

CRM-M- 26666 of 2016 -1- 2023 : PHHC : 067262

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 10.05.2023

CRM-M- 26666 of 2016

Manjit Kumar and another

---Petitioners

versus

State of Punjab and another

---Respondents

CRM-M- 32223 of 2016

Kuldeep Kumar @ Laddi

---Petitioner

versus

State of Punjab and another

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Sunny Singla, Advocate
 for the petitioners

Mr. Shiva Khurmi, AAG, Punjab

JAGMOHAN BANSAL, J. (ORAL)

1. By this common order, CRM-M- 26666 of 2016 and CRM-M- 32223 of 2016, arising from one FIR, are hereby disposed of. For the sake of convenience, facts are borrowed from CRM-M- 26666 of 2016.
2. The petitioners through the instant petition are seeking quashing of FIR No. 46 dated 17.03.2008, under Sections 406, 498-A

and 494 IPC, registered at Police Station Noormahal, District Jalandhar and order dated 03.02.2009 whereby petitioners have been declared as proclaimed offender.

3. The brief facts of the case are that marriage of respondent No. 2-complainant was solemnized with petitioner No. 1 on 22.02.2004 according to Hindu rites and ceremonies. The petitioner No. 1 was residing in Dubai at the time of marriage. After three months of marriage, petitioner No. 1 took away complainant to Dubai. The complainant time to time came to India from Dubai. On account of matrimonial discord complainant and petitioner No. 1 decided to part their ways. A compromise between the parties was executed and as per compromise, a sum of Rs. 3.5 lakh as lump sum money was paid to complainant who also executed an affidavit deposing that she has accepted lump sum amount Rs. 3.5 lakh and she will not file any case against her in-laws family. She further deposed that she has no more relation with Manjit Kumar (husband) and he can marry anyone of his choice. The petitioner No. 1 solemnized marriage with petitioner No. 2. The complainant lodged impugned FIR under Sections 406, 498-A and 494 IPC against her husband as well as distant and sundry relatives. Police after completing investigation filed its report under Section 173 Cr.P.C. Challan against three persons (petitioners) namely Manjit Kumar, Kuldeep Kumar @ Laddi and Kavita Bhatia could not be presented because they were declared proclaimed offender. Challan was presented against six accused and they faced trial. The Judicial Magistrate Ist Class, Phillaur vide judgment dated 30.11.2015 came to a conclusion that no offence

punishable under Sections 406, 498-A and 494 IPC is made out against the accused and it is settled principle of criminal jurisprudence that prosecution is required to prove guilt beyond shadow of doubt. The trial court acquitted all the accused. The complainant preferred an appeal before Sessions Court assailing judgment of acquittal passed by Judicial Magistrate Ist Class, Phillaur. The appeal of the complainant came up for consideration before Additional Sessions Judge, Jalandhar who vide judgment dated 3.4.2018 dismissed appeal of the complainant. The complainant on the one hand lodged FIR against the petitioner and his family members and on the other hand filed petition under Section 13 of Hindu Marriage Act seeking dissolution of marriage. The Additional District Judge, Jalandhar vide judgment and decree dated 13.3.2003 ordered to dissolve marriage between complainant and Manjit Kumar (petitioner No. 1).

4. CRM-M- 26666 of 2016 has been filed by Manjit Kumar and Kavita Bhatia. Manjit Kumar was husband of complainant and Kavita Bhatia is alleged to be second wife of Manjit Kumar. CRM-M-32223 of 2016 has been filed by Kuldeep Kumar who is brother of Manjit Kumar i.e. brother-in-law (devar) of Rajni Bhatia-complainant.

5. Learned counsel for the petitioners, at the outset, submits that he does not press the petition qua Manjit Kumar (petitioner No. 1 in CRM-M-26666 of 2016), thus, the petition qua petitioner No. 1 (Manjit Kumar) is dismissed as not pressed.

6. Learned counsel for the petitioners inter alia contends that from the perusal of FIR no offence is made out against the other

petitioners. The allegations against the petitioners and other accused who have already been acquitted are *pari materia*. The trial court has passed detailed and reasoned order while acquitting co-accused and appeal against judgment of acquittal stands dismissed. The respondent No. 2 has got ex parte decree of divorce and she has further solemnized marriage which is cause of her non-appearance before this Court despite repeated opportunities.

7. Despite repeated notices and opportunities, there is no representation on behalf of respondent No. 2 and matter is pending before this Court since 2016. This Court is left with no other option except to adjudicate the present petition with the able assistance of learned State Counsel.

8. The conceded position emerging from record is that marriage of the petitioner No. 1 was solemnized with complainant on 22.2.2004. The complainant from time to time joined company of the petitioner at Dubai. The parties could not continue their matrimonial ties and decided to part their ways. A compromise was arrived at between the parties and as per compromise, complainant received a sum of Rs. 3.5 lakh from petitioner No. 1 towards full and final settlement. Challan came to be presented against six accused who have been acquitted. The role of Kavita Bhatia (petitioner no.2 in CRM-M-26666 of 2016) and petitioner in CRM-M- 32223 of 2016 is *pari materia* with other accused. No offence is made out against petitioner No. 2 under Sections 406 and 498-A because as per FIR there is allegation against petitioner No. 1 that he has solemnized second marriage with petitioner No. 2 though his first marriage was

subsisting.

9. I have heard learned counsel for the petitioners and perused the record.

10. A two judge Bench of Hon'ble Supreme Court in **Kahkashan Kausar v. State of Bihar, (2022) 6 SCC 599** while dealing with issue of embroiling of all and sundry family members of a husband in matrimonial cases, after noticing its previous judgments, has held:

11. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of Section 498-A IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid State intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as Section 498-AIPC as instruments to settle personal scores against the husband and his relatives.

*12. This Court in its judgment in **Rajesh Sharma v. State of U.P. (2018) 10 SCC 472**, has observed : (SCC pp. 478-79, para 14)*

“14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the

hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the Statement of Objects and Reasons of Act 46 of 1983. The expression “cruelty” in Section 498-A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. [Explanation to Section 498-A.] It is a matter of serious concern that large number of cases continue to be filed under Section 498-A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualised. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement.”

*13. Previously, in the landmark judgment of this Court in **Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273, it***

was also observed : (SCC p. 276, para 4)

“4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-AIPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-AIPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In quite a number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested.”

14. Further in Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667, it has also been observed : (SCC pp. 676-77, paras 32-36)

“32. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of

genuine cases of dowry harassment is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant,

accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinised with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an

amicable settlement altogether. The process of suffering is extremely long and painful.”

15. In *Geeta Mehrotra v. State of U.P.* (2012) 10 SCC 741 it was observed : (SCC p. 749, para 21)

*“21. It would be relevant at this stage to take note of an apt observation of this Court recorded in *G.V. Rao v. L.H.V. Prasad* [*G.V. Rao v. L.H.V. Prasad*, (2000) 3 SCC 693 : 2000 SCC (Cri) 733] wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that : (SCC p. 698, para 12)*

‘12. ... There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are

rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.’

The view taken by the Judges in this matter was that the courts would not encourage such disputes.”

16. Recently, in *K. Subba Rao v. State of Telangana*, (2018) 14 SCC 452, it was also observed that : (SCC p. 454, para 6)

“6. ... The courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”

17. The above-mentioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-A IPC and the increased tendency of

implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

10.1 A two judge Bench of this Court while acquitting appellants has adverted with status of co-accused in **Sudo Mandal @ Diwarka Mandal vs. State of Punjab 2011(2) R.C.R.(Criminal) 453** and has held:

“22. While disposing of these two appeals, we are very much concerned about the absconding village rustic accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal, who had successfully evaded the dragnet of the police. The Investigating agency has put up a case implanting eye witnesses as against all the accused. Both the eye witnesses projected by the prosecution had not passed the test of trustworthiness. Their own showing would go to establish without any pale of doubt that they could not have witnessed the occurrence. The other materials produced by the

prosecution also did not advance the case of the prosecution any further. The above facts and circumstances have persuaded us to come to a definite conclusion that the accused in this case were not the perpetrators of crime of murder as alleged by the prosecution. The same set of materials would be produced before the Sessions Court on production of the remaining three accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal. After all the poor innocent labourers had migrated to other places to eke out their livelihood. The appellants herein had in fact suffered imprisonment for such a long time leaving behind their kith and kin, who might have been in dire need of financial support and help from them. Such an unpleasant situation shall not be created for the other three accused against whom also there is no material on record to fasten them with the charge of murder. We seriously pondered over rendering judicial succour to those faceless and voiceless accused who had taken to heels and hidden themselves apprehending the wrath of criminal proceedings for the heinous crime of murder. We are convinced that our judicial arm is not so crippled as to betray the vague hope of the hopeless.

23. We are conscious of the fact situation that those three accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal had absconded and were declared as

proclaimed offenders. They had not faced the trial, but when we find that no case could be made out as against them also with the very same rickety materials, those accused also will have to be relieved of the impending pain of facing the prosecution for murder. Section 482 of the Code of Criminal Procedure reads as follows:-

“Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

24. The above provisions recognize the inherent powers of the Court to do real and substantial justice, preventing the abuse of the process of the Court. The statutory recognition of the inherent jurisdiction of the criminal Court indicates that there is a power for the criminal Courts to make such an order as may be necessary to meet the ends of justice. We are conscious of the fact that the powers under Section 482 of the Code of Criminal Procedure are to be exercised very sparingly and in exceptional cases where abuse of the process of the Court would result in serious miscarriage of justice. The inherent powers of the Court should not be exercised to stifle legitimate prosecution. But at any rate the settled

position is that this Court has the jurisdiction to quash the entire criminal proceedings to prevent the abuse of the process of the Court in order to secure the ends of justice. In our considered view the same inherent powers can be exercised when this Court finds that the innocent accused, who had absconded would simply face the empty formality of trial with the very same unbelievable and untrustworthy evidence, which would ultimately lead to their acquittal. Bringing the absconding accused to face the trial in this case in the above facts and circumstances would amount to abuse of the process of the Court. To secure the ends of justice, we hereby quash the entire proceedings as against the absconding accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal pending before Judicial Magistrate Ist Class, Bathinda/Sessions Judge, Bathinda, as no useful purpose will be served even if they are procured and ordered to face the trial in this case.”

10.3. A single judge bench of Karnataka High Court in **Salman @ Shameer Vs State of Karnataka (W.P. No. 25286 of 2018 (GMRES). D/d. 13.7.2018)** has held:

5. In another decision reported in 2002 (1) KCCR 1 in the case of Muneer Ahmed Qureshi, Muneer @ Gaun Muneer v. State of Karnataka by Kumaraswamy Layout Police, wherein this Court has held that:

"Entire case of the prosecution as against six accused is practically inseparable and individual one and especially when the Judgment of acquittal is passed, when P.W. 1 denies the entire incident or the role of the accused. This reasoning of acquittal would also definitely enure to the petitioner. Even if the petitioner is tried there cannot be any other material other than what is already produced and considered by Trial Court. In such circumstances it will be an exercise in futility to make the petitioner to undergo the ordeal of crime, and then to be acquitted. Holding that the proceeding against the accused person who was absconding and subsequently against whom a split up charge sheet was filed was quashed."

6. In the above said backdrop and the dictum of the Hon'ble Apex Court and this court, the only point that requires for consideration of this court is -

"Whether the materials placed before the court against the accused person who has already acquitted and the material available against the petitioner herein, are one and the same and inseparable if juxtapose compared with each other".

7. If the allegations are indivisible and inseparable in nature, in such an eventuality, the judgment of

acquittal can also be extended to the absconding accused persons or against whom, a separate split up charge sheet has been filed. Therefore, it is incumbent upon the court to examine the materials on record to find out whether the petitioner is entitled for such benefit in a given particular case. Therefore, it is just and necessary to ascertain the factual aspects of this case.”

11. In the case in hand, petitioners are relatives of husband of the complainant. Husband of the complainant has withdrawn his petition, thus, he is supposed to raise all pleas before the trial court. Kavita Bhatia is allegedly second wife of Manjit Kumar. There were allegations of demand of dowry and harassment on the part of husband and his family members. There was no question of demand of dowry and harassment on the part of Kavita Bhatia who allegedly is second wife of husband of the complainant. The trial court has returned a finding that prosecution has failed to prove second marriage of Manjit Kumar. In any case, Kavita Bhatia cannot be prosecuted for second marriage especially in an FIR case. As per Section 198 Cr.P.C. complaint can be lodged for commission of offence punishable under Section 494 IPC whereas in the present case FIR was registered against all the accused who in the trial have been found innocent, thus, in view of findings recorded by trial court qua co-accused, no offence is made out against Kavita Bhatia.

Kuldeep Kumar @ Laddi-petitioner (CRM-32223 of 2016) is brother-in-law(Devar) of the complainant. There are same set of allegations against the petitioner which were levelled against other co-accused. The

prosecution has failed to prove allegations of demand of dowry and harassment against distant and sundry relatives of husband of the complainant. The role attributed to petitioner is *pari materia* with role of co-accused.

12 In view of above noted peculiar facts and circumstances of the case and applying the principles laid down by Hon'ble Supreme Court in **Kahkashan (supra)**, judgment of this court in **Sudo Mandal (supra)** and judgment of Karnataka High in **Salman @ Shameer (supra)**, this court is of the considered opinion that it would in the fitness of things and interest of justice if present petition is allowed and accordingly allowed.

13. FIR No. 46 dated 17.03.2008, under Sections 406, 498-A and 494 IPC, registered at Police Station Noormahal, District Jalandhar and all other consequential proceedings are hereby quashed qua the petitioners (Kavita Bhatia and Kuldeep Kumar @ Laddi).

14. Pending misc. applications, if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

10.05.2023

paramjit

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No