

Crl. Misc. No. M-4465 of 2013 (O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No. M-4465 of 2013 (O&M)
Date of decision : 22.03.2018**

JAGJIT SINGH

.....Petitioner(s)

Versus

STATE OF PUNJAB AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. T.S. Sangha, Sr. Advocate with
Mr. Narinder Singh, Advocate
for the petitioner.

Mr. Pawan Sharda, Sr. DAG, Punjab.

Ms. Isha Goyal, Advocate
for respondent no.2.

ANITA CHAUDHRY, J.
CRM-33903-2015

For the reasons set out in the application, same is allowed as
prayed for. Amended petition and other accompanying documents are
allowed to be taken on record.

MAIN CASE

The instant petition has been filed under Section 482 Cr.P.C.
seeking quashing of FIR No.5 dated 06.01.2012 registered under Sections
498-A, 506 IPC, Police Station Tibber, District Gurdaspur.

The basic facts which are not in dispute are as under:-

The petitioner is the son-in-law of the complainant-respondent no.2. This petition has been filed through the attorney. The complainant's daughter Rajwinder Kaur was married to the petitioner. The civil ceremony took place on 17.06.2011. The petitioner was a student while the complainant's daughter was living in U.S. even before the civil marriage.

Rajwinder Kaur filed divorce petition in the Superior Court of California on 25.01.2012. It is apt to mention here that after the civil ceremony in U.S., the marriage was not consummated nor the couple stayed together. It was agreed that the couple would stay together after the nuptials ceremony, which was to take place in India. Both the girl and the boy came to India. The marriage was fixed for 8th January 2012. The marriage ceremony was not performed as disputes arose. The FIR was lodged on 06.01.2012. The same evening the petitioner went abroad.

The complainant's daughter also returned to U.S. and filed petition for annulment of the marriage. The petitioner contested the petition but midway there was an amicable settlement and parties were divorced in July 2014. The police meantime had filed the challan against the husband in 2013 on the complaint given by the father-in-law.

I have heard counsel of both the sides.

The counsel for the petitioner contends that the petitioner was studying in U.S. whereas the complainant's daughter was a Green Card holder and it was agreed that they would be married and the civil ceremony was performed in U.S. and it was agreed that they would start living together after marriage as per Hindu rites, which was to take place in India.

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It was urged that both the parties travelled to India but then disputes arose as to who would bear the expenses. It was urged that in the FIR there is a reference that a joint reception ceremony was to be held and the complainant has alleged that certain demands with respect to dowry were made. It was urged that the haste the police had shown in registering the FIR can be seen as the complaint was given at 6:10 P.M. and the FIR was registered the same day without even making a preliminary inquiry and without giving a reasonable opportunity to the respective parties or calling for their version. It was urged that Rajwinder Kaur had filed a petition seeking nullity of the marriage on the ground of fraud but that petition was dismissed as it was found that there was no mis-representation nor there was any intention to deceive and the superior Court had noted in its elaborate order that the petitioner had every intention to marry and have a Indian ceremony and there were exchange of long phone calls and texts in the intervening period and guests had been invited by both the families from all over the world, therefore, the Judge of the Supreme Court dismissed the petition filed by the wife holding that there was no mis-representation or intention to deceive and the request for annulment of marriage was denied in 2013. It was urged that mere demand is not enough and the couple had never lived together and there was no cruelty or entrustment. It was urged that mere demand of dowry is not an offence under Section 498-A of the Indian Penal Code and it would be a futile exercise to direct the trial Court to hold a trial and it would be an abuse of the process of law. Reliance was placed upon ***Harmanpreet Singh***

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Parveen Kumar Vs. State of Himachal Pradesh 2011(4) RCR (Crl.) 640.***

On the other hand, it was urged that the police had investigated the case and the petitioner had not joined the investigation and the police had approached the Ministry seeking warrants of arrest. It was urged that the petitioner had entered into the marriage so that he could get a permanent visa whereas he had no intention to marry and there are allegations with respect to demand made by the petitioner and his family. It was urged that the demand came before marriage and the details are given in the FIR.

The civil ceremony between the petitioner and complainant's daughter was solemnized in U.S. Admittedly, the complainant's daughter is a U.S. Citizen. The petitioner at that point of time was studying in U.S. The parties had agreed that the couple would start living together after the Hindu religious ceremonies. It is not disputed that the boy and the girl travelled to India and the initial functions before the wedding were also arranged. The wedding hall had been booked and the advance payments had been made by the complainant side. The complainant had alleged that the petitioner and his family started demanding dowry. The tone and tenor of the FIR does show that there was a dispute as to who would bear the expenses for the functions. The complainant had alleged that a list was given to them with respect to the Milnis and the amount which was to be handed over at the time of the Milni and the gifts to the relatives.

The FIR also refers to the various demands made and the

Milni and Shagun demanded at different stages of the wedding ceremonies. The wedding, however, was called off and did not take place. The wife had filed for annulment of the marriage and she had alleged that the husband had played fraud and had no intention to marry. Her plea was not accepted by the U.S. Courts and detailed reasons have been given in the order dated 04.06.2013 (Annexure P-3) with the amended petition. It is not disputed that the wife approached the Courts for divorce which was not contested and a divorce decree was passed. The marriage was never consummated.

The question which would arise is whether mere demand is enough to constitute an offence under Section 498-A IPC. Admittedly, the demand was not fulfilled nor the marriage ceremony took place nor the couple had lived together. There are no allegations of cruelty or harassment related to dowry demand. Mere demand of dowry is not enough and the prosecution would be obliged to go further, allege and also prove that there was torture and harassment of the complainant's daughter which is missing in this case. The marriage was called off. The offence would not fall under Section 498-A of IPC.

After carefully considering the facts, I am of the considered view that the parties had invoked the jurisdiction of the Courts at U.S. in terms of their matrimonial status and the proceedings were contested and there was an amicable settlement followed by a divorce decree. The proclamation proceedings were initiated against the petitioner namely the declaration under Section 82 Cr.P.C. when he was not in India, therefore,

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the validity of the proclamation is doubtful. It is declared that those proceedings are nonest and are set aside. In view of the fact situation, the continuation of the present criminal proceedings would be an abuse of the process of law. Accordingly, the instant petition is allowed and the aforesaid FIR and all consequent proceedings conducted on the basis thereof are quashed.

(ANITA CHAUDHRY)
JUDGE

22.03.2018
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No