

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-5257-2016 (O&M)
Date of decision: 25.05.2023

Santosh Devi

.....Petitioner

Versus

Sukhbir and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sumit Sangwan, Advocate
for the petitioner.

Mr. Vikram Bishnoi, Advocate
for respondent No.1.

Mr. Rahul Mohan, Sr. DAG, Haryana.
for respondent No.2-State.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking quashing of order dated 29.07.2015 (Annexure P-1) as well as order dated 20.05.2014 (Annexure P-2) vide which her revision petition was dismissed by the Revisional Court, wherein she had been summoned to face trial, in Criminal Complaint No.32 of 2014 under Sections 494, 506, 500 and 120B of the IPC, and all consequential proceedings arising therefrom.

2. Learned counsel appearing for the petitioner *inter alia* submits that the allegations levelled by the complainant against the petitioner of having committed bigamy are totally baseless and frivolous, and in fact the sequence of events leading to the institution of the complaint makes it abundantly clear that respondent No.1 has been intentionally subjecting the petitioner to harassment and agony.

Learned counsel contends that as per allegations levelled the alleged marriage between the petitioner and respondent No.1 was solemnized in the year 1989, when the petitioner was just 04 years of age. It was a matter of record that, thereafter, the petitioner filed a petition for divorce under Section 13 of the Hindu Marriage Act, 1955 (for short, 'the Act') and a petition for maintenance under Section 125 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.'). While filing his written statement in Court in both the aforementioned proceedings, respondent No.1, by way of an affidavit, had denied the factum of any marriage with the petitioner. Still further, respondent No.1 had also filed a separate affidavit dated 28.09.2013 before the Court below, wherein he yet again deposed that neither had he solemnized any marriage with petitioner Santosh nor would he ever claim her as his wife. In support, learned counsel has drawn the attention of this Court to Annexures P-4 and P-5, which are the written statement and the affidavit filed by respondent No.1 before the Courts in the above mentioned proceedings. Learned counsel has further submitted that in view of the statement made by respondent No.1, the petitioner withdrew her petition under Section 125 of the Cr.P.C. Furthermore, in light of the written statement filed by respondent No.1 in the divorce proceedings between the parties, the Family Court at Bhiwani had dissolved their marriage by passing a decree of divorce vide order dated 14.08.2014 and it was a matter of record that it had also attained finality as no challenge was laid to it.

3. Learned counsel for the petitioner, has thus, vehemently asserted that in the light of the judgment passed by the Family Court as

well as the sworn in affidavit of respondent No.1 given before the Court concerned, the complaint in question as well as the summoning order were unsustainable and, thus, liable to be quashed. In support, learned counsel has placed reliance upon ***Bhaurao Shankar Lokhande and another Vs. State of Maharashtra and others : 1965AIR (SC) 1564; Kanwal Ram and others Vs. The Himachal Pradesh Administration : 1966 AIR (SC) 614; Shanti Deb Berma Vs. Smt. Kanchan Prava Devi : 1991(2) RCR (Criminal) 432; Ashok Kumar Chopra Vs. Krishna Kumari 1992(1) RCR (Criminal) 20; Hari Singh Vs. Chander Parkash and others : 2006(4) RCR (Criminal) 686 and Raj Pal Singh and another Vs. Smt. Raj Dulari @ Rajeshwari Singh 1990(2) RCR (Criminal) 104.***

4. Per contra, learned counsel appearing for respondent No.1 while controverting the submissions made by the counsel opposite submits that at the stage of summoning, only a prima facie case has to be seen. Hence, in view of the allegations levelled in the complaint, the impugned order vide which the petitioner had been summoned to face trial in the criminal complaint in question, could not be faulted with. He submits that the sister of the petitioner herself while appearing as CW2 had deposed that the petitioner was married to respondent No.1, and had solemnized second marriage without obtaining any divorce from respondent No.1. Learned counsel has, however, not been able to controvert the contents of written statement (Annexure P-4) and affidavit (Annexure P-5) which were filed by respondent No.1 before the Family Court at Bhiwani during the divorce proceedings between the parties. He has, thus, prayed for dismissal of the instant petition.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. From a perusal of the material on record it stands revealed that in the petition under Section 13 of the Act while filing his written statement dated 14.10.2013 (Annexure P-4), respondent No.1 had prayed for dismissal of the petition by asserting that he had never solemnized any marriage with the petitioner. Still further, even the duly sworn in affidavit of respondent No.1 (Annexure P-5) shows that he had categorically affirmed therein that he had never got married to the petitioner and he had no concern with her. It was, thus, on the basis of his written statement, along with respondent No.1 not opposing the prayer of the petitioner to dissolve their marriage, the Family Court at Bhiwani had passed a decree of divorce. In the facts and circumstances, this Court has no hesitation to observe that respondent No.1 has evidently been taking self-contradictory stands all throughout and cannot be permitted to sail in two boats. When the petition under Section 125 of the Cr.P.C. was filed, he deposed that he had never been married to the petitioner and hence, he would not pay any maintenance, as a result thereof the petitioner had withdrawn the petition under Section 125 of the Cr.P.C. and thereafter strangely respondent No.1 took a U-turn by filing a complaint under Sections 494, 506, 500 and 120B of the IPC. This Court concurs with the submissions made by the counsel for the petitioner that respondent No.1 has been subjecting the petitioner to harassment and rather it is the respondent No.1 who has played a huge fraud upon the Court by taking different stands during different proceedings. Continuation of proceedings in the criminal

complaint in question would indeed be an abuse of the process of law.

7. Accordingly, the instant petition is allowed and the complaint in question and all consequential proceedings arising therefrom including the impugned orders are quashed.

25.05.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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