

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. M-28201 of 2014
Date of Decision: 19.1.2018**

Amarinder Singh Gandhi and others

.....Petitioners

Versus

Gurdev Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. J.S.Bedi, Senior Advocate with
Mr. Akashdeep Singh, Advocate
for the petitioners.

Mr. S.S.Rangi, Advocate
for respondent No. 1.

Mr. Atinder Pal Singh Jaurkian, AAG, Punjab.

ANITA CHAUDHRY, J

The petitioners have filed this petition under Section 482 Cr.P.C. seeking quashing of the complaint filed by the father-in-law of petitioner No. 1.

Some facts are necessary to be given to have the background first. Petitioner No. 1 was married to Kanwaljit Kaur Gandhi in India in March 2003. The couple moved to Australia. The wife joined him in July 2004. Two children were born to them in 2004 and 2007. Differences arose between the couple and the wife moved out of the house. Divorce was granted by the Courts in Australia in March 2011. The alimony issue was settled and a sum of 65,000 Australian Dollars were paid in March 2012.

The divorce was by the consent. The father of Kanwaljit Kaur Gandhi gave

recommending filing of the complaint as the occurrence, if any, had occurred in Australia. The complaint was filed in July 2010. After the divorce and the alimony issue was sorted, Gurdev Singh-father of Kanwaljit Kaur Gandhi, filed a complaint in August 2013 levelling the same allegations which he had earlier made in the complaint filed in 2010. He referred to the divorce petition but did not disclose that any amount had been received by his daughter. Kanwaljit Kaur Gandhi also appeared as a witness and on the basis of those statements the trial Magistrate summoned the husband and his parents under Section 406, 498-A, 506 IPC.

The petitioners are aggrieved and seek quashment of the complaint as well as the summoning order. They had taken a plea that the wife had received Rs. 40.00 lacs and a consent decree was passed and all the matters including property were settled and the complaint filed by the father-in-law of petitioner No. 1 was an abuse of the process of the Court and material facts had been hidden by the complainant as also by her daughter. It was pleaded that petitioner No. 2 was a retired Lecturer and petitioner No. 3 was a retired Primary School Teacher in the age group of 81-75 respectively and they along with petitioner No. 1 were residents of Australia and had wrongly been summoned.

Notice was given to the respondents.

The State in its reply had pleaded that it was a complaint case and the State was not a party and the petitioners were not required by the police in any case and the facts of the complaint were not known to them and they were a formal party.

Respondent No. 1 pleaded that the petitioners had misled the Court that a valid decree of divorce was rendered by the Australian Court

and if there is a decree of divorce, it could not be labelled as a valid decree in view of the ratio in a case decided by this Court and reported in 2014 (2) RCR (Civil) 697. It was denied that any valid decree of divorce was passed. It was pleaded that a sum of Rs. 40.00 lacs which was received by the petitioners, actually related to the rights in the property which was evident from Annexure P-12. It was admitted that the couple went to Australia in 2004. It was admitted that two children were born to them. It was pleaded that his daughter did not want to settle in Canada and it was petitioner No. 1 who wanted to shift to Canada. It was pleaded that his daughter was subjected to cruelty and harassment on account of dowry. It was denied that his daughter had moved out of the matrimonial home in December 2009 or that she started living separately in Melbourne. Respondent No. 1 also referred to the manner in which the wife had to leave on a call made by the uncle of Kanwaljit Kaur Gandhi. It was pleaded that the demand of Rs. 90,000/- was raised by the petitioners and a draft was handed over and it is a matter of evidence whether the draft was ever got encashed. It was admitted that a complaint was lodged on the allegations of demand of dowry. It was pleaded that the matter regarding divorce petition in the Australian Courts was a separate fact and the complaint had been filed on account of misappropriation of *istri dhan* and on account of harassment to his daughter. It was pleaded that the Magistrate was not obliged to call for a report from the police and there was no concealment of any fact. It was pleaded that the compliance of provisions of Section 202 Cr.P.C. was not necessary and the Court could proceed on the basis of the evidence brought before it.

I have heard the submissions of both the sides.

Initiating the submissions, learned senior counsel for the petitioners has urged that the petitioners had been dragged in unnecessary litigation and the complainant had concealed material facts from the Court that there was a mutual divorce and a year later the alimony issue was settled and a sum of Rs. 40.00 lacs was paid to settle all issues. It was urged that this fact was not mentioned in the complaint and this fact was also withheld by Kanwaljit Kaur Gandhi when she stepped into the witness box. The counsel referred to the various annexures filed along with the petition and had urged that all the petitioners are Australian citizens and they were not residing in India and the Magistrate failed to call for the report of the police and had it done so, the complaint which was earlier given by the complainant and its fate would have been before the Court. It was urged that the wife had made the same allegations in her affidavit (Annexure P-10) and those were dismissed. It was urged that the complaint has been filed with an ulterior motive and it is a fit case which should be quashed and the Court will not be justified in embarking upon any inquiry as to the reliability or genuineness of the allegations in the complaint. It was urged that the respondents in their reply have submitted that the decree obtained from the Australian Court is not a valid decree and referred to para 2 of the reply.

The submissions on behalf of the respondents is that they were not raising the issue regarding validity of the decree passed by the Australian Court. It was urged that the amount which has been received was in relation to property rights and not dowry and the complainant had given the details of the amount which had been given on the demand made by the petitioners and this was not an extraordinary case and the powers for

quashing the complaint can be exercised sparingly and the complaint discloses the commission of offence and the Magistrate had gone through the evidence and had summoned the accused.

Responding to the submissions, it was urged on behalf of the petitioners that Gurdev Singh-complainant and his wife had given affidavits Annexure P-11 saying that they had no objection if the amount which he had paid to his son-in-law was paid to his daughter and had mentioned that he would not claim that amount but despite that affidavit he was claiming the amount in their complaint and making false allegations. It was urged that pursuant to the filing of the affidavit the Australian Courts ordered the amount of alimony and the Court in the consent order in Annexure P-12 had made a note in the end that it would finally determine the financial and other relationship between the parties.

At the outset it needs to be noted first that the respondents have not been able to explain or give reason for furnishing affidavits. It is not disputed before me that these affidavits were produced before the Australian Courts.

Section 482 Cr.P.C. makes it crystal clear that the object of the exercise of the power under this Section is to prevent the abuse of the process of the Court and to secure the ends of justice and there are no hard and fast rules that can be laid down. There is no straight-jacket formula in order to define parameters and the facts of each case have to be examined.

The facts of the present case are not in dispute. The marriage took place in March 2003 and the couple left for Australia in July 2004. During this period there was no complaint to any authority. The couple were blessed with two children one in 2004 and the other in 2007. Till

then, there was no complaint. Therefore, for the first six years of marriage there was no complaint either to the police in India or to the Australian police. Differences arose sometime in 2009. The father of the girl namely the respondent made a complaint to the Women Cell in 2010. The complainant had referred to the filing of the complaint but did not disclose its fate and merely mentioned that the accused were influential and had links with people who were highly placed. However, they did not indicate the name of any person. It was not disputed that the complaint was filed in July 2010. Meanwhile, in 2009 itself, the husband approached the Australian Court for divorce and mutual divorce took place in March 2011 (Annexure P-9) and the marriage was terminated. The respondent did not place any document to show that they had any objection. The wife had approached for alimony and had given her affidavit (Annexure P-10) which gives the same amount in para 14 as disclosed in the complaint but those are indicated as 'gifts'. While allowing alimony to the wife a consent order followed and the husband was directed to pay a sum of 65,000/- Australian Dollars and was to be paid before December 2012. The application filed by the wife in April 2012 was dismissed. The Court noted that the order finally determined the financial relationship. Despite that order, Gurdev Singh (father of Kanwaljit Kaur) filed the complaint and did not disclose about the proceedings or the orders and raised the same issue (Annexure P-10) which were raised before the Australian Courts. Though, Kanwaljit Kaur Gandhi while appearing as CW-1 referred herself to be a divorced wife and referred to payments made in 2004, 2005 and 2006 but withheld information about the proceedings which had taken place in Australia. She did not disclose about the amount she had received. It is a case of concealment on her part. It appears that the

complainant has indulged in vindictiveness on account of frustration and the continuation of the proceedings would only lead to abuse of process of the Court. It is a fit case where the powers under Section 482 Cr.P.C. must be exercised and proceedings quashed.

The petition is allowed. Complaint No. 17 dated 14.8.2013 titled 'Gurdev Singh vs. Amarinder Singh Gandhi and others' is dismissed and the summoning order dated 5.5.2014 is set aside.

**(ANITA CHAUDHRY)
JUDGE**

January 19, 2018
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No