

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc. No. M-40668 of 2013

Date of Decision: 23.10.2018

Sukhdev Singh and others

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Mohit Garg, Advocate
for the petitioners.

Ms. Jaspreet Kaur, AAG, Punjab.

Mr. Akshay Kumar Goel, Advocate
for respondent No. 2.

ANITA CHAUDHRY, J

The petitioner had assailed the order dated 21.1.2013 by the Magistrate vide which charge was ordered to be framed against the accused under Section 406 and 498-A IPC and the order passed in revision.

Counsel for the petitioner contends that on a complaint made by Dharampal father of Baljit Kaur, the accused were summoned. The counsel further submits that earlier the parties had settled the differences and a petition under Section 13-B of the Hindu Marriage Act was filed and Baljit Kaur had made her statement Annexure P-2 which was recorded on 28.3.2005 according to which Maninder Kaur, their daughter was to remain in custody of the father whereas Rupinder Kaur was to remain in the custody of the mother and the final statement was made and the divorce

decree Annexure P-4 was passed. The counsel further contends that the order refers to the fact that all the disputes relating to dowry articles and maintenance had been settled but few months later a complaint was got filed not by the wife but by her father and allegations were made that her signatures on some papers were taken for going abroad and she had now come to know that decree of divorce has been passed and all matters had been settled including custody of the children and in fact divorce had been obtained by fraud. The counsel also submits that pre charge evidence was recorded and they have placed on record cross-examination of CW-2 and the wife had admitted that she had filed the complaint only to extract money. The counsel further states that the wife did not challenge the divorce decree and she neither filed an application for recall of the order nor lodged any FIR of cheating and fraud and after having settled finally and after all the articles were given back, the petitioner could not be made to face the trial. Reliance was placed upon ***Shlok Bhardwaj versus Runika Bhardwaj and others 2015(2) SCC 721.***

On the other hand submission of the respondent is that the petitioner is concealing the facts and they had earlier filed a petition which was decided on 13.1.2011 and they were directed to raise all the pleas before the trial Court. The counsel further submits that divorce was taken by playing fraud and one of the daughter had died and one son was born after the divorce decree and this fact was mentioned and is recorded in the order passed on 13.7.2016.

The respondent is asserting some facts according to which the divorce was taken by playing fraud on her. Admittedly, the wife did not lodge any FIR nor filed any application in the Court which passed the

divorce decree. The respondent has chosen not to file reply here in the present proceedings.

The petitioner has placed on record the statement given by Baljit Kaur before the then District Judge, Fatehgarh Sahib on 28.3.2005. The statement was made on oath. The wife appeared again for the second statement on 1.10.2005 and thereafter divorce decree was passed. The oral claim of the respondent is that fraud had been played. Except for the averment in the complaint not by Baljit Kaur but it is by the father. I find that Baljit Kaur did not take any steps. She had already made a statement that she had received all the articles. Nothing has been produced to show that her statement made in the Court was under any pressure. It is not their case that Baljit Kaur did not appear before the Court below or that some other person had appeared. Baljit Kaur had admitted that she had filed the case with a view to extract money from Sukhdev Singh and his family. In the light of the above, the trial Court could not have framed the charges. The complainant had referred to the divorce decree in the complaint. No evidence was led by the complainant to show that the signatures of Baljit Kaur were obtained by concealing facts. No member of panchayat was examined though it was alleged that a panchayat was convened to rehabilitate Baljit Kaur. Baljit Kaur had admitted to her appearance in the Court therefore, for her to turn around and make a different statement was wrong and could not have been acted upon. Baljit Kaur did not approach the police to make allegations of fraud. No complaint was made against the lawyer who was representing her before the District Judge. The onus to prove the allegations of demand of dowry or the acts of cruelty, if any, would be on the wife and not on the father. Purposely Baljit Kaur did not

file the complaint as she would have been accused of perjury having made a different statement before a different Court earlier. The complainant found a novel way to file the complaint.

In the light of the above and keeping in view that there was a settlement and the husband and the wife had parted ways amicably, no dispute survived after that. The complaint could not have been filed.

The petition is allowed. The impugned orders are set aside and the complaint is dismissed.

(ANITA CHAUDHRY)
JUDGE

October 23, 2018
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No