

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-34445 of 2014

Date of decision: 19.09.2018

Shanti and others

.. Petitioners

Versus

State of Haryana and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashok Kumar Sharma, Advocate
for the petitioners.

Mr. Amrik Narwal, DAG, Haryana.

Mr. Nitish Garg, Advocate
for respondent No.2.

SURINDER GUPTA, J.(Oral)

The petitioners have filed this petition under Section 482 Code of Criminal Procedure (for short, 'Cr.P.C.') seeking quashing of FIR No.163 dated 28.04.2014 (Annexure P-1), registered for offences punishable under Sections 420/494 of Indian Penal Code (for short 'IPC') at Police Station Matlauda, District Panipat, along with all consequential proceedings arising therefrom.

Heard.

Instant FIR was registered on the complaint of respondent no. 2-Minaxi. Allegations in the FIR translated copy of which has been produced as Annexure P-1, reads as follows:-

“.....Complaint for taking legal action against Brijender @ Munna son of Bhkira caste Balmiki resident of village Goli, Police Station Asand, District Panipat; 2) Priyanka daughter of Roop Bansal, resident of village Sodipur Police Station Model Town Panipat; 3) Bira son of Bheru; 4)

Shanti wife of Bira; 5) Sonu son of Bira residents of village Goli Police Station Assandh District Panipat; 6) Manju wife of Sunny resident of village Sodapur, Police Station Matlauda, District Panipat. Sir, the applicant submits as under:- (1) That the applicant is resident of village New Bahali, Police Station Matlauda, District Patiala (sic Panipat) and married with accused no. 1 Brijender and out of wedlock with Brijender three children were born. The above Brijender has solemnized love marriage with accused no. 2 Priyanka on 08.04.2014 and after obtaining protection from the Hon'ble High Court he is residing at Karnal Safety Home with Priyanka. The marriage of applicant was held 8 years ago with the accused till then he was having relation with Priyanka and is giving beating to the applicant since last 2 years; (2) That all the other accused in connivance with Brijender @ Munna and Priyanka have also duped the applicant as well as her children. (3) That all the above accused are favouring Brijender @ Munna and Priyanka and now in these days they are residing at Karnal Safety House. Therefore, it is requested to you to take legal action against the accused persons and justice be done to applicant and children of applicant. Sd/- Meenakshi daughter of Ranbir caste Balmiki resident of village New Bohali Police Station Matlauda District Panipat.”

Learned counsel for petitioners has argued that even if allegations in the FIR be taken as it is, no offence punishable under Sections 494/420 IPC is made out against petitioners, who are parents of Brijender @

Munna and his sister.

Learned State counsel as well as learned counsel for respondent no. 2 were asked to point out any evidence on police file to make out the involvement of petitioners for offence punishable under Section 494 and 420 IPC. They, however, say that allegations in the police file are only as per FIR.

Now point to be seen in this petition is as to whether any offence punishable under Sections 494 and 420 IPC is made out against petitioners?

Section 494 IPC reads as follows:-

“494. *Marrying again during lifetime of husband or wife.*—

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

As per provisions of Section 494 IPC, a husband or wife, who contracts second marriage during subsistence of first marriage is liable to be proceeded for offence punishable under Section 494 IPC.

The husband of respondent no. 2-complainant is not before this Court. There is no allegation in the FIR that petitioners have abetted Brijender @ Munna to contract second marriage or that second marriage of Brijender @ Munna was performed with active assistance of petitioners. Consequently, on perusal of allegations in the FIR, no offence under Section 494 IPC against petitioner is disclosed.

Section 415 IPC describes cheating as follows:-

“415. *Cheating.*—Whoever, by deceiving any person,

fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.”

Offence of cheating is punishable under Section 420 IPC, which reads as follows:-

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

Firstly, in the FIR there is no allegation as to how respondent no. 2 has been cheated. The mere allegation that petitioners in connivance with Brijender @ Munna and Priyanka have duped the complainant and her children is not sufficient to attract provisions of Sections 415 IPC or 420 IPC. Mere averment that petitioners are favouring Brijender @ Munna does not attract provisions of Sections 415 or 420 IPC.

In view of my above discussion, I find that allegations as levelled in the FIR do not attract provisions of Sections 494 and 420 IPC

against petitioners. Filing of challan and pendency of trial is a sheer misuse of process of Court.

For the reasons as discussed above, the instant petition is allowed and impugned FIR no. 163 dated 28.04.2014 (Annexure P-1) registered at Police Station Matlauda, District Panipat along with all consequential proceedings arising therefrom, qua petitioners, is quashed.

September 19, 2018

(SURINDER GUPTA)
JUDGE

jk

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No