

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc. No. M-43352 of 2015 (O&M)
Date of Decision: 16.7.2018

Manreet Singh Dhaliwal and others

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rajiv Joshi, Advocate
for the petitioners.

Mr. A.P.S.Gill, DAG, Punjab.

Mr. Amit Kumar, Advocate
for respondent No. 2.

ANITA CHAUDHRY, J

The petitioners are seeking quashing of criminal complaint bearing No. 50/20/12/12 titled “Harleen Kaur versus Manreet Singh and others” (Annexure P-5) and the summoning order dated 21.9.2013 (Annexure P-7) and the order passed by the Additional Sessions Judge dated 16.11.2015 (Annexure P-10) declining the revision.

The factual score is as under:-

Petitioner Manreet Singh Dhaliwal was married to respondent No. 2 on 7.6.2010 at Ludhiana. The petitioners claim that after the marriage, all the petitioners and the complainant went to US on 11.6.2010.

Differences arose between them and a decree of divorce was passed which

was after a mutual settlement and all the financial aspects were agreed to

and paid which included past, present and future maintenance but respondent No. 2 after having settled finally, came back to India and in order to wreck vengeance upon the petitioners gave a complaint to the police. The police conducted detailed investigation and found that the complainant had concealed material facts and that there was a decree of divorce by mutual consent. It did not register the FIR. The complainant thereafter filed a complaint in the Magistrate's Court and the Magistrate passed a hasty order summoning all the accused. The petitioners challenged the order in revision which was dismissed. The main plea is that the mandatory provisions of Section 202 Cr.P.C. had not been complied with. It was pleaded that majority of the allegations pertaining to cruelty and demand pertain to the period when the couple was in USA. It was pleaded that they stayed in India only for three days after the marriage.

Respondent No. 2 pleaded that the petitioners have not come to the Court with clean hands and on the very next day of the marriage the petitioners started taunting respondent No. 2 for bringing less dowry and demanded Rs. 10.00 lacs and the petitioners kept on abusing and beating respondent No. 2 for not fulfilling the demand. It was pleaded that the father of respondent No. 2 along with two other persons had visited the house on 8.6.2010 and the petitioners insulted the father who thereafter paid Rs. 3.00 lacs to the petitioners. It was pleaded that on 11.6.2010, all the petitioners along with respondent No. 2 went to USA and after reaching there, the behaviour of petitioner No. 1 became more cruel and the complainant was mentally and physically tortured for dowry. It was claimed that the complainant was pressurized to call her father and fulfill a further demand of 50,000 dollars and the complainant was sent back to India on

21.2.2011. The complainant narrated the whole incident to her father and the complainant called the accused and told him that they did not have the capacity to meet their unwarranted demand but the accused threatened them that they would take a divorce if the demand was not met and on 14.3.2011 respondent No. 2 went back to USA and told the petitioners that her parents are not in a position to meet the illegal demand. It was pleaded that under compelling circumstances respondent No. 2 had filed the joint divorce petition as there was a threat to kill her father in US. It was pleaded that *istri dhan* was yet to be recovered and the list had been appended along with the complaint. It was also pleaded that it was not mandatory to call for a report under Section 202 Cr.P.C.

Rejoinder was filed by the petitioners and documents Annexures P-11 to P-16 were placed on record. It was pleaded that respondent No. 2 had herself maintained that she had come to India in February 2011 to attend wedding of her cousin and she returned to USA in March 2011 and false allegations are being made. It was pleaded that the father of the complainant had come to US on 19.3.2011 on a visitor's visa and he left USA on 17.9.2011 only due to expiry of visa and the divorce decree was passed in February 2012. Therefore, the allegation that there were threats to kill her father in US stands falsified. A reference to the e-mail (Annexure P-11) was made which was written by the father of respondent No. 2 to show that there was no threat. It was pleaded that the petition for divorce was initially filed by the husband and it was not joint petition but thereafter it was withdrawn and a joint petition was filed and the divorce petition initially filed by the husband was contested and an interim order of maintenance was passed and copy of the order (Annexure

P-13) was annexed. It was pleaded that the complainant had received a green card in USA which falsifies the allegations of dowry and cruelty. It was pleaded that all the proceedings in the Courts in USA are technically termed as transcripts and the complainant had voluntarily submitted to the jurisdiction of the foreign Court and there were no allegations of demand of dowry and all the jewellery items were returned to respondent No. 2 in the Court and the receipts bear her signatures and were reflected in the documents and the complainant had gone to the house of the petitioners to collect her entire belongings which are noted in the transcripts. A copy of the transcript was also attached.

I have heard both the sides.

The main submission of the petitioners is that the complainant had concealed the fact that a mutual divorce had taken place and she had received all her jewellery and clothes etc. and she filed the complaint after the proceedings were completed and the police had conducted a thorough investigation and had found that there was no case which was fit to be registered. It was urged that contradictory statements have been given and initially it was stated that there was a demand of Rs. 10.00 lacs and then it was stated that Rs. 3.00 lacs was given but the complainant in her statement Annexure P-6/A had stated that a sum of Rs. 2.00 lacs was paid. It was urged that the transcripts of the proceedings in the US are available on record which record the entire statement which was audio recorded and the complainant was satisfied with the properties settlement agreement and to the equitable distribution and she had made a statement that nobody had forced her or coerced her into signing the statement and false stories are being cooked up after having settled it. It was urged that the jewellery

which was returned is annexed as Annexure P-16/A and that would show that the gold items which were given by the complainant's parents were also handed over to the complainant and the receipt available at page 108 would show that luggage items, clothes, books, shoes was handed over and the complainant herself had gone to collect the items from the husband's house and it was made clear to her that she would not be allowed to return to the residence for any other item. It was urged that the complaint and the subsequent orders are an abuse of the process of the Court and the Magistrate failed to comply with the provisions contained in Section 202 Cr.P.C. as the accused and his family were residing beyond the jurisdiction of the Court. It was urged that this fact was within the notice of the Court as the record had been called from the police. It was urged that the Sessions Judge wrongly dismissed the revision holding that it was an interlocutory order and the final rights had been determined and the revision was maintainable and the Court failed to apply its mind and mechanically ordered the summoning of the accused and it was a fit case where the complaint and the subsequent orders should be quashed. It was urged that the petitioners cannot be compelled to face trial and as the Court had decided a serious question as to the rights of the petitioners, it cannot be held that it was an interlocutory order. It was urged that the complainant had subjected herself to the jurisdiction of foreign Court and a decree of divorce was mutually passed. Reliance was placed upon *S.K.Bhowmik versus S.K. Arora and another 2007(4) R.C.R. (Criminal) 650, Harmanpreet Singh Ahluwalia and others State of Punjab and others 2009(2) R.C.R.(Criminal) 956, Ruchi Agarwal versus Amit Kumar Agrawal 2004(4) R.C.R. (Criminal) 949, Amar Nath etc. versus State of*

Haryana etc. 1977 (4) SCC 137, Rama Ayyar (Died) and another versus Krishna Patter, The Indian Law Reporters, Vol. XXXIX, 733, Shalig Ram versus Firm Daulat Ram Kundanmal 1967 AIR (SC) 739, Shiv Indersen Mirchandani of Bombay and another versus Natasha Harish Advani alias Natasha Vijay Kumar Tolaram Mirchandani and others 2002(2) BCR 436 and Augustine Kalathil Mathew versus The Marriage Officer (Sub Registrar), North Paravur Sub-District, North Paravur, Pathanamthitta District 2017 (171) AIC 484.

On the other hand it was urged that the complainant had agreed to a mutual divorce as there was a threat to kill the father of the complainant. It was urged that the complainant had appended the list of jewellery which had not been returned and the jeweller from whom the jewellery was purchased, was also examined and the demand started soon after marriage. It was urged that threat was given when the father of the complainant was in US and under fear, consent was given and it should be left to the trial Court to see whether the offence was proved and there are no extraordinary circumstances which should be considered in a petition filed under Section 482 Cr.P.C. It was urged that the Magistrate was not obliged to carry out the proceedings under Section 202 Cr.P.C.

On perusal of all the above said factual background it is found that though the marriage took place in Ludhiana but the couple went abroad within three days of the marriage. Differences arose between them and they applied for divorce and a mutual settlement was arrived at. All the financial issues were sorted out. After finally settled all issues including past, present and future maintenance, respondent No. 2 came back to India and gave a complaint to the police. The police carried out a detailed investigation and

was a decree of divorce. The police did not register the FIR. Thereafter the complainant approached the Court and filed a complaint. The complainant did not disclose that there was a divorce decree. Had the Magistrate called for the report under Section 202 Cr.P.C. the facts would have been clear. The couple had not stayed in India. There was no complaint to the police during the three days stay in India. There was no allegation of any harassment, maltreatment or demand in India. Had there been any such complaint there was no reason that the couple would have gone abroad. It appears that a concocted version was given in the complaint with respect to the threat given to the father. It is not disputed that the husband had filed for divorce and it was not a joint petition and ultimately that petition was withdrawn and joint petition for mutual divorce was filed and the wife did not contest or raise new grounds before the Courts in US. The transcripts available on record along with the rejoinder show the proceedings and the statement given by the complainant. The complainant had received all dowry and the jewellery. She herself had gone to the house of the petitioner and collected her belongings but when she comes to India after everything was over, she has raised absurd allegations. It is difficult to accept that she had made a statement in the US Courts because she was under threat. The petitioners were living abroad and compliance of Section 202 Cr.P.C. was mandatory. It appears that the Court did not apply its mind and summoned the accused without verifying facts from the police.

The allegations of cruelty, harassment, demand and torture, if any, took place in United States and cognizance of it could not be taken by the police in India. The parties had invoked the jurisdiction of US Courts for all their disputes which have already been settled.

After carefully considering the facts, I am of the view that it is evidently a fit case where the complaint and the subsequent proceedings should be quashed exercising the extraordinary jurisdiction under Section 482 Cr.P.C.

The petition is allowed. The aforesaid complaint and the subsequent orders are quashed.

(ANITA CHAUDHRY)
JUDGE

July 16, 2018
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No