

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8085-2022

Reserved on:- 25.04.2023

Pronounced on:- 08.05.2023

Kewal Singh Brar & Anr.

....Petitioners

Vs.

State of Punjab

...Respondent

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Baltej Singh Sidhu, Sr. Advocate assisted by
Mr. G.K. Sidhu, Advocate and
Ms. Divij Datt, Advocate
for the petitioners.

Mr. Kunwarbir Singh, Assistant A.G. Punjab.

AMARJOT BHATTI, J.

1. Kewal Singh Brar and Jasvir Kaur have filed petition under Section 482 Cr.P.C. for quashing of order dated 22.11.2021 (Annexure P-5) passed by learned Additional Sessions Judge, Bathinda and order dated 08.10.2021 (Annexure P-4) passed by learned Judicial Magistrate First Class, Bathinda whereby the charges under Section 498-A, 406, 494, 120-B and 417 of I.P.C. has been ordered to be framed against the petitioners in FIR No. 55 dated 11.09.2019, under Section 498-A, 494, 406 and 506 of IPC, registered at Police Station Women, District Bathinda.

2. As per the facts of the case, a written complaint was filed by Kiranjit Kaur alleging that she got married with Kewal Singh Advocate about 19-20 years ago. Her parents had spent money at the time of her marriage as per their capacity. Out of this wedlock they have a daughter

namely Harleen Kaur, aged about eighteen and a half years. The complainant was physically and mentally tortured by her husband. She had a talk with her father-in-law Amarjit Singh that her husband Kewal Singh wanted to take divorce from her and was insisting to vacate the house. He wanted that she and her daughter should go and stay somewhere else as he performed marriage with Jasvir Kaur who is junior Advocate in his office. The husband of the complainant clearly told her to give him divorce as he wanted to spend his life with second wife namely Jasvir Kaur as he wanted to have a son. She also approached her father-in-law at Goniana Kalan, District Bathinda where her sister-in-law was also present. On contrary, they threatened her and also took her signatures on blank papers by locking her in a room. Thereafter, she came back to Bathinda and narrated the story to her parents. They also approached the parents of Jasvir Kaur at village Kaliaana Malakan. She further stated that all her dowry articles are lying in the matrimonial home. Her husband performed second marriage with Jasvir Kaur without taking divorce from her. With these allegations, the matter was investigated and the present FIR was registered. As per record, challan in this case was presented against Kewal Singh Brar and Jasvir Kaur – petitioners/accused who are facing trial in the aforesaid FIR.

3. The learned counsel for the petitioners argued that both the petitioners are Advocate by profession, practicing at District Court Complex, Bathinda. In the aforesaid FIR, the complainant has levelled baseless allegations. After the presentation of challan, the Judicial Magistrate First Class, Bathinda vide order dated 01.04.2021 framed charge-sheet under Section 498-A, 406, 506 and 494 of I.P.C. which is Annexure P-2. The complainant had filed revision against this order which

was disposed of by learned Additional Sessions Judge, Bathinda vide order dated 16.07.2021, which is Annexure P-3 and the case was remanded back to the learned Judicial Magistrate First Class, Bathinda to consider the documents for the purpose of framing charge-sheet under Section 417 of I.P.C. In view of this order, the learned Judicial Magistrate First Class, Bathinda vide order dated 08.10.2021 (Annexure P-4) framed charge-sheet under Section 498-A 406, 494, 120-B, 420 read with Section 120-B and 506 of I.P.C. The present petitioners approached the learned Sessions Judge, Bathinda by filing criminal revision and the aforesaid order was modified vide order dated 22.11.2021 (Annexure P-5) with the direction to learned Judicial Magistrate First Class, Bathinda to modify the charge-sheet from Section 420 of I.P.C. to Section 417 of I.P.C.

It is argued that from the facts of the case and the evidence available on record, infact no offence is made out. It is argued that the marriage of petitioner No. 1 took place with the complainant in the year 2000. A daughter was born out of this wedlock, who is now 20 years of age. The age of petitioner was about 26-27 years, while the age of complainant was about 37-38 years. As she was an aged lady, she could not give birth to second child. She herself wanted a son and spent lacs of rupees on her treatment for giving birth to a second child but to no avail. It was Kiranjit Kaur – complainant who used to tell him to contract second marriage so that they could have a son. She also suggested to arrange surrogate mother or to have extra marital relationship. The petitioner No. 1 had told her several times that he was having a good reputation in the society, therefore he could not do so. The complainant herself suggested to perform second marriage as she wanted to have a son. On the advise of

complainant, the petitioner No. 1 talked with petitioner No. 2 Jasvir Kaur who agreed to the proposal. They started live-in relationship and a male child was born on 16.05.2020 as per the wishes of complainant. Therefore, all the allegations levelled against them are false and baseless. The learned counsel for the petitioners further pointed out that no offence is made out under Section 498-A, 406, 494, 120-B, 417, 506 of I.P.C. During these long years, there was no complaint that the complainant was ever maltreated on account of demand of dowry. It is the complainant who has grabbed the property of petitioner and is residing in that house. Therefore, there is no question of misappropriation of dowry articles. Even no offence under Section 494 of I.P.C. is made out as petitioner No. 1 never solemnized marriage with petitioner No. 2. It is argued that the facts of the case referred above does not fall within the definition of cheating under Section 415 of I.P.C. Therefore, the charge-sheet framed under Section 417 of I.P.C. is also without any basis. There is no criminal conspiracy or criminal intimidation on the part of present petitioners. Therefore, the present petition may be accepted and the impugned order dated 22.11.2021 (Annexure P-5) passed by learned Additional Sessions Judge, Bathinda and order dated 08.10.2021 (Annexure P-4) passed by learned Judicial Magistrate First Class, Bathinda regarding framing of charge-sheet under Section 498-A, 406, 494, 120-B and 417 of I.P.C. are liable to be quashed.

4. On the other hand, the learned counsel representing the State filed a detailed status report taking the stand that there are specific serious allegations against both the petitioners. The petitioner No. 1 has performed marriage with petitioner No. 2 during the subsistence of first marriage with the complainant. She was maltreated in the matrimonial home. All her

dowry articles were also misappropriated. The petitioners hatched criminal conspiracy with each other for the commission of offence. Therefore, both of them have cheated the complainant. It is pointed out that for the purpose of framing charge-sheet, only prima facie case is to be seen which is there on record. Therefore, the charge-sheet was rightly framed against the petitioners and the petition filed by the petitioners is liable to be dismissed.

5. I have considered the arguments and have gone through the record carefully. Admittedly, the present FIR has been registered on the complaint of Kiranjit Kaur. The copy of FIR No. 55 dated 11.09.2019 under Section 498-A, 406, 506, 420, 494 of I.P.C. is Annexure P-1. Admittedly, after the completion of investigation, challan was presented against Kewal Singh and Jasvir Kaur, whereas Prakash Singh was kept in column No. 2. It is matter of record that after the framing of charge-sheet, revision has been preferred twice. Ultimately, vide order dated 22.11.2021 (Annexure P-5), the order dated 08.10.2021 passed by learned Judicial Magistrate First Class, Bathinda (Annexure P-4) was modified and instead of framing charge-sheet under Section 420 of I.P.C, the learned Magistrate was directed to frame charge-sheet under Section 417 of I.P.C.

I have perused the photostat copy of record received from the trial Court. It is matter of record that on receiving the complaint filed by Kiranjit Kaur, the matter was investigated and there is detailed report of DSP, Special Branch, Bathinda dated 05.09.2019. During the investigation of the case, the Investigating Officer has recorded the statements of witnesses and after completion of investigation the challan was presented in the Court. The complainant Kiranjit Kaur categorically alleged that her marriage was performed 19-20 years ago. Out of this wedlock, she is

having a daughter who is also eighteen and a half years old. She was treated with physical and mental cruelty. In order to have a son, her husband performed second marriage with his junior Advocate Jasvir Kaur – petitioner No. 2. She approached her in-laws family as well as family of Jasvir Kaur but nobody supported her and ultimately she filed this complaint. In the present petition, both the petitioners have taken the defence that it was Kiranjit Kaur who wanted to have a son and with her consent Kewal Singh - petitioner No. 1 started having relationship with Jasvir Kaur -petitioner No. 2. It is further alleged that Jasvir Kaur has given birth to a son on 16.05.2020. However, Kewal Singh – petitioner No. 1 has denied his marriage with Jasvir Kaur. So far as the defence raised by the petitioners is concerned, it is matter of evidence and it can be appreciated after recording the evidence of prosecution as well as evidence in defence. For the purpose of framing of charge-sheet only prima facie case is to be seen. The complainant has levelled the allegations of maltreatment in the matrimonial home, misappropriation of her dowry articles as well as marriage of her husband Kewal Singh with Jasvir Kaur without taking divorce from her. She has also levelled the allegations of criminal intimidation on account of threats given to her. Therefore, considering the facts of the case, prima facie case is made out against the present petitioners under Section 498-A, 406, 494, 120-B, 506 of I.P.C.

So far as the charge-sheet framed under Section 417 of I.P.C. is concerned, in order to appreciate the framing of charge-sheet under this provision, we will have to go through the contents of Section 415 of I.P.C. where cheating has been defined, which reads as under :-

“415. Cheating. - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to

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*deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.
Explanation – A dishonest concealment of facts is a deception within the meaning of this section...”*

The punishment is provided under Section 417 of I.P.C. under which the charge-sheet has been framed. The allegations levelled by the complainant does not fit in the definition of cheating as referred above. Infact the allegations levelled by the complainant that petitioner No. 1 performed marriage with petitioner No. 2 without taking divorce from her are covered under the provisions of Section 494 of I.P.C, for which the charge-sheet is already framed.

Therefore, considering these facts, the petition filed by the petitioners – Kewal Singh and Jasvir Kaur is partly accepted by holding that no offence under Section 417 of I.P.C. is made out and qua this the impugned order dated 22.11.2021 (Annexure P-5) passed by learned Additional Sessions Judge, Bathinda is set aside, whereas the framing of charge-sheet under the rest of the provisions of I.P.C. is accordingly, upheld.

The petition is accordingly, disposed of.

08.05.2023
lalit

(AMARJOT BHATTI)
JUDGE

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