

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9801-2018 (O&M)
Date of Decision: 01.05.2019

Balwinder Kaur Lamba

.. Petitioner

Vs.

State of Haryana and another

..Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms. Kiran Bala Jain, Advocate for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

Mr. Rajesh Kumar Garg, Advocate
for respondent No.2.

...

Inderjit Singh, J.

Petitioner Balwinder Kaur Lamba has filed this petition against State of Haryana and respondent-Vivek Kumra, for quashing of FIR No.0078 dated 20.02.2018, registered at Police Station Ambala Cantt, under Sections 406 and 420 of the Indian Penal Code along with all subsequent proceedings therein.

Notice of motion was issued.

Learned State counsel and learned counsel for respondent No.2 have appeared and contested this petition.

I have heard learned counsel for the parties and learned State counsel and have gone through the record.

The FIR in the present case was got registered by complainant Vivek Kumra. The brief facts as mentioned in the FIR read as under:

“I, Vivek Kumra son of late Shri Bhisham Dev Kumra, resident of H. No.80, Naseeb Bagh, near Shyam Nagar Gurudwara, Amabala Cantt. My

marriage was preformed with Balwinder Kaur daughter of Hoshiar Singh Lamba, resident of H. No.66-B, Matidass Nagar, Ambala Cantt. Presently resident of H. No. Q-4, Punjabi University, Patiala on 14.09.2007. We have two sons Shubham aged about 9 years and Parnav aged 7 years out of this wedlock. After marriage, our married life did not remain smooth, so Balwinder Kaur started living separate from me from 12.03.2012. During this period, I filed a case under Section 13 of the Hindu Marriage Act in the Family Court at Ambala. My wife Smt. Balwinder Kaur moved an application under Section 34 of the Hindu Marriage Act and under Section 125 Cr.P.C. in the Court at Ambala. During this period, my wife Balwinder Kaur obtained bank statement from my bank account No.10333580363 from State Bank of India, Ambala Cantt. pertaining to period 29.12.2014 to 11.12.2015 fraudulently in connivance with bank employee Paramjit Singh Kohli without my knowledge. She produced the same in the above noted cases. I moved an application for taking legal action against my wife Smt. Balwinder Kaur and the concerned official of State Bank of India on 25.03.2016 to SP, Ambala for taking legal action. Thereafter, a written compromise took place between me and my wife Balwinder Kaur on 05.10.2016, according to which both the parties were to withdraw the cases against each other and to file a petition under Section 13-B of the Hindu Marriage Act for divorce. After the written compromise, my wife refused to act upon the written compromise. On the basis of my complaint dated 25.03.2016 given to the S.P., a case vide FIR

No.65 dated 25.02.2017 under Section 406 IPC and 72 I.T. Act, P.S. Ambala Cantt. was registered against my wife Balwinder Kaur and the official of State Bank of India, Branch, Ambala Cantt. Thereafter, my wife agreed to act upon the written compromise dated 05.10.2016. Myself and my wife on the basis of the compromise filed a petition under Section 13-B Hindu Marriage Act in Family Court, Ambala. The joint statement of mine and that of my wife was recorded on 28.03.2017 and the learned Court fixed 06.10.2017 the next date in the case. On the basis of my written compromise, I moved an application for the cancellation of the case FIR No.65 dated 25.02.2017 under Sections 406 IPC and 72 IT Act. The learned Court on the basis of my statement cancelled the case vide order dated 21.08.2017. My wife Smt. Balwinder Kaur again backed out from the written compromise and gave the statement in the Court for not taking divorce. The learned Court on that basis dismissed the petition. In this manner, my wife Balwinder Kaur has obtained the bank statement without my consent has committed offence, fraudulently she has taken my statement and has produced in the Court. She has got my case cancelled and has refused to take divorce while withdrawing the consent. My wife Balwinder Kaur has committed an offence of fraud in connivance with the bank officials, so the legal action be taken against Balwinder Kaur and official concern. Thanking you Vivek Kumra son of Shri Bhisham Dev Kumra, r/o H. No.80 Naseeb Bagh, near Shyam Nagar Gurudwara, Ambala Cantt. Mobile No.9466156675.”

Challan has not been presented so far in this case. It is settled law that the FIR can be quashed, if from the perusal of the FIR, no cognizable offence is found to be committed. The perusal of the FIR shows that present petitioner Balwinder Kaur Lamba was married with complainant/respondent No.2 Vivek Kumra and two children, namely, Shubham and Parnav were born from this wedlock. It is clear from the FIR that there is a matrimonial dispute and accused/petitioner was residing separately from complainant/respondent No.2. It is also clear that a petition under Section 13 of the Hindu Marriage Act was filed by respondent No.2 Vivek Kumra, whereas petitioner Balwinder Kaur Lamba moved an application under Section 24 of the Hindu Marriage Act and also filed a petition under Section 125 Cr.P.C. for maintenance purpose.

The only allegation against the present petitioner is that she obtained bank statement of complainant's bank account from the State Bank of India, Ambala Cantt. pertaining to period 29.12.2014 to 11.12.2015 fraudulently in connivance with the bank employee without his knowledge and which is produced in those proceedings. As per respondent No.2/complainant, he filed a complaint before the Superintendent of Police for taking action against the petitioner, but a compromise was effected, therefore, that application was not pressed.

In view of the compromise, a joint petition under Section 13-B of the Hindu Marriage Act was filed for divorce, but the accused/petitioner refused to act upon the compromise. Then again this FIR was registered for obtaining the bank statement of complainant/respondent No.2 from the bank without his knowledge. Even if the facts of the FIR are taken as it is, no cognizable offence is being committed by the accused/petitioner. If the

accused/petitioner resiled from the compromise, it does not amount to commission of any offence. Similarly, even if it is taken that the accused/petitioner has applied for the copies of the bank statement of the complainant from the bank and the bank supplies the copies, even then, in no way, it amounts to commission of offence. At the most, a departmental action can be taken against the bank employee. It is for the bank to give the bank account statement or not. Otherwise also, there is nothing that the Court has found any illegality in producing this bank account statement of the complainant. Therefore, from the above, I find that no cognizable offence is being found committed from the perusal of the FIR itself.

Therefore, from the contents of the FIR, it looks that this FIR has been got registered just to harass the present petitioner. There being a matrimonial dispute between the parties and the registration of the FIR is nothing but abuse of process of law and amounts to miscarriage of justice.

Therefore, this petition is allowed and all subsequent proceedings arising out of the said FIR are quashed.

01.05.2019
Jasmine Kaur

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No