



CWP-25485-2017(O&M)

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

215

CWP-25485-2017(O&M)
Date of decision: 06.05.2024

Hirdaypal Singh Bhinder & ors.

...Petitioners

Versus

State of Punjab & ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. H.P.S. Ghuman, Advocate,
for the petitioners.

Ms. Ankita Chauhan, DAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

1. Petitioners-Hirdaypal Singh, Jaswant Singh and Rajinder Kaur have approached this Court impugning the order dated 25.10.2017 (Annexure P-12) passed by the Non-resident Indian (NRI) Commission, Punjab whereby direction for registration of a case against the petitioners as well as for filing of final report under Section 173 Cr.P.C has been issued and the same is contested on the ground that it is beyond the jurisdiction conferred upon the NRI Commission and is contrary to the law laid down by the Courts.

2. The case was initially listed for hearing on 08.11.2017 and the following order was passed :-

“The petitioners have challenged the order dated 25.10.2017 passed by respondent no.3.

Briefly, it is submitted that petitioner no.1 was got engaged



CWP-25485-2017(O&M)

-2-

with respondent no.7 by way of a ring ceremony on 09.06.2012 at JW Marriot Hotel, Chandigarh but their marriage was solemnized on 26.01.2013 in USA. They lived together upto 07.02.2013 and, thereafter, it is alleged that petitioner no.1 was thrown out from the matrimonial home by respondent no.7 and he came back to India on 18.02.2013. The dispute between the parties started with a complaint filed by respondent no.7 along with her father before the Punjab State Commission for NRIs (hereinafter referred to as the "Commission") for taking appropriate action against petitioner no.1 and his parents for deserting respondent no.7; to direct them to return the dowry articles given at the time of ring ceremony and marriage; to pay all expenses incurred by them at the time of ring ceremony at Chandigarh and marriage in USA; and also restrain petitioner no.1 from contracting second marriage. It is submitted that in the said complaint, initially an order was passed on 15.06.2013 in order to call the parties for the purpose of conciliation/mediation. The said order was challenged by the petitioners by way of CWP No.2324 of 2014, which was dismissed as pre-mature on 09.02.2017, giving liberty to the petitioners to raise the issue of jurisdiction before the Commission itself. In the meantime, on 09.03.2017, the Commission sent the copy of the complaint along with documents appended with it to the IGP, NRI & Women Wing, Mohali to enquire into the matter and take action in accordance with law. The said authority was also asked to submit the status report and the case was adjourned to 09.05.2017. On 09.05.2017, the petitioners filed objections in respect of the jurisdiction of the Commission. The said objection was replied and, thereafter, it is alleged that the Assistant IGP, NRI & Women Wing, Amritsar submitted the report to the IGP, NRI & Women Wing, SAS Nagar, Mohali on 26.07.2017 stating therein that *"both the parents of the parties for sorting out differences between Hirday Pal Singh and Sumandeep Kaur had met at the house of Dr. Gurmej Singh Dhillon, but did not succeed. During inquiry, no matter of harassing the girl Sumandeep Kaur, demand of dowry by Hirdaypal Singh has come forth. Apart from it, the marriage between the girl and boy has been found to have been performed at U.S.A., which is not registered. Under the jurisdiction of P.S. N.R.I., Amritsar, no cognizable offence has been found to have occurred. Then even after getting the opinion of Law Officer,*



appropriate action would be taken". The said inquiry report is stated to have been submitted to the Commission vide diary no.2120 dated 25.10.2017. However, on 25.10.2017 itself, the Commission has recorded in the order that the report from the IGP, NRI & Women Wing, Mohali has not been received.

Be that as it may, it is further submitted that the objection raised by the petitioners before the Commission about the fact that since the cause of action had taken place in USA, therefore, the Commission has got no jurisdiction to adjudicate or interfere in the matter has not been decided but all that has been said in the impugned order is that the Commission has to look after the interest of the NRIs, therefore, it had the jurisdiction to pass the order and then the direction has been given to the DGP, Punjab to register an FIR on the basis of the complaint filed by respondent no.7.

It is further submitted that on one hand, the Assistant IGP, NRI & Women Wing, Amritsar, to whom the matter was referred to for the purpose of inquiry, has observed that there is no harassment to respondent no.7 in respect of the demand of dowry and that since the marriage was solemnized in USA, therefore, the Police Station, NRI, Amritsar has no jurisdiction to register the FIR and on the other hand, the Commission, while ignoring this report, directed the DGP, Punjab, to register the FIR.

Notice of motion for 13.12.2017.

Till then, operation of the impugned order dated 25.10.2017 shall remain stayed."

3. The contention of the petitioner was specifically noticed that the petitioner No. 1 was engaged with respondent No.7-Sumandeep Kaur on 09.06.2012 at JW Marriot Hotel, Chandigarh and the marriage was solemnized in USA where they lived together upto 07.02.2013. It was also noticed that pursuant to the order dated 09.03.2017, an enquiry was conducted and a report was submitted by the IGP, NRI & Women Wing, SAS Nagar Mohali on 26.07.2017 as per which no cognizable offence has occurred even in the jurisdiction of Police Station, NRI Amritsar.

**CWP-25485-2017(O&M)****-4-**

Contention was also recorded to the effect that the NRI Commission has no jurisdiction to adjudicate or interfere in the matters and it was only a recommendatory body having no power to issue a direction to register an FIR and thereafter, to file a final report against the petitioners.

4. Reply on behalf of respondents No.1, 4 and 5 had been filed wherein it was averred that complaint was marked to SHO, Police Station NRIs Moga for enquiry and during the course of enquiry, statement of the complainant was obtained, which was sent by her through e-mail. The petitioners were also joined in the enquiry. Prima-facie it was found that only the shagun ceremony had been organized at Chandigarh and the marriage was solemnized in United States of America. On consideration of the enquiry in a free and fair manner, the allegations levelled by the complainant with regard to harassment by the petitioners on account of demand of dowry was not substantiated. It was also concluded that the marriage was not only solemnized in USA but was not registered also and no cognizable offence was committed even in the jurisdiction of Police Station, NRI Amritsar. The said enquiry report was approved by the Legal Advisor i.e Joint Director Prosecution, Crime Bureau of Investigation, Punjab. The respondent No.7/complainant was also informed about the same vide e-mail and a report was filed before the NRI Commission as well.

5. Separate replies have been filed on behalf of respondent No.2 and respondent No. 6 reiterating the above said position. On 21.08.2023, a statement was made by the State counsel that there is no necessity of filing of any separate reply on behalf of respondent No.3. Respondent No.7, however, preferred not to participate in the proceedings despite service and



CWP-25485-2017(O&M)

-5-

notwithstanding that the matter was adjourned on various occasions to enable appearance and for filing of the reply, if any, by respondent No.7. The matter relates to the year 2017 and no further wait will be justified. Respondent No. 7 is, accordingly, ordered to be proceeded against *ex parte*.

6. Counsel for the petitioner has additionally argued that the enquiry conducted by the Police reflects that there was no cognizable offence committed and that the NRI Commission chose not to even make a reference to the above said enquiry report and resorted to issuance of directions to the DGP, Punjab to register an FIR on the basis of complaint filed by the complainant and to complete the investigation and thereafter to file a police report under Section 173 Cr.P.C. The operative part of the report reads as under:-

“Thereafter, parties appeared before the commission and vide order dated 09.03.2017, the Commission sent the complaint along with its annexures to IGP NRI & Women Wing, Mohali seeking a status report after making an inquiry. However, no report has been received.

In the meantime, opposite side filed an application, seeking withdrawal of the aforesaid order dated 09.03.2017 of the Commission. The opposite side raised objections to the jurisdiction of the Commission as under:-

“That this Hon’ble Commission has got no power for taking appropriate action against the respondent No.1 for deserting the complainant No.1. This power lies with the Civil Court. Since Hon’ble Commission is a recommendatory body, no recommendation can be made to the Government for taking action against the respondent No.1 in this regard. The Hon’ble commission has got no jurisdiction for directing the respondent No.1 and his family for return back all the dowry articles, Since Hon’ble Commission is an recommendatory body, no such recommendation can be made to the government for recovery of dowry articles



CWP-25485-2017(O&M)

-6-

coupled with the fact that the facts are disputed. The Hon'ble Commission has got no jurisdiction for making direction to the respondent No.1 and his family to pay all the expenses incurred by the complainant on ring ceremony at Chandgiarh/India and for solemnization of marriage in U.S.A, since the Hon'ble commission is an recommendatory body and it can not make direction to the government for the recovery of all the alleged expenses.

That in all the above said issues such as desertion, recovery of dowry articles and recovery of expenses spent on marriage ceremonies, adequate remedy has been provided under the civil law and family law and this Hon'ble Commission cannot run a parallel court and the same would be encroaching upon the domain of other statutory law."

At this stage it may be noted that the Punjab State NRIs Commission has been constituted under the NRI Act-2011, to safeguard the interest of NRIs belonging to Punjab State. Admittedly complainant is an NRI and thus, as per the provisions of Section 12 and 14 of the NRI Act, the Commission can make recommendations to the competent authority in the State of Punjab for making an inquiry on the complaint and also to submit its report.

In view of the provisions of law, the complaint filed before the Commission for redressal of the grievance of the complainant with regard to her harassment on account of demand of dowry and return of Ishtridhan is definitely maintainable and therefore the objections raised before the Commission is rejected.

In view of the aforesaid, a recommendation is made to DGP, Punjab to register an FIR on the basis of the complaint filed on behalf of the complainant and then complete the investigation and file its police report under Section 173 Cr.P.C in the competent Court of jurisdiction.

Copy of the complaint along with its annexures and replies etc. may be sent to DGP, Punjab along with the order of the Commission for his information and necessary action."

7. On the other hand, counsel for the respondent-State contends

**CWP-25485-2017(O&M)****-7-**

that as the further proceedings have been stayed by this Court vide order 08.11.2017, further investigation in the matter could not be conducted.

8. I have heard the learned counsel appearing on behalf of the parties and have gone through the records appended along with the petition.

9. A perusal of the above establishes that no cognizable offence took place within the territories of India and only a shagun ceremony took place in India. It was on the said circumstance that the Investigating Agency filed a report against the matter being inquired into. However, notwithstanding the territorial jurisdiction, which is primary for initiation of criminal proceedings, the NRI Commission directed registration of an FIR. Issuance of any such direction is not under the powers conferred upon the NRI Commission and that it is only a recommendatory body. Exercise of the powers to direct registration of an FIR is a power, which is ministerial in nature and cannot be exercised by the NRI Commission. In issuance of such a direction for registration of a case which can only derive from the powers under Section 156(3) Cr.P.C/powers under Article 226(4) under Section 482 Cr.P.C, the NRI Commission has travelled beyond the scope of the powers vested under the Act.

10. Under the given circumstances, I find that the directions issued by the NRI Commission to the extent that the DGP has been directed to register FIR and thereafter to complete investigation and to file police report under Section 173 Cr.P.C is beyond the powers conferred upon the Commission. The present writ petition is, accordingly, allowed. The order dated 25.10.2017 passed by the NRI Commission is set aside.

11. The setting aside of the said order shall however not be to the

prejudice of the parties to take recourse to the remedies that she may otherwise have in accordance with law.

06.05.2024

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(VINOD S. BHARDWAJ)

JUDGE

Whether reasoned/speaking:

Whether reportable:

Yes/No

Yes/No