

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

CRM-M No.2636 of 2016

Date of decision: 30th October, 2019

Dr. Satvinder Singh Choudhary & another

... Petitioners

Versus

State of Haryana & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Nirav Sharma, Advocate for the petitioners.

Mr. Ripudaman, Asstt. Advocate General, Haryana
for respondent No.1/State.

Mr. Parminder Singh, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

Petitioner Dr.Satvinder Singh Choudhary and his father Er.Bichha Ram Choudhary have come up before this Court in this petition under Section 482 Cr.P.C. making prayer seeking quashment of order dated 28.10.2015 (Annexure P6) of the Court of learned Chief Judicial Magistrate, Karnal whereby the Court has dismissed their application dated 25.08.2015 seeking their discharge in case bearing FIR No.1013 dated 07.12.2013 under Sections 323, 498-A, 494, 506, 406 IPC pertaining to Police Station Civil Lines Karnal and further seeking quashment of order dated 17.12.2015 (Annexure P8) whereby revision against the said order stood declined and dismissed by the Court of learned Additional Sessions Judge, Karnal.

Upon hearing Mr. Kanwaljit Singh, Senior Advocate assisted by Mr. Nirav Sharma, Advocate for the petitioners; Mr. Ripudaman, Assistant Advocate General, Haryana representing respondent No.1/State; Mr.Parminder Singh, Advocate on behalf of respondent No.2 and on perusal of the records.

It is the case of both the sides that Dr. Satvinder Singh Choudhary son of Er. Bichha Ram Choudhary entered into wedlock with private respondent No.2 Ritu Jaglan, the complainant of the case, on 28.03.2004. The couple was not bestowed with any child and during the course of their matrimony, a dispute arose whereby the wife filed present FIR against the accused on the allegations of physical assault, cruelty, criminal intimidation and criminal breach of trust as well as on the part of the husband for having performed second marriage with one Reshu alias Renu.

At the trial, the accused moved an application for their discharge on 25.08.2015 which was dismissed by the Court of learned Chief Judicial Magistrate, Karnal through orders (Annexure P6). The revision petition against the said order was also declined through order (Annexure P8). That is how the present petition with the aid of Section 482 Cr.P.C. has come about by these accused.

Appreciating the submissions of the two sides, the learned counsel for the petitioners has sought to submit that it is after more than nine years of the wedlock the criminal case has been registered and is a counterblast to the petition under Section 13 of the Hindu Marriage Act,

1955 by the husband who had sought divorce from the present complainant wife and which was filed on 14.08.2006, arguing that after such a belated stage no offence whatsoever was made out and that it was a pure act of vengeance by the wife and sought setting aside of the impugned findings.

Mr. Parminder Singh, Advocate representing the complainant wife respondent No.2 along with the learned State counsel Mr.Ripudaman, Asstt. Advocate General, Haryana have laid scathing attack on the arguments of learned counsel for the petitioners, submitting that a bare perusal of the allegations makes it a case against the petitioners and which has been repeatedly held so at the time of framing of charge by the trial Court and so in the revision by the Court below, and therefore, no ground for exercise of powers under Section 482 Cr.P.C. is made out.

Delving deep into the submissions of the two sides and the records, it is well settled proposition of law as has been laid down in historic judgments passed in **AIR 77 SC 2018** titled '**State of Bihar vs. Ramesh Singh**' and **1990 Cri. Law Journal 1869 SC** titled '**Jatindra Bhim Raj Bijja and others**' and so in **AIR 1986 SC 2045** titled '**R.S. Nayak vs. A.R. Antuley**', where the test of prima facie case was laid by their Lordships of the Hon'ble Apex Court. Learned trial Court below had applied this preposition of prima facie case, holding that on the basis of the documents on the record, a prima facie case is made out to frame charges against the accused and further that offence under Section 498A

IPC is a continuing offence, is in itself a response to the submissions of learned counsel for the petitioners Mr.Kanwaljit Singh, Senior Advocate.

Hon'ble the Supreme Court in '**Rupali Devi vs. State of Uttar Pradesh & others**' 2019(2) RCR(Criminal) 795, has observed as follows:

*"9. At this stage it may also be useful to take note of what can be understood to a continuing offence. The issue is no longer res integra having been answered by this court in **State of Bihar v. Deokaran Nenshi (1972) 2 SCC 890**. Para 5 may be usefully noticed in this regard.*

'5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or 6 complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all'."

Furthermore, the offence under Section 494 Cr.P.C. prescribes imprisonment for seven years and fine, and therefore, the arguments that have been sought to be placed before this Court on the premise that the allegations are hopelessly belated, does not cut much ice before this Court as the bar of taking cognizance as laid down in Section 468 Cr.P.C. cannot be applied and more so, in case of a continuing offence as provided under Section 472 Cr.P.C. it begins to run at every moment of time during which the offence continues. The plea that it was a counterblast to the divorce petition instituted by the husband earlier in point of time to the present case got registered by the wife, is of no avail to the petitioner side, as admittedly the same stood dismissed on 03.03.2009. Even otherwise, in view of the submissions of learned State counsel, the petitioners have not sought quashment of the FIR, but have only challenged the framing of charges and therefore, not much scope for the petitioners to lay challenge to every aspect of the evidence collected during the investigations. Thus, in the light of what has been detailed and discussed above, this petition is nothing but a desperate and frantic effort by the accused petitioners to put to hold their trial in a criminal case by obviating the process of law. The petition is hopelessly without merit and stands dismissed accordingly.

(FATEH DEEP SINGH)
JUDGE

October 30, 2019

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No