

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No.30371 of 2018 (O&M)

Date of decision : 23.7.2018

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Satpal Singh and another

.....Petitioners

vs.

State of Punjab and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Argued by: Mr. Amit Dhawan, Advocate
for the petitioners.

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H. S. Madaan, J.

Complainant Rajni had submitted a written complaint to DSP Nakodar, against her husband Dilbagh Singh, father-in-law Sat Pal, mother-in-law Ram Pyari, elder brother of her husband (jeth) Hem Raj, sister-in-law (Nanad) Sita Rani, alleging that her husband had performed second marriage by playing fraud with her and causing her mental and physical cruelty and accused had raised demand of more dowry.

Inter alia in the complaint, she had contended that she was married to Dilbagh Singh on 20.1.2012; that Dilbagh Singh had come from Manila; that at that time her parents had given several

valuable articles in dowry; that after a few days of her marriage she found that her husband was addicted to liquor and would come home in a drunken condition and fight with her unnecessarily; that her mother-in-law and sister-in-law used to misbehave with her and abuse her besides harassing her for bringing more dowry; that on 10.3.2012, her husband went abroad and after two months, he told the complainant on telephone that he needed Rs.4 lacs and she should tell her parents to give the said amount to the person informed by her husband at village Bilga. However on receipt of the amount, he switched off his phone and did not call the complainant. However, one day sister-in-law of the complainant told her that her husband was already married abroad and had children, as such she should leave the matrimonial home. Thereafter, parents of the complainant had a talk with her in-laws family, who abused her parents and also misbehaved with them.

On receipt of the complainant, the matter was enquired into by Incharge Women Cell, Sub Division, Nakodar, who concluded that complainant Rajni has been mentally and physically harassed for bringing more dowry and then turned out of her matrimonial home by her husband Dilbagh Singh, mother-in-law Ram Pyari. Thus FIR against both of them was ordered to be registered, for offence under Sections 406, 498-A IPC at Police Station Sadar, Nakodar.

After registration of the FIR, the matter was investigated and then Ram Pyari and Dilbagh Singh were sent up to face trial. Dilbagh Singh had already been declared as proclaimed offender.

After framing of charge, the prosecution witnesses were examined. During the trial, the Public Prosecutor moved an application under Section 319 Cr.P.C. for summoning Satpal Singh, Hem Raj s/o Satpal Singh and Sita Rani d/o Satpal Singh, all residents of village Bajra, Police Station Lambra, District Jalandhar, as accused in this case. Vide impugned order, the application was accepted and three proposed accused were ordered to be summoned. The order was challenged by way of filing a revision petition before the Court of Additional Sessions Judge, Jalandhar, which was dismissed vide order dated 10.5.2018, as such the present petition under Section 482 Cr.P.C. has been filed against the said order.

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

The petitioners are specifically named in the FIR and criminal acts have been attributed to them, which disclose commission of cognizable offences. They have filed revision before the Additional Sessions Judge, Jalandhar, which revision petition stood dismissed. Thus petitioners have approached this Court.

I do not see any infirmity or illegality with the orders passed by the Courts below, which might have called for interference by this Court, while exercising the powers under Section 482 Cr.P.C. The relevant part of the impugned order passed by the learned Magistrate reads as under:-

“The perusal of record shows that original FIR in question was registered vide written complaint No. 955 PTM dated 26.6.2013, 77

BH-R-DSP-NKD dated 15.3.2013 on the statement of one Rajni daughter of Pankaj Kumar against two persons (present accused) under Sections 406, 498A Of IP Code PS Mehatpur, whereas Satpal Singh (father in law of complainant) HemRaj (Jeth of complainant) and Sita Rani (Nanan of complainant) were declared innocent by the police. In her statement, complainant alleges that she is subjected to cruelty by all the accused persons on the demand of dowry and they in collusion with each other solemnized second marriage of complainant with of accused Dilbag Singh (since PO). During the course of investigation police has recorded the statement of complainant on dated 14.5.2013 where she has specifically mentioned the names and role of Satpal Singh, Hem Raj and Sita Rani in the alleged solemnization of second marriage of complainant with of accused Dilbag Singh. The evidence presented in the police record further showed that during investigation the mediator of marriage of complainant and Dilbag namely, Kamal Narayan son of Late Phuman Ram and Sarpanch of the Village Bajra Ram Aasra also confirmed the fact of former marriage of

accused Dilbag Singh in Manila with another lady. They deposed that accused Dilbag Singh have two children from his first marriage. Further the depositions of Satpal Singh, Ram Piyari and Sita Devi has also reveals that they have actively participated in the marriage of complainant. The proposed accused persons are nothing else but relative between both families. It may here also be observed that according to Explanation below Section 109 of the Indian Penal Code an act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation or with the aid which constitutes the abetment. Since there is prima facie evidence against proposed three persons qua the former marriage of accused Dilbag Singh with another lady, there is material to take cognizance for the offence under section 494 read with Section 109 IPC. It would be inferred from the evidence that, there was agreement of the Satpal Singh, Hem Raj and Sita Rani in the second marriage of accused Dilbag Singh and they knew that the first wife of accused Dilbag Singh is living. Therefore, prima facie the offence of criminal conspiracy also appears to have been committed. In view of

the aforesaid material on record, I am of the view that sufficient ground is made out for proceeding against said Satpal Singh, Hem Raj and Sita Rani under Section 319 Cr.P.C. and there is earlier probability that they may be eventually convicted in the present case, if prosecution evidence is satisfactorily led against them. Accordingly, present application is hereby admitted and said Satpal Singh, Hem Raj and Sita Rani is ordered to be summoned as an accused in this case to face trial for 9.10.2017.”

Paragraph 5 of the judgment passed by the Additional Sessions Judge, Jalandhar, is also reproduced as under:-

“5. On the basis of this evidence learned trial court formed an opinion that there is sufficient material to proceed ahead and take cognizance under Section 494 IPC read with Section 109 IPC. In the opinion of this Court, no illegality in this approach can be found as summoning cannot be limited or confined to offence under Section 498-A IPC only. No doubt offence under Section 494 IPC read with Section 109 IPC is non cognizable, but when trial is already undergoing under Section 498-A IPC, this aspect can also be gone into. Though in the learned trial court's file, no charge under

Section 494 IPC is there, but charge can be framed at any stage. Perusal of the file shows that trial is going at initial stage. Complainant from the very beginning had attributed second marriage of her husband and participation by family members. Prima facie a person who already marriage and have children, then such information must in the knowledge of close family. So if they actively participated and allowed performance of second marriage with complainant, then prima facie abetment under section 494 IPC read with Section 109 IPC is certainly there.”

Thus finding no merit in this petition, the same is dismissed.

23.7.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No