

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-24149-2014 (O&M)

Date of decision: 27.02.2019

Manjit Singh Sekhon and another

....Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Kunal Dawar, Advocate
for the petitioners.

Mr. Sidakmeet Sandhu, AAG, Punjab.

Mr. K.S. Sodhi, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of FIR No.1 dated 04.03.2014 under Sections 420, 120-B IPC, registered at Police Station NRI Sangrur, District Sangrur and all the subsequent proceedings arising therefrom.

Brief facts of the case are that the FIR was got registered by complainant Swarnjit Kaur against the petitioners, Gursharan Singh Sekhon and his mother Kuldeep Kaur, with the allegations that the complainant is a widow lady having two daughters namely Sandeep Kaur and Kulwinder Kaur. The marriage of her daughter Sandeep Kaur was performed with Gursharan

Singh Sekhon, co-accused on 13.02.2005 and before performing marriage, she had published a matrimonial advertisement in the newspaper that a foreign boy is required for her daughter. In response, the petitioners, being uncle and aunt (massar and massi) i.e. Gursharan Singh Sekhon's mother's sister and her husband, contacted the complainant and stated that Gursharan Singh Sekhon is permanent resident of USA and if complainant can spend well on marriage and give 25 tolas of gold and Rs.15 lac in cash, the marriage proposal can be accepted. On this, the proposal was accepted by the complainant and her brothers and they performed the engagement of Sandeep Kaur with Gursharan Singh Sekhon and on the date of marriage, she had given gold articles weighing 25 tolas to Gursharan Singh Sekhon and similarly, as asked by the petitioners, she paid an amount of Rs.10 lac in cash to said Gursharan Singh Sekhon. It is further stated that she spent Rs.5 lacs on marriage. On 09.03.2005, the marriage of Sandeep Kaur and Gursharan Singh Sekhon was got registered with the Registrar of Marriage and Gursharan Singh Sekhon had shown himself as unmarried. Out of this wedlock, a son namely Tanvir Singh was born on 11.11.2005. Thereafter, Gursharan Singh Sekhon had taken her daughter and son namely Tanvir Singh to USA in the year 2006, where Sandeep Kaur came to know that Gursharan Singh Sekhon was already married and had a female child from the first marriage, however, her daughter did not disclose this fact to the complainant initially so that the complainant, because of her poor health, may not face mental tension. Gursharan Singh Sekhon forced Sandeep Kaur to take divorce, because he was having illicit relations with a girl, who is

resident of Maxico and twin daughters were born to Gursharan Singh Sekhon and said Maxican girl. This fact came to the notice of Sandeep Kaur on 15.12.2010 from the facebook account of said Gursharan Singh Sekhon.

It is further stated in the FIR that in January, 2011, Sandeep Kaur disclosed this fact to the complainant, when she had come to attend marriage of her sister Kulwinder Kaur and on that account, the complainant came under depression and got treatment from the doctor. It is also stated that Sandeep Kaur informed her that Gursharan Singh Sekhon had taken divorce from her forcibly in December, 2011 through USA Court and a case regarding custody of child Tanvir Singh is pending in the Court and she is residing alone in USA. It is lastly stated in the FIR that now the complainant came to know that Gursharan Singh Sekhon has come to Village Sirajmajra along with his daughter from first marriage and aforesaid Tanvir Singh son of Sandeep Kaur and accused have committed fraud by concealing the fact about his first marriage and by taking 25 tolas of gold and Rs.15 lacs in cash, the fraud was committed in connivance of the petitioners, who are uncle and aunt of Gursharan Singh Sekhon.

Present petition was filed in the year 2014 and on 02.12.2014, notice of motion was issued, after noticing the aforesaid facts and thereafter, the police submitted report under Section 173 Cr.P.C. before trial Court and the proceedings qua the petitioners were stayed by this Court vide order dated 30.01.2015.

It is worth noticing here that till date, no reply has been filed by the respondent-complainant and it is stated at bar by learned counsel for the

complainant that the complainant has also travelled abroad, long time back and has not come back.

Reply by way of affidavit of Deputy Superintendent of Police, NRI Wing, Patiala filed on behalf of respondent No.1 is on record.

Learned counsel for the petitioners has argued that from the bare perusal of the FIR, the following facts emerge: -

(a) The complainant stated that she had given a matrimonial advertisement in the newspaper that she is looking for a foreign based boy and the police, during the investigation, has not collected said advertisement, therefore, it cannot be said that in the advertisement, it was stated that the boy should be unmarried, as well.

(b) The marriage has taken place on 13.02.2005 and was registered on 09.03.2015. Thereafter, a son was born on 11.11.2005 and daughter of the complainant along with her son had travelled abroad on 20.07.2006 and presently, she is also a green card holder/permanent resident of USA along with her son, where FIR is registered by her mother in 2014.

(c) It is own case of the complainant that the marriage between Gursharan Singh Sekhon and Sandeep Kaur was dissolved by way of a decree of divorce dated 23.12.2011 by USA Court and thereafter, custody of the child Tanvir Singh is also given to husband i.e. Gursharan Singh Sekhon, vide order dated 28.12.2012.

Learned counsel for the petitioners has referred to an order of Superior Court of the State of California, wherein daughter of the complainant Sandeep Kaur had made a declaration that in July, 2006, upon

arriving in the United States, she moved into her in-laws' home with her husband and her husband's daughter from a former marriage. It is argued on behalf of the petitioners that daughter of the complainant came to know about first marriage of Gursharan Singh Sekhon in July, 2006 itself, when she had made a self-declaration. It is further submitted that in this declaration, the complainant's daughter has further made a request for custody, visitation, support and attorney's fees and to grant primary physical custody of her son Tanvir Singh and thus, it was well within the knowledge of the complainant and her daughter that Gursharan Singh Sekhon had a daughter from the previous marriage.

Learned counsel for the petitioners has next argued that the complaint has been filed in India after about 03 years from the date of divorce granted to daughter of the complainant and there are no specific allegations against the petitioners. It is further submitted that the only allegation pertaining to the petitioners is that they have contacted the complainant on reading the matrimonial advertisement in the newspaper that a foreign boy is required and then, they informed her about the demand of the boy and as per the FIR, gold and cash was handed over or entrusted to Gursharan Singh Sekhon and there is nothing in the FIR that anything was entrusted to the petitioners.

It is further argued on behalf of the petitioners that during the investigation, the police has recorded the statement of daughter of the complainant, by way of email, which is taken on record as Mark 'X', in which she has nowhere stated that the petitioners, being Massar and Massi of

Gursharan Singh Sekhon, had any knowledge that Gursharan Singh Sekhon was previously married in USA. In this affidavit, Sandeep Kaur has not stated that the petitioners have committed any fraud with the complainant or Sandeep Kaur and she has given all the details against her husband Gursharan Singh Sekhon, after she had travelled to USA in the year 2006. In this affidavit, the only allegation against the petitioners is that they have threatened her.

Learned counsel for the petitioners has further argued that even in the report submitted under Section 173 Cr.P.C., no evidence is collected to connect the petitioners about knowledge of the previous marriage of Gursharan Singh Sekhon, who is residing in USA since 1995 and the allegation of bigamy under Section 495 IPC is not at all made out against the petitioners, as this offence was never committed in India and as per provisions of Section 188 Cr.P.C., no Court in India can take cognizance of an offence, which is committed outside the jurisdiction of India, without previous sanction of the Central Government. Learned counsel has lastly argued that even otherwise, the allegation of bigamy under Section 495 IPC is only against Gursharan Singh Sekhon, husband of Sandeep Kaur.

In reply, learned State counsel, on the basis of affidavit of DSP, NRI Wing, Patiala, has submitted that the police investigation is based on the information given by the complainant and the statement of her daughter, sent through email that Gursharan Singh Sekhon, during subsistence of earlier marriage with a Mexican girl, has solemnized second marriage with her and thereafter, he had forcibly obtained divorce from her in December, 2011. It is

further stated that the matrimonial status of Gursharan Singh Sekhon was concealed from the complainant, however, the affidavit is silent whether the petitioners had any knowledge about the previous marriage of Gursharan Singh Sekhon.

No argument was raised on behalf of the complainant, as neither any reply was filed despite availing number of opportunities for the last three years nor any document was placed on record, to controvert the arguments raised by learned counsel for the petitioners.

After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons: -

- (a) A bare perusal of the FIR nowhere reflects that the petitioners had any knowledge about the previous marriage of Gursharan Singh Sekhon and it is stated in FIR that daughter of the complainant, when went to USA in 2006, she came to know that Gursharan Singh Sekhon has a daughter from the previous marriage and therefore, no prima facie offence under Section 420 IPC is made out against the petitioners.
- (b) Even from the bare perusal of the FIR, offence under Section 495 IPC is not made out against the petitioners, as the same, if committed in U.S.A., then Gursharan Singh Sekhon alone can be held guilty for the same. Moreover, the offence, if any committed in USA, in view of bar under Section 188 Cr.P.C., the trial Court cannot take cognizance without previous sanction of the Central Government.

- (c) The allegations in the FIR are that the complainant had given a matrimonial advertisement in the newspaper and the petitioners responded to the same, nowhere proves any of their guilt, as the advertisement was never handed over to the Investigating Officer, to show that the complainant has asked for an unmarried groom who is settled abroad.
- (d) Even otherwise, in the self-declaration of daughter of the complainant, in the proceedings before the Superior Court of the State of California, it is stated that in July, 2006, when she travelled to USA with her son Tanvir Sekhon, she had moved to her in-laws' home with her husband and husband's daughter from a former marriage i.e. to say that the complainant's daughter had every knowledge that her husband Gursharan Singh Sekhon had a daughter from previous marriage and the FIR was registered after a long delay of 09 years and even after 03 years after obtaining the divorce from Gursharan Singh Sekhon and there is no explanation of delay. It appears that the FIR has been registered against the petitioners with a malafide motive, just to settle the dispute with co-accused Gursharan Singh Sekhon, with whom, daughter of the complainant had a matrimonial dispute.
- (e) Even from statement of Sandeep Kaur sent through email Mark 'X', no specific role is attributed to the petitioners except that they were mediator. There is no allegation that petitioners had

any knowledge of previous marriage of Gursharan Singh Sekhon. Even it is not stated that the petitioners played any fraud with her.

(f) It is not case of the complainant that the petitioners have ever travelled to USA and had any knowledge about the first marriage of Gursharan Singh Sekhon.

(g) In view of judgment of the Hon'ble Supreme Court in **State of Haryana and others Vs. Ch. Bhajan Lal and others, 1991 (1) RCR (Crl.) 383**, I find that from the bare perusal of the FIR, no offence against the petitioners is made out and the FIR appears to be registered against them on account of the malafide motive of the complainant, as her daughter Sandeep Kaur had a matrimonial dispute with Gursharan Singh Sekhon and the petitioners, being his uncle and aunt i.e. Massar and Massi, have been falsely roped in the FIR.

For the reasons recorded above, this petition is allowed and FIR No.1 dated 04.03.2014 under Sections 420, 120-B IPC, registered at Police Station NRI Sangrur, District Sangrur and all the subsequent proceedings arising therefrom, are ordered to be quashed qua the petitioners.

[ARVIND SINGH SANGWAN]
JUDGE

27.02.2019
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No