

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

CRM-M-41936 of 2015
Date of Decision: 30.11.2018

Rekha Rani and others

....Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Ripudaman Singh Sidhu, Advocate, for the petitioners.
Mr. Amandeep S. Gill, DAG, Punjab.
Ms. Sunita Nambiar, Advocate, for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C. prayer has been made for quashing FIR No.186 dated 18.10.2015 registered under Sections 313, 314, 494, 506, 34 IPC at Police Station Lalru, District SAS Nagar (Mohali) along with all consequent proceedings.

Briefly, respondent No.2-complainant filed private complaint under Section 156(3) Cr.P.C. before the learned Judicial Magistrate Ist Class, Dera Bassi, against the petitioners for registration of FIR against them under aforesaid Sections, which was forwarded by Mr. J.S. Mehndiratta, Judicial Magistrate Ist Class, Dera Bassi, to the police for registration of case and investigate the matter. During investigation police found the petitioners innocent qua offences under Sections 313, 314, 506 and 34 IPC. Consequently, it filed final report against the petitioners under Sections 494 and 120-B IPC only.

respondent No.2 who is allegedly previous husband of petitioner No.1 has lost his battle on all counts and before all Courts and fora. Even application of respondent No.2 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights with petitioner No.1 was dismissed in default. Respondent No.2 did not ever make any effort to get it restored. Respondent No.2 also filed *Habeas Corpus* petition bearing CRWP No.467 of 2014, before this Court for the production of petitioner No.1, claiming himself to be her husband, which he lateron withdrew. Therefore, as on date there is no proof with respondent No.2 that petitioner No.1 is his legally wedded wife. Consequently, investigating agency has wrongly challaned the petitioners under Section 494 read with Section 120-B IPC, not adhering that it was not competent to file final report under the aforesaid Sections against the petitioners as added offence under Section 494 IPC is non-cognizable. Private complaint of respondent No.2 is already pending adjudication against all the petitioners.

On the other hand, learned counsel for respondent No.2 endorses action of the police of filing final report under Section 494 read with Section 120-B IPC against the petitioners.

Having given thoughtful consideration to the rival submissions, this Court finds that instant petition merits acceptance for the reasons to follow.

There is dispute regarding *inter se* relationship of wife and husband between petitioner No.1 and respondent No.2. Petitioner No.1 alleges that she never married respondent No.2, whereas respondent No.2 claims her to be his wife. However, as on date, respondent No.2 has not been able to prove before any Court or

forum his assertion that petitioner No.1 is his legally-wedded wife inasmuch as his petition under Section 9 of the Hindu Marriage Act has already been dismissed for want of prosecution, which has not been got restored till date.

Petitioner No.1 lodged FIR No.66 dated 06.04.2014 (Annexure P-2) against respondent No.2 under Sections 354/376D/363/506/34 IPC and Sections 67/72 of the Information Technology Act, 2000 at Police Station Lalru, District SAS Nagar (Mohali), levelling allegations of rape against him, which again proves that petitioner No.1 never accepted respondent No.2 as her husband. It is altogether different matter that respondent No.2 has been acquitted in that case and appeal filed by respondent No.1 is still pending adjudication.

Offence under Section 494 IPC is non-cognisable. Therefore, Police was not empowered to file final report under Section 173(2) Cr.P.C. against the petitioners under Section 494 read with Section 120-B IPC, more particularly when complaint of respondent No.2 against the petitioners under Section 198 Cr.P.C. was already pending.

In view of above, petition is allowed. FIR No.186 dated 18.10.2015 registered under Sections 313, 314, 494, 506, 34 IPC at Police Station Lalru, District SAS Nagar (Mohali) along with all consequential proceedings against the petitioners is quashed.

November 30, 2018
R.S.

(Ramendra Jain)
Judge