



119/1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32115-2023 (O&M)
Date of Reserve:12.08.2024
Date of Decision:02.12.2024

Mugdha Sharad Palav @ Mugdha Tejas Sule @ Sharan Walia
...Petitioner

Vs.

Rishu Pal Walia
...Respondent

Coram : Hon’ble Mr. Justice N.S.Shekhawat

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Ranjan Lakhanpal, Advocate with
Mr. Shubhkaran Singh Sandhu, Advocate
for the respondent.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C with a prayer to quash the complaint bearing No.110, dated 02.05.2022 under Sections 406,420,465,466,468,471,494,506 and 120-B of IPC, titled as “Rishu Pal Walia Vs. Mugdha Sharad Palav @ Mugdha Tejas Sule @ Sharan Walia (Annexure P-7) as well as summoning order dated 06.05.2022 (Annexure P-8), passed by the Court of Judicial Magistrate Ist Class, Jalandhar, whereby the petitioner has been ordered to face trial under Sections 406,420,494,506,120-B of IPC and all other subsequent proceedings arising out therefrom.

2. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case by her husband,



respondent/complainant, who is non-resident Indian and got the complaint filed through his Power of Attorney in the Court of Judicial Magistrate Ist Class, Jalandhar (Punjab) by levelling false and baseless allegations. Learned counsel further contends that marriage between the petitioner and the respondent was solemnized on 31.08.2019, according to Hindu Rites and Ceremonies at Marriage Registration Office, Gram Panchayat, Humarmala Taluka Kudal, District Sindhu Durg, Maharashtra. The petitioner was earlier married to Tejas Sule on 15.02.2009 and divorced her husband on 18.04.2012 vide the decree of divorce passed by the County Court, Horsham, England (UK) (Annexure P-1). Consequently, it was the second marriage of the petitioner. Even the factum of first marriage of the petitioner with Tejas Sule was disclosed by her to respondent and after knowing all the facts, the respondent had married the petitioner on 31.08.2019 out of his free own will. A male child Rehan was born out of the said wedlock in the year 2020. The petitioner initially went to England on tourist visa in the year 2019 and stayed there for a period of 3 to 4 months and after the marriage, she went on spouse visa in the year 2021. Even, the name of the petitioner was corrected in her passport and she completed all the formalities regarding immigration at the time of applying spouse visa, which clearly shows that the respondent was aware of the earlier marriage of the petitioner.

3. Learned counsel further contends that on the other hand, it was the respondent, who had cheated the petitioner as he never disclosed the fact of his first marriage with Pooja Walia, which was solemnized in the year 2003 at Ludhiana. Even a female child was born out of the said wedlock. During the subsistence of first marriage of the respondent/complainant with Pooja Walia,



the respondent solemnized one more marriage with Attilane Farkas on 23.10.2013 and at the time of solemnizing the marriage with her, the respondent had shown himself as single. Learned counsel had placed reliance on the copy of the certificate of the entry of marriage issued by the Registration Authority, District Haringey, England in this regard. The respondent had never disclosed these two marriages to the petitioner at any point of time. Learned counsel further contends that on 03.09.2021, the petitioner went to U.K with her son as she wanted to reside happily with her husband i.e. respondent. However, the conduct of respondent was not good and he used to abuse and beat her up under the influence of liquor. On 17.11.2021, the respondent had beaten up the petitioner and her minor son Rehan and the petitioner called the police. Ultimately, the respondent was arrested by the police in England on the charges of domestic violence on 18.11.2021 and he was sent to two days police custody. After two days, he was bailed out and the petitioner had placed reliance on the order dated 19.11.2021 (Annexure P-4) in this regard. On 26.01.2022, the Oxbridge Family Court found that the respondent/complainant was guilty of offence of common assault and damage to the property. Ultimately, vide order dated 22.02.2022, the respondent was sentenced to six months imprisonment along with surcharge amount of 128 pounds and further restrained order was passed against the respondent that he will not directly or indirectly contact the petitioner except via a professional in the matter of divorce proceedings. The petitioner also filed a divorce petition against the respondent in June 2022 and vide order dated 28.01.2023 (Annexure P-6), the Family Court, U.K., granted the divorce in favour of the petitioner and the marriage dated 31.08.2019 was legally ended.



4. Learned counsel further contends that in order to take revenge from the petitioner, the respondent gave his Power of Attorney to his brother Gagan Walia, who is resident of District Jalandhar to file a complaint (Annexure P-7) against the petitioner and her brother in the Court of Judicial Magistrate Ist Class, Jalandhar. In the complaint (Annexure P-7), the respondent has levelled baseless and unfounded allegations against the petitioner and her brother. The petitioner was never informed about the pendency of the proceedings and vide the order dated 06.05.2022, passed by the Court of Judicial Magistrate Ist Class, Jalandhar wrongly summoned the petitioner. Even the petitioner was wrongly declared as a proclaimed offender and a separate petition has been filed for quashing of the P.O order. Learned counsel for the petitioner contends that in fact, the respondent has levelled false allegations against the petitioner as the petitioner had never come to Jalandhar at any point of time in her life time. Consequently, it was prayed that the present complaint and the summoning order may be ordered to be quashed.

5. On the other hand learned State counsel assisted by learned counsel for the complainant vehemently opposed the submissions made by the petitioner on the ground that the petitioner has raised several disputed question of fact and the present petition may be ordered to be dismissed.

6. I have heard the learned counsel for the parties and with their able assistance, I have gone through the record carefully.

7. On perusal of all the abovesaid factual background, it is found that the story putforth in the impugned complaint is based on concoctions and these baseless allegations amount to a flatten misuse of the process of law. The respondent/complainant, who is non-resident Indian has attempted to misuse the



process of law by getting the impugned complaint (Annexure P-7) filed through his Power of Attorney/brother namely Gagan Walia, who is resident of Jalandhar. The marriage in the present case was admittedly solemnized and was registered in District Sindhu Durg (Maharashtra). The respondent was resident of England and even the petitioner stayed in England in the matrimonial home with him, after the performance of the marriage. Still further, in November, 2021, the respondent had beaten up the petitioner and the respondent was arrested by the police in England on the charge of domestic violence at 01:00 AM on 18.11.2021. It is also apparent from the order (Annexure P-4) that the petitioner was bailed out after two days and he was directed not to contact the petitioner except through social services, Family Court or the Solicitors. Consequently, it is apparent from the orders (Annexures P-4 and P-5), passed by the competent authorities that the parties had a dispute in England itself. Still further, even the petitioner had filed a divorce petition in the Family Court, U.K and vide order dated 28.01.2023 (Annexure P-6), the marriage between the parties was ended by a competent Court in U.K., England. Thus, it is apparent that the major part of the offence was committed in England itself and the Courts at Jalandhar had no jurisdiction to entertain the complaint. Still further, the Hon'ble Supreme Court of India in the matter of "**Harmanpreet Singh Ahluwalia and Others Vs. State of Punjab and others**" 2009(2) RCR (Criminal) 956: 2009 (3) SCC (Cri) 620 held that in the cases, where larger part of the offence was committed abroad and the parties had stayed in a foreign country after solemnization of the marriage, the Court in India would have no jurisdiction to entertain and try a complaint with regard to the said allegations. Still further, as mandated by Section 188 of Cr.P.C., when the alleged offence is



committed outside India, criminal prosecution cannot be initiated in India without obtaining sanction by the Central Government. Even reliance can be placed on the judgments rendered by the Supreme Court in the matter of “Sartaj Singh Vs.State of Uttrakhand,(2022) 13, SCC 136.

8. Still further, the allegations levelled by the complainant in the present case do not inspire confidence and no offence as alleged is made out against the petitioner. The prosecution had examined CW-3, Dalip Kumar, who stated that he had solemnized marriage with the petitioner and he had paid a sum of Rs.3 lacs to the petitioner, after arranging it from his near and dear ones and got Panchayati divorce from her. However, it is surprising that Dalip Kumar, CW-3 had not made any complaint to any authority in this regard. Still further, the petitioner has wrongly summoned under Section 494 IPC as there was no evidence to show that the petitioner had married again during the life time of her husband. Even the allegations levelled in the present complaint, clearly proved that there was some matrimonial discords between the petitioner and the respondent and the complaint does not disclose any cognizable offence.

9. In **Madhu Limaye v. The State of Maharashtra [1977] 4 SCC 551** a three-Judge Bench of Hon'ble the Apex Court held as under:

"... In case the impugned order clearly brings out a situation which is an abuse of the process of the Court, or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. Such cases would necessarily be few and far between. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. The present case would undoubtedly fall for exercise



of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, that the invoking of the revisional power of the High Court is impermissible."

10. In Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors. 1988 (1) R.C.R. 565 the Hon'ble Apex Court observed in para No. 7 as under:

"7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court, chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

11. In State of Haryana and Ors. v. Bhajan Lal and Ors. 1991 (1) R.C.R. 383 Hon'ble the Apex Court, in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure under Chapter XIV and of the principles of law enunciated by the Supreme Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.P.C., gave the following categories of cases by way of illustration wherein such



power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice.

(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 made in the first information report and other materials, if any, accompanying the FIR 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"

12. Resultantly, the present petition is allowed and complaint bearing No.110, dated 02.05.2022 under Sections 406,420,465,466,468,471,494,506 and 120-B of IPC, titled as “Rishu Pal Walia Vs. Mugdha Sharad Palav @ Mugdha Tejas Sule @ Sharan Walia (Annexure P-7) as well as summoning order dated 06.05.2022 (Annexure P-8), passed by the Court of Judicial Magistrate Ist Class, Jalandhar and all subsequent proceedings are hereby ordered to be quashed by this Court.

13. Pending application(s), if any, stand(s), disposed of, accordingly.

02.12.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

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