

THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35985-2015(O&M)

Date of Order: 14.11.2019

Parvinder Kaur @ Parwinder Kaur

...Petitioner

Versus

State of Punjab and another

..Respondents

Criminal Revision No.181 of 2016(O&M)

Narinderjit Singh

...Petitioner

Versus

Balwinder Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nitin Kaushal, Advocate,
for the petitioner (in CRM-M-35985-2015)
for respondent nos. 1 to 5 (in CRR-181-2016)

Mr. B.D.Sharma, Advocate,
for the petitioner (in CRR No.181-2016)
for respondent no.2 (in CRM-M-35985-2015)

Mr. Hittan Nehra, Addl.A.G.,Punjab.

ANIL KSHETARPAL, J.

By this judgment, CRM-M-35985-2015 and CRR-181-2016
shall stand decided.

Petitioner and respondent no.2 were husband and wife and
their marriage stands dissolved by a decree of the Court in a petition under
Section 11 of Hindu Marriage Act, dated 08.12.2005. In CRR No.181 of
2016, Narinderjit Singh, who is respondent no.2 in CRM-M-35985-2015 is
the petitioner and the respondents are parents and other relatives of wife-

Parvinder Kaur @ Parwinder Kaur.

At the outset, it must be noticed that after the dissolution of the marriage by a decree of the court between Parwinder Kaur and Narinderjeet Singh, both have now re-married and settled in their respective lives.

A criminal complaint was filed by Narinderjit Singh claiming that he got married with Parwinder Kaur on 16.07.2000 and the couple was blessed with a female child Prabhjot Kaur on 06.06.2001. Allegations are that Parwinder Kaur was previously married with Simarjit Singh and that fact was not disclosed to him before entering into marriage alliance. It is claimed in the complaint that Narinderjit Singh came to know of the fact when he received summons along with a copy of the petition under Section 11 of the Hindu Marriage Act from the Court. Thus, it is claimed that he has been cheated.

It may be noted here that Parwinder Kaur was earlier married to Simarjit Singh. It is claimed by Parwinder Kaur that marriage between her and Simarjit Singh was dissolved by mutual consent through efforts of the community on 05.02.1998. After getting divorce, Simarjit Singh got married with Kamaljeet Kaur younger sister of Parwinder Kaur. Thereafter, parents of Parwinder Kaur invited matrimonial alliance for their divorcee daughter by issuing a public notice published in the 'Punjab Kesri' newspaper on 14.05.2000, Copy annexure P-1. In the aforesaid advertisement it was specifically mentioned that Parwinder Kaur is a divorcee. Narinderjit Singh and Parwinder Kaur got married on 16.07.2000 and started living as husband and wife. They were blessed with a female child on 06.06.2001. It is the case of the wife that she was thrown out of the house in March 2003. Thereafter she made efforts to go back to matrimonial home but remained unsuccessful. She filed a petition under

Section 11 of the Hindu Marriage Act, 1955 for declaring the marriage nullity as also prayed for dissolving marriage on the ground of cruelty. The aforesaid petition was decreed ex-parte on 08.12.2005. Application for setting aside ex-parte decree filed by Narinderjit Singh was dismissed on 18.09.2006.

Present complaint as noticed above was filed on 14.01.2006. Learned Judicial Magistrate Ist Class after appreciating the preliminary evidence and the averments made in the petition dismissed the complaint while refusing to summon the accused. Husband-Narinderjit Singh filed a revision petition before the Court of Sessions which was accepted and the matter was remitted back to the Judicial Magistrate to pass fresh order after appreciating the evidence brought on the record.

Thereafter, learned Judicial Magistrate summoned all the accused vide order dated 18.08.2010. Now, this time a revision petition was filed by petitioner Palwinder Kaur and her parents. The aforesaid revision petition was accepted by the learned Sessions Judge vide order dated 19.04.2011. Husband challenged the order passed by Sessions Judge by filing a petition under Section 482 of the Code of Criminal Procedure, which was partly allowed and it was found as under:-

"Arguments of learned counsel for the petitioner is accepted as the revisional court has not examined the ingredients of the offence under Section 420 IPC against Parminder Kaur-respondent no.4. Even though the offence under Section 494 IPC was not made out, yet the Court at Jalandhar was required to examine, if the offence of cheating under Section 420 IPC was made out against respondent no.4 or not."

From the reading of the order, it is apparent that this court also found that offence under Section 494 IPC is not made out, however since the learned Sessions Court had not examined the ingredients of Section 420

IPC against Parwinder Kaur, therefore, the Sessions Court is requested to re-examine the matter.

After the matter was remitted, the learned Sessions Judge, vide order dated 24.09.2015, maintained the order of summoning qua Parwinder Kaur under Section 420 IPC. It is apparent from the order passed by the Sessions Court that the learned Sessions Judge, refused to examine the documents produced by the petitioner wife on the ground that in the revision petition, the documents or evidence produced by the accused cannot be examined/taken into consideration.

This court has heard learned counsel for the parties at length and with their able assistance gone through the paper book.

On the one hand learned counsel for the petitioner wife-Parwinder Kaur has submitted that there was no misrepresentation as in the public notice dated 14.05.2000 inviting matrimonial alliance, her parents had in fact disclosed that Parwinder Kaur is a divorcee. He, hence, submitted that the proceedings cannot be permitted to continue. On the other hand learned counsel for the husband-Narinderjit Singh has submitted that he was never disclosed that Parwinder Kaur is married. He, hence, submitted that this court should not interfere in exercise of powers under Section 482 Cr.P.C.. Learned counsel for the husband has also submitted that the Court of Sessions has erred in dismissing his revision petition qua remaining accused. He further submitted that once the court of Sessions has *prima facie* found that offence under section 420 IPC is made out against the wife, for the similar reasons offence against the parents of Parwinder Kaur is also made out.

On consideration of the entire material on record, this court is

of the considered view that the proceedings cannot be permitted to continue further. The reasons for arriving at such conclusion are as under:-

- (1) *It is highly improbable and rather there is very very remote possibility that Narinderjit Singh did not know of status of Parwinder kaur as divorcee particularly when the factum of public notice given on 14.05.2000 inviting matrimonial alliance declaring Parwinder Kaur, specifically notifying that she is a divorcee, is not disputed. Petitioner has asserted this fact in para 3 of the petition but in reply to the present petition, apart from stating that he was never informed, there is no specific denial. Once in the newspaper it has been declared and that also just two months before the date when Narinderjit Singh and Parwinder Kaur got married, therefore, it is highly improbable to conclude that Narinderjit Singh did not had knowledge of previous marriage and divorce of Parwinder Kaur.*
- (2) *Parties have re-married after the decree passed by the court of competent jurisdiction dissolving marriage with effect from 08.12.2005. 14 years have elapsed, since then. Continuation of the proceedings at this stage would not be in the interest of any one.*
- (3) *Both the parties have already progressed in the life and at this stage continuation of proceedings would not be in the interest of justice.*

In the considered view of this court, as laid down by the

Hon'ble Supreme Court in the case of *State of Haryana and others vs. Bhajan Lal and others, 1992 (Supplement)1 SCC 335*, the High Court is entitled to exercise its powers in order to do substantive justice between the parties. Hon'ble Supreme Court has laid some broader guidelines as illustrations for exercise of powers under 482 Cr.P.C. These guidelines are contained in para 102, which are extracted as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;*
- (2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;*

- (3) *where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*
- (4) *where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;*
- (5) *where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;*
- (6) *where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;*
- (7) *where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

In the considered view of this court, the present case falls in clauses 5 and 7 as the present proceedings which have been initiated by a complaint filed in January 2006 is with an ulterior motive for racking vengeance on the accused and with a view to spite the accused due to private and personal grudge.

Hence, the petition filed by the wife deserves to be allowed.

As regards the Criminal Revision filed by the husband against the orders passed by the Court of Sessions, for the reasons which have been stated above, this court does not find any ground to interfere with the court of session.

Hence, the same is dismissed.

14th November, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No