

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

235

CRM-M-45538-2021(O&M)

Date of order: 05.04.2024

Ravinder Singh

.....Petitioner(s)

Vs.

Kiranjit Kaur & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.H.S. Randhwawa, Advocate
for the petitioner.

None for respondent No.1.

Mr. Sukhsandesh Singh Chahal, AAG Punjab.

Nidhi Gupta, J.

Prayer in the present petition is for quashing of criminal complaint No.COMI/95/2015 dated 21.03.2015 registered under Sections 406 and 498-A IPC (Annexure P1) titled as “Kiranjit Kaur Vs. Ravinder Singh & Others”; **and** summoning order dated 01.07.2017 (Annexure P2); **and** order dated 22.02.2019 (Annexure P3), declaring the petitioner as ‘proclaimed offender’.

2. Learned counsel for the petitioner inter alia submits that petitioner was married to respondent No.1/complainant on 04.11.2006. Two daughters were born out of this wedlock, who are in the care and custody of the complainant. The petitioner and the complainant are both NRIs who live in America. As the petitioner is himself residing in America, therefore, the present petition has been filed through his Special Power of

Attorney holder. Learned counsel relies upon a Division Bench judgment of this Court in **“Mangal Dass Gautam & Another Vs. State of Haryana & Another” Law Finder Doc ID # 1706587**, wherein it has been held that a petition under Section 482 Cr.P.C. for quashing can be filed by power of attorney holder.

3. Ld. Counsel states that due to marital discord and temperamental differences, the parties started living separately since 2011. Thereafter, the parties have also been granted divorce by a Court in America vide decree dated 19.02.2014 (Annexure P7).

4. Learned counsel submits that *after* grant of divorce, the complainant filed the present private complaint No.95 of 2015 dated 21.03.2015 under Sections 406 and 498-A IPC before the learned Illaqa Magistrate, Jalandhar. Total 3 accused were named by the complainant. The said persons are the petitioner/husband of the complainant and parents-in-law of the complainant. However, the summoning order dated 01.07.2017 (Annexure P2) was issued only under Section 406 IPC. It is contended that the malicious intent of the complainant to harass the accused, and falsity of the allegations made in the complaint is evident from the fact that the same was filed after so much delay, after the parties had been living separately since 2011, and had even been granted divorce in 2014.

5. Learned counsel further informs that parents of the petitioner/parents-in-law of the complainant have already been acquitted by the learned trial Court/Chief Judicial Magistrate (NRI Cases), Jalandhar

vide judgment dated 09.03.2021 (Annexure P6). In this respect, Ld. Counsel places reliance upon a Division Bench judgment of this Court in **“Sudo Mandal @ Diwarak Mandal Vs. State of Punjab”** Law Finder Doc ID # **249157** wherein it has been held that: –

“C. Indian Penal Code, Section 302 - Criminal Procedure Code, Section 482 - Trial in absentia - Prosecution version that five accused persons committed the murder - Three accused absconded and declared proclaimed offenders (P.Os) - Two accused arrested and sent up trial - Both convicted by trial Court, but acquitted by High Court - High Court found that eye-witnesses were implanted and were untrustworthy - Proceedings against the absconding P.Os. also quashed in exercise of power under Section 482 Criminal Procedure Code - Held, it would be empty formality to send them for trial on same unbelievable and untrustworthy evidence, which would ultimately lead to their acquittal.”

6. Ld. Counsel further submits that in the above said trial of his parents, notice was duly issued to respondent No.1/complainant. However, on 02.03.2021 counsel for the complainant made the following statement before the learned CJM, NRI Cases, Jalandhar:-

“Stated that the complainant has instructed me that she does not want her further cross-examination after charge recorded before this Court and she has instructed me to close her evidence and accordingly, I close the evidence of the complainant”.

7. It is submitted that clearly therefore, the complainant was not interested in pursuing the present complaint and had filed the same purely with the malintent to harass the accused. It is stated that even

in the present case, the complainant has been duly served however, she has failed to put in appearance. Office report for 15.02.2023 shows that notice issued to respondent No.1 at her foreign address has been received back served. However, till date, the complainant has not put in appearance before this Court. Therefore, the complainant did not appear either before the learned trial Court as also failed to put appearance here. It is prayed that accordingly, present petition be allowed.

8. Ld. counsel for the petitioner places reliance upon judgment of this Court in **“Surindervir Singh & Another Vs. State of Punjab & Another”** Law Finder Doc ID # 1716185, wherein it has been held that:-

“Criminal Procedure Code, 1973, Sections 154, 173(8) and 482 - Indian Penal Code, 1860 Sections 406 and 498A Further investigation after cancellation report - When not justified - Complainant-wife left for England on a spouse visa within a period of 1-2 months of her marriage - Prior to leaving for England, no complaint lodged against petitioners in-laws - FIR lodged after return from England as to allegations of her having been subjected to physical and mental abuse at the hands of her husband and at the hands of her in-laws when they were visiting them in England, held without jurisdiction - Allegations relating to misappropriation of certain amount belonging to complainant also found not tenable - Resultantly, the impugned order for further investigation of the matter after submission of cancellation report held to be not justified and consequently, this order as well as FIR directed to be quashed.”

9. Ld. Counsel further submits that the petitioner has been declared as proclaimed offender vide impugned order dated 22.02.2019 (Annexure P3). It is contended that as the petitioner is a resident of America, he was not properly served in the matter, and provisions of

Section 82 Cr.P.C. were not complied with. The proclamation was issued against the petitioner on 15.01.2019 for appearance on 29.01.2019. It is submitted that thus, the proclamation was issued only for a period of 14 days, which runs contrary to the mandatory period of 30 days as provided under Section 82 Cr.P.C. It is therefore, prayed that the said impugned order be set aside. In support, learned counsel relies upon judgment of this Court in **“Ashok Kumar Vs. State of Haryana & Another” Criminal Misc. No.-M-13638 of 2013 decided on 05.08.2013 Law Finder Doc ID # 484333**, relevant part of which is reproduced hereinbelow:-

“Criminal Procedure Code, 1973, Section 82(1) - Proclamation to declare as a proclaimed offender - No time and place to appear specified in publication - Accused not given mandatory period of 30 days to appear before Court - Court adjourned the matter a period of 30 days - Adjournment of 30 days cannot be treated as compliance of provisions of Section 82(1) Cr.P.C. - Proclamation order not as per law and same set aside.”

10. Learned counsel also relies upon judgment of this Court in **“Mehar Singh & Another Vs. State of Punjab” CRM-M-1513-2009 decided on 25.05.2009**, relevant part of which is reproduced hereinbelow:-

“Criminal Procedure Code, Section 82 - Proclaimed offender - FIR registered against accused who were residing in Canada much before registration of case - Accused declared proclaimed offenders - Order set aside - As per Section 82, Criminal Procedure Code proclamation can be issued against a person if the Court has reason to believe that a person against whom a warrant has been issued has absconded or is concealing himself and that the warrant cannot be executed had not left the country after registration of FIR with a view to abscond or conceal themselves - Accused were already residing in Canada - Accused were not attempted to be served in Canada.”

11. Learned State Counsel does not dispute the above said contentions made by learned counsel for the petitioner, neither on facts nor on legal precedent.

12. I have heard learned counsel for the parties and perused the case file in detail. The record bears out the truth of the factual submissions made by counsel for the petitioner.

13. In addition to the voluminous case laws cited by the learned counsel for the petitioner, reference may also be made to **“Krishna Lal Chawla & Ors. Vs. State of UP &Anr.” Law Finder Doc ID # 1816686**. In this landmark judgement, the Hon’ble Supreme Court has held in para 21 that there are inherent powers to prevent the abuse of process so that the Courts shall not suffer a litigant utilising the institution of justice for unjust means. Relevant extract of which is as under:-

“21. It is a settled canon of law that this Court has inherent powers to prevent the abuse of its own processes, that this Court shall not suffer a litigant utilising the institution of justice for unjust means. Thus, it would be only proper for this Court to deny any relief to a litigant who attempts to pollute the stream of justice by coming to it with his unclean hands. Similarly, a litigant pursuing frivolous and vexatious proceedings cannot claim unlimited right upon court time and public money to achieve his ends.”

14. In the facts and circumstances of the present case, reference may also be made to another judgment of the Hon’ble Supreme Court in the case of **“Harmanpreet Singh Ahluwalia & Others Vs. State of Punjab & Others” Law Finder Doc ID # 190773**, wherein it has been held as under:-

“A. Criminal Procedure Code, Section 482 – Indian Penal Code, Section 420 and 406 Criminal Procedure Code Section 178 – Territorial jurisdiction – Parties married at Jalandhar thereafter living in Canada – Demand of dowry made in Canada – FIR lodged at Jalandhar – FIR quashed, inter alia, on the ground that larger part of offence was committed in Canada”.

15. Reference may also be made to judgment of this Court in **“Satwant Singh & Others Vs. State of Punjab & Another” 2008 (4) RCR Criminal 429/Law Finder Doc ID # 144907**, wherein, in similar circumstances, the FIR was quashed by holding that: –

“Criminal Procedure Code, Sections 181 and 177 - Indian Penal Code, Sections 498A and 406 - Territorial jurisdiction - Marriage solemnized in India - Parties thereafter living in Canada - Both citizens of Canada - Petition for divorce and custody of the child filed in a Family Court at Canada - Wife sending complaint to police that she was harassed by parents of husband by making demand and misappropriation of dowry given at time of marriage - A case under sections 498A and 406 Indian Penal Code registered at Hoshiarpur - FIR quashed - Held :-

This is a classic case of misuse of process of the Court where process of the law has been used as a tool to harass the petitioners to vindicate her grudge on account of the proceedings taken out at Canada - In view of the fact that the Court at Garshankar/Hoshiarpur have no jurisdiction to entertain and try the case. 2004(3) RCR (Criminal) 988 : 2004(3) Apex Criminal 455 (SC) relied.”

16. In the case of **“Bahadur Singh & Others Vs. State of Punjab & Another” Law Finder Doc ID # 210334**, this Court in similar circumstances held as follows:–

“Criminal Procedure Code, Section 177 – Indian Penal Code, Sections 498A and 406 – Territorial jurisdiction – Husband and wife living in Canada after marriage – Allegation by wife that father, brother, and brother’s wife of husband used to make demand through phone calls and husband used to beat her at

Canada – Complaint under Sections 406, 498A of Indian Penal Code filed in India – Complaint quashed – Held:

Larger part of offence has taken place in Canada - Marriage has already been dissolved at Canada – Thus impugned FIR is nothing but an abuse of process of criminal law”.

17. In the facts and circumstances of the present case, it would also be apposite to refer to a three-Judge Bench judgment of the Hon’ble Supreme Court in “**State of Madhya Pradesh Vs. Laxmi Narayan & Others**” Law Finder Doc ID # 1385786, wherein it has been held as under:-

“29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases”.

18. In view of the above undisputed factual and legal position, the present petition is **allowed**; and complaint No.COMI/95/2015 dated 21.03.2015 registered under Sections 406 and 498-A IPC (Annexure P1) titled as “Kiranjit Kaur Vs. Ravinder Singh & Others”; **and** summoning order dated 01.07.2017 (Annexure P2); **and** order dated 22.02.2019 (Annexure P3), declaring the petitioner as ‘proclaimed offender’, are hereby quashed qua the petitioner.

19. Pending application(s) if any also stand(s) disposed of.

05.04.2024

Sunena

Whether speaking/reasoned
Whether reportable

(Nidhi Gupta)
Judge

Yes/No
Yes/No