mrs. G.K. Mann, Advocate
for the petitioners.

Mr. Ajay Pal Singh, DAG, Punjab.

Mr. Rajesh Bhateja, Advocate
for respondent no.2.

ANITA CHAUDHRY, J.

Petitioners are seeking quashing of FIR No.283 dated 27.12.2008 registered under Sections 406, 498-A, 506, 120-B IPC at Police Station City Kotkapura and the order Annexure P-5.

Shorn of detail factual background, it would suffice to refer to basic facts of the case, which are necessary for disposal of the present petition. Petitioner no.1 was married to sister of respondent no.2. The marriage between Gurpreet Singh and Balwinder Kaur took place on 22.01.1997. The complainant and his sister came to India for the wedding and stayed in India for 20 – 25 days and Balwinder Kaur went back to Canada. Two children were born out of the wedlock, one in 1998 and the

other in 2003. Disputes arose between the couple afterwards and a petition was filed by them seeking mutual divorce which was allowed on 14.10.2010. Ontario Superior Court of Justice passed a settlement order allowing child support and ordered payment to the wife with respect to her share after the sale of the matrimonial home. The wife's brother came to India and lodged an FIR in 2008 alleging that gold and clothes were given at the time of the marriage and he had spent Rs.5 lacs. It was alleged that the boy did not have a degree in computer engineering. It was alleged that a house was purchased and the major amount was paid by his sister. The majority of the allegations pertain to the period while the couple was abroad. It was alleged that there was a report of domestic violence against Gurpreet Singh and he was arrested and restrictions were placed upon him.

The police investigated the case and filed a cancellation report.

The petitioners had earlier filed a quashing petition as well as the order vide which the petitioners therein had been declared proclaimed offenders. The Co-ordinate Bench disposed of the petition as infructuous as it noted that the cancellation report has been presented before the trial Court. The order declaring the petitioners as proclaimed offenders was set aside.

After the presentation of the cancellation report before the Magistrate, the Judicial Magistrate, Faridkot rejected the cancellation report and instead of sending the matter back to the police for further investigation, treated the cancellation report as challan and issued notice

to the accused calling upon the Investigating Officer to submit the list of witnesses. It is this order, which has also been challenged.

I have heard the counsel for both the parties.

At the very outset, it needs to be stated that the order by the Magistrate is illegal if the police had filed the cancellation report and the Court was not accepting it then the only course available to it was to return the same to the police for holding further investigation. The trial Magistrate rejected the cancellation report but failed to ask the complainant to file a protest petition and treated the cancellation report as challan, which could not have been done.

Now coming to the merits, the submission on behalf of the petitioners is that the wife of petitioner no.1 went abroad within 22 days of the marriage and there is no assertion by her that there was any demand or cruelty during her stay in India nor she had made any complaint to the Canadian Police and all the matters have been settled including the financial settlement and Balwinder Kaur did not disclose that any FIR had been registered nor did she reserve her right. It was urged that there was no assertion that some dowry articles remained with the in-law's family in India and the proceedings are an abuse of the process of the law. It was urged that there is no date of any demand nor any time has been indicated nor they can disclose as to when the threat was given and the FIR has come into existence after 11 years of the marriage that too by the brother of the wife and it was a fit case where the FIR should be quashed.

On the other hand, the submission of the complainant is that the FIR had been registered prior to the divorce proceedings and the

proceedings abroad are summary in nature and when the marriage had taken place in India, the divorce decree is void as a foreign decree is not recognized in India.

The complainant has chosen not to file the reply. The complainant had put in appearance in 2014. The case had been adjourned number of times to enable them to file the reply. After seeking adjournments for three years, it was stated on 08.05.2017 that respondent no.2 was coming to India. The case was adjourned again for a number of times but reply was not filed. There is no extra material provided by the complainant.

It is not disputed that the girl had come from Canada and the wedding took place in India in January 1997. The girl went back after 22 days. The boy left after 6 months. He was sponsored by the girl's family. All was well for few years and the couple had two children. After 10 years of marriage there appears to be some discord and the couple filed a mutual petition for divorce. The wife had approached the Court for child support and all the issues were settled including the financial aspects. The wife failed to raise the issue of any demand or that some amount was due, before the authorities in Canada. It is the brother who returned to India and lodged the FIR. This fact was not disclosed by the complainant's sister and it was concealed from the authorities though there was no reason to do so.

The police had also carried out the investigation and had recommended cancellation and did not submit any challan. No material

was appended by the police to show that it was a fit case which should have been sent for trial. The trial Court rejected the cancellation report and did not send the matter back for reinvestigation. It passed an order which was illegal when it ordered that the cancellation report would be treated as challan. The police had collected no material which could be used to sent up to the Court for trial.

The marriage no doubt was performed in India. Whatever articles were given by the family were gifts, which are normally given in Indian weddings. It would not amount to entrustment. Vague allegations of demand have been levelled after ten years of marriage.

The Court cannot be oblivious of the fact that the husband and wife were staying abroad and had obtained divorce and parted ways. The property and other issues have been settled by the Ontario Superior Court. The larger part of the allegations were committed in Canada. It appears that the FIR has been lodged with an ulterior motive to harass the family of the husband and it is a fit case where the continuance of the criminal proceedings should not be allowed and it tantamounts to abuse of process of the Court. Hence, the petition is accepted and the impugned FIR and the subsequent proceedings are quashed.

(ANITA CHAUDHRY)
JUDGE

20.07.2018
Sunil

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