

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**Criminal Misc. No. M-1347 of 2014 (O&M)
Date of decision : April 10, 2019**

Harmit Kaur and others

....Petitioners

versus

Hardeep Kaur Mann

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Premjit S. Hundal, Advocate, for the petitioners
Mr. Harsh Aggarwal, Advocate, for the respondent

Fateh Deep Singh, J.

Petitioners-accused Harmit Kaur, Mohinder Singh, Lakhwinder Singh @ Lucky, Barjinder Singh Mann, Rajinder Singh Mann and Gurmeet Kaur Mann have instituted this petition by the aid of Section 482 of the Code of Criminal Procedure (in short, Cr.P.C.) and have sought quashment of complaint dated 17.5.2011 (Annexure P/1) pending in the court of learned Judicial Magistrate Ist Class, Jagraon whereby accused-petitioners have been summoned under Sections 406, 498-A, 420 IPC as well as summoning order dated 18.7.2013 Annexure P/2.

Heard Mr. Premjit S. Hundal, Advocate, for the petitioners; Mr. Harsh Aggarwal, Advocate, for the respondent and perused the records.

Complainant wife in her complaint through her attorney Buta Singh has filed the complaint alleging that the respondents were residents of Canada and that a marriage took place between the complainant and accused petitioner Barjinder Singh Mann on 22.3.2003 in a Marriage Palace at Jagraon. It is alleged that the parents of the complainant had given sufficient dowry articles as per the wishes and status of the parties and demand raised by the accused side. The complainant had alleged one day prior to the marriage at the Shagun ceremony on the asking of the accused side they were given costly articles of gold etc. and that at the marriage the articles of Ishtridhan belonging to the complainant were handed over to the accused persons in the presence of the gathering and with the specific request that the same be given to the complainant for her use after the marriage. It is alleged by the complainant that after reaching Canada a girl child was born to the couple on 30.12.2005. However, thereafter on account of matrimonial strains a dispute had arisen between the complainant and the accused in the year after 2010. It is the claim of the complainant that the accused in

connivance with each other had physically as well as mentally abused her and refused to hand over her articles of Ishtnidhan which were meant to be used by her. The complainant unable to meet with the ever increasing demands including cash could not concede to this so raised by the accused and subsequently had come to India and on 9.3.2011 the complainant and her parents along with their respectables met accused Mohinder Singh, Harmit Kaur and Lakhwinder Singh @ Lucky and requested them to ensure that the complainant is kept in her matrimonial home but they refused and even raised a demand of Rs 40 lacs besides refusing to return back the articles of Ishtnidhan leading to filing of the present complaint on 17.5.2011 in which the court of learned Judicial Magistrate Ist Class vide orders dated 18.7.2013 summoned them as accused.

Appreciating the submissions of Mr. Premjit S. Hundal, Advocate, for the petitioners and Mr. Harsh Aggarwal, Advocate, for the respondent, a close look at the complaint of the complainant clearly illustrates that the marriage had taken place within the jurisdiction of Sub Division, Jagraon. The articles of Ishtnidhan as per the allegations levelled in the complaint were handed over to the accused in village Kishanpura Kalan, Tehsil and District Moga. The averments that have been hotly debated by the two sides over the

very territorial jurisdiction of the courts where reliance has sought to be placed by the petitioners side on **Harmanpreet Singh Ahluwalia and others vs State of Punjab and others, 2009(2) R.C.R. (Criminal) 956** and **Gurmel Singh and another vs State of Punjab and another, CRM-M-26781-2011**, decided by this Court on **29.9.2017** and which is sought to be refuted by the respondent side. Going through the same, the accused have been summoned under Sections 406, 498-A, 420 IPC. Sections 178, 179 & 181(4) of the Cr.P.C. are reproduced as under:-

“178. Place of inquiry or trial.—(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

179. Offence triable where act is done or consequence ensues.—When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may

be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

181. Place of trial in case of certain offences.—

(1) to (3) xxx xxx xxx xxx

(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

(5) xxx xxx xxx xxx”

Thus it is clearly illustrative that principal offence for which the accused have been summoned pertains to offence punishable under Section 406 IPC and plain reading of the fore-going statutory provisions enlists that such an offence of criminal breach of trust can be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused persons. Thus by that analogy the prima-facie allegation in the complaint which is duly substantiated by the preliminary evidence of the complainant are

clearly underlining the place where cause ensues to the complainant to file the complaint. More-so the complainant has shown her permanent address to be Tehsil Jagraon and District Ludhiana. The Hon'ble Apex Court in a recent view in **Rupali Devi vs State of Uttar Pradesh & Ors., Criminal Appeal No. 71 of 2012, decided on April 09, 2019** while considering initiation and access to legal process of the courts for complainant wife have laid down the ratio that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would have also the jurisdiction to entertain a complaint for commission of such offences. Therefore, the ratio cited by counsel for the petitioners do not come to their rescue.

Further-more the other assailment that has been made revolves around the time gap that has lapsed from the date of the marriage, the cause of action and filing of the complaint so claimed by the petitioners does not help the stand of the petitioners' side as in another Apex Court view in the **State of Bihar vs. Deokaran Nenshi, (1972) 2 SCC 890** and applying the said ratio, the offences for which the accused-petitioners have been summoned have clearly arisen out of their failure to obey or comply with a rule or its

requirement and is deemed to be a continuing offence which arises at every occasion and therefore, the petitioners cannot take advantage of such an inability of the complainant to approach the court at the earliest. Besides as is normally seen in the rural areas of the State in such matrimonial disputes it is the endeavour of the family to sort out the issues at their own ends rather than going to the courts and which is normally the last resort adopted by the parties for obvious reasons. The prima facie allegations made in the complaint supportive by the preliminary evidence this Court does not feels any illegality in the summoning order nor any perversity in the complaint on the basis of which the impugned orders have come about. **This Court upon observing that a criminal complaint has been filed by the complainant through her holder of power of attorney and the fact that even the present petition by the accused have come about while they were residing abroad and in utter disregard to the summoning order did not either come to India, appear before the court in obedience of the same are matters of much concern. In the dispensation of justice, the court trying such matters needs to ensure that such “proxy wars” are not allowed to be waged through their propped up so called duly constituted agents and which is alien to criminal law.**

It needs to be kept in mind that Section 2 of the Power of Attorney Act by virtue of which this authorization has come about certainly cannot override the specific provisions of the Code of Criminal Procedure which necessitates that a particular act should be done by a party in person. Thus, it needs to be enunciated especially for the trial courts to ensure that such a recourse to legal process is not allowed to be flouted by appointing attorneys and thus carry on a battle through proxy.

In view of the foregoing discussion and the fact that this Court by the exercise of powers under Section 482 Cr.P.C. is not to weigh the evidence on the parameters as if adjudicating a trial and therefore, there being no merit in the instant petition, the same stands dismissed.

The Court is saddened to observe that the petitioners consequent to the summoning order, instituted the present petition in the year 2014 leading to passing of the stay of further proceedings in the trial court on the very first date of hearing by the Coordinate Bench and thus, for more than five years, the proceedings have been put to hold impels this Court to issue directions to the trial court to proceed ahead into the matter expeditiously by giving short adjournments and if so necessitated use coercive means.

The petitioners are directed that they put in appearance before the Court below within 15 days of the receipt of the copy of this order.

April 10, 2019
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No