IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CRM-M-3109-2010(O&M)

Sukhbir Singh Dagar and another

...Petitioners

Versus

Dr.Umesh Kumar

...Respondent

(2) CRM-M-12537-2010(O&M)

Paramjeet Dagar

...Petitioner

Versus

Dr.Umesh Kumar and another

...Respondents

Date of Decision:-30.8.2018

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.M.L. Saggar, Sr. Advocate with
Ms.Veenu Garg, Advocate
for the petitioners in CRM-M-3109-2010.

Mr.H.S. Hooda, Sr.Advocate with
Mr.C.S. Singh, Advocate
for the petitioner in CRM-M-12537-2010.

Mr.Hemant Bassi, Advocate
for the respondent(s).

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H.S. MADAAN, J.

By this order, I shall dispose of two petitions i.e. **CRM-M-3109-2010** filed by petitioners - Sukhbir Singh Dagar and Jasbir @ Moha Dagar and **CRM-M-12537-2010** filed by petitioner - Paramjeet Dagar through duly constituted attorney Sukhbir Singh Dagar for quashing of complaint titled as "Umesh Kumar Versus Paramjeet Dagar and others" and summoning order dated 6.7.2009 passed by Judicial Magistrate Ist Class, Hansi.

Briefly stated, facts of the case are that complainant Umesh Kumar had filed a criminal complaint in the Court of Judicial Magistrate Ist Class, Hansi against Paramjeet Dagar, his father Sukhbir Singh Dagar and mother Jasbir @ Mona Dagar on the allegations that Smt.Shruti Lamba daughter of the complainant was married with Paramjeet Dagar on 29.2.2004 at Bristol Hotel, Mehraulli Road, Gurgaon as per Hindu religious rites and ceremony; that the marriage was got registered at Mehraulli (Delhi) on 1.3.2004. According to the complainant, he had spent about Rs.26 lakhs at the time of marriage of his said daughter Shruti; that Paramjeet Dagar had left for America on 6.3.2004. According to the complainant, the marriage function was organized in a lavish manner and costly articles were given in dowry as desired by Paramjeet Dagar and his parents; that after the marriage Paramjeet Dagar took Shruti along with him to America on 16.5.2004. In the complaint, the complainant has levelled allegations of demand of dowry by Paramjeet Dagar and his parents from him the complainant and his leaving his daughter Shruti in the house of her in-laws on 19.5.2007, where statedly

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2018.09.10 17:23
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she was taunted and maltreated so as to force her to bring more dowry; that when Shruti did not do so, then accused in conspiracy got issued notice of divorce petition to her, who conveyed the facts to the complainant; though Shruti demanded her Istridhan and jewellery but accused refused to return that.

On filing of complaint, the complainant examined Shruti Lamba as CW1, Renu Lamba as CW2, Rajesh Lamba as CW3 and got his own statement recorded as CW4. The Judicial Magistrate Ist Class, Hansi vide order dated 6.7.2009 summoned Paramjeet Dagar along with his parents as accused to face trial for the offences under Sections 498-A, 406 IPC. The said summoning order as well as the complaint filed are being challenged in the present petitions.

According to the petitioners, the complaint has been filed with *mala fide* intention to harass the petitioners and is an abuse of process of law; the complainant has concealed the material facts from the Court. As a matter of fact, on a petition for divorce having been filed by Paramjeet Dagar against his wife Shruti Lamba, vide final judgment dated 16.6.2008 rendered by Superior Court of Fulton County, State of Georgia, the marriage has been dissolved. According to the version of the petitioners, after marriage between Paramjeet Dagar and Shruti Lamba was solemnized on 29.2.2004, Paramjeet Dagar had returned to America in March, 2004, thereafter, he arranged visa for Shruti Lamba and then both of them went to America and the spouses had developed a matrimonial discord and Shruti Lamba moved out of the matrimonial house on 15.6.2007. Paramjeet Dagar had filed a divorce petition against

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her on 23.6.2007 on the ground of the marriage having broken down irretrievably with no reasonable hope of reconciliation. Vide judgment passed by the Court, the marriage between the spouses was dissolved and assets were distributed between them. According to the petitioners, the trial Court does not have jurisdiction to entertain and try the petition. As a matter of fact, the complainant had earlier filed a complaint against the petitioners at Gurgaon with a prayer for registration of criminal case. The police did not find any substance in the allegations so levelled, therefore, no action was taken on the complaint. Subsequently, a private complaint was filed before the Judicial Magistrate Ist Class at Hansi. The petitioners pray that the petitions be allowed.

Notice of the petitions were given to respondent(s), who put in appearance through counsel opposing the petitions vehemently.

In reply filed on behalf of respondent, preliminary objections have been taken that petitioners have not approached the Court with clean hands; that the judgment and decree of divorce passed by the Court in America are not conclusive since those do not conform to the parameters laid down under Section 13 CPC; that the judgment/ decree of divorce do not appear to have been passed by the Court of competent jurisdiction and rather appears to be founded on the incorrect appreciation of international law not recognizing the law of India; that the petitioners have not fulfilled their obligations arising out of the said judgment. It is further contended that the articles of dowry and Istridhan, which belong to daughter of complainant are in custody of the petitioners, which they have not returned despite repeated demands; that the petitioners are avoiding

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putting in appearance in the trial Court; that the petitioners had remedy of filing a revision petition against the summoning order, which they have not availed of. On merits, the material assertions in the petitions are refuted and the plea taken in the preliminary objections are reiterated, while coming up with a prayer for dismissal of the petitions.

I have heard learned counsel for the parties besides going through the record.

Admittedly, Paramjeet Dagar was residing in America at the time of his marriage and after drawing the nuptial knot with Shruti, the couple migrated abroad. Though parents of Paramjeet Dagar have their residence at Chhattarpur, New Delhi. As it comes out that the spouses had developed differences, which they could not resolve and their marriage was dissolved by a decree of divorce. Though according to the complainant, a judgment and decree delivered by the foreign Court are not admissible but no cogent or convincing reason has been put forward for rejecting the said judgment and decree. Shruti Lamba herself having submitted to the jurisdiction of the foreign Court giving consent to the proceedings there and even filing counter claim in those proceedings, now she cannot raise any objection to the legality of those proceedings. It is not open to her father even to do so. The spouses had a bout of litigation in America. Their marriage ended in divorce where all the important and necessary aspects were taken care of including equitable distribution of assets between them in the form of payment of 30,000/- dollars to the wife, health-care insurance and bills of parities, bank accounts, retirement and financial assets etc. There she had not levelled allegations with

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respect to criminal breach of trust regarding her Istridhan articles. Now, she cannot wriggle out of the settlement agreement. The spouses having entered into settlement agreement in USA, then father of Shruti filing a private complaint in the Court of Judicial Magistrate Ist Class, Hansi under Section 406, 498-A IPC against Paramjeet Dagar, who had been residing in America and his parents residing in Delhi after about more than three years of the marriage, is nothing but an abuse of process of law. It does not seem convincing that Shruti Lamba having accompanied her husband to America would leave her Istridhan articles with her parents-in-law. Similarly, it does not appeal to reason that when she came to visit her in-laws for a short time, they would raise demand of more dowry articles or maltreat her. It is stated that under the settlement, 30,000/- dollars has been paid to Shruti Lamba by Paramjeet Dagar. It has also come on record that the complainant had earlier filed a complaint dated 19.9.2007 before Deputy Commissioner of Police, Gurgaon but no action was taken then he filed a private complaint before Judicial Magistrate at Hansi, when that Court lacks territorial jurisdiction to entertain and try the complaint.

Learned counsel for the respondents has raised an objection that petition under Section 482 Cr.P.C. cannot be filed through attorney. In support of his that contention he has referred to authority ***Amit Ahuja Versus Gian Parkash Bhambri, 2010(3) RCR(Criminal)586*** by a Co-ordinate Bench of this Court.

Learned counsel for the petitioners pressed into service judgment passed by a Division Bench of this Court in CRM-M-6890-2013

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2018.09.10 17:23
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titled ***Mangal Dass Gautam & another Versus State of Haryana & another*** decided on 1.6.2018, wherein it was observed that criminal proceedings under Section 482 Cr.P.C. can be filed by an accused through an attorney though the circumstances under which it can be so filed and would be maintainable would be dependent upon various factors including facts and circumstances of that particular case.

Learned counsel for the respondents has further referred to authority ***Smt.Satya Versus Teja Singh, AIR 1975 Supreme Court 105,*** wherein dealing with the question as to how far the foreign judgment in divorce proceedings are binding and conclusive in Indian courts, it was observed that a foreign decree of divorce obtained by the husband from the the Nevada State Court in USA in absentum of the wife without her submitting to its jurisdiction will not be valid and binding on a criminal Court in proceedings for maintenance under Section 488 Cr.P.C.

Learned counsel for the petitioners have contended that the authority is not applicable since Shruti Lamba had submitted herself to the jurisdiction of the Court in USA and had rather filed counter claim there. She had received various assets under the settlement. Now it is not open to her to challenge the legality of the said judgment and decree and furthermore as per the facts of the authority, decree of divorce was obtained by fraud and making false representation at the back of the wife, whereas it is not so in the present case. Therefore, this authority is not application in the present case.

Learned counsel for the respondents has referred to a judgment passed by a Co-ordinate Bench of this Court in ***Rupak Rathi***

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Versus Anita Chaudhary, 2014(2) RCR(Civil) 697 wherein it was observed that if the spouses aggrieved by the foreign matrimonial decree has not submitted to the jurisdiction of the foreign court or consented to the passing of the foreign Court judgment, it ought not to be recognized being unenforceable under Section 13 CPC. However, this position of law ought to be applied to the facts of the individual case.

As already observed Shruti Lamba had submitted to jurisdiction of the foreign Court and had given consent to passing of the judgment by the said Court.

Learned counsel for the petitioners has further referred to authority ***Satwant Singh and others Versus State of Punjab and another, 2008(3) Criminal Court Judgments 36*** by a Co-ordinate Bench of this Court. As per the facts of the authority marriage between the spouses had taken place in India, however, later on they had shifted to Canada, where they were blessed with a child, a petition for divorce and custody of child filed in Family Court, Canada, whereas complaint regarding demand of dowry and harassment and his family members was instituted in India by wife from Canada. It was held to be a classic case of misuse of process of Court where process of law has been used as tool to harass the petitioners to vindicate her grudge on account of proceedings taken out at Canada and keeping in view the fact that Courts at Hoshiarpur have no jurisdiction to entertain and try the case and it was a case of misuse of process of the Court observing that proceedings had been initiated with *mala fide* intention; the FIR and subsequent proceedings were quashed.

Therefore, it shall be in the interest of justice, if the complaint

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2018.09.10 17:23
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in question and the summoning order besides ancillary proceedings against the petitioners are quashed.

Ordered accordingly.

Both the petitions stand allowed.

Necessary information be sent to the quarter concerned.

30.8.2018 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

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