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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25501-2020 (O&M)

Date of decision: 05.12.2024

Baljinder Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vijay Lath, Advocate
and Mr. Naveen Sharma, Advocate
for the petitioners.

Mr. Sandeep Kumar, DAG, Punjab and
Mr. Nitesh Sharma, DAG, Punjab.

Mr. Mehtab Singh Khaira, Advocate
for respondent No.2

HARPREET SINGH BRAR, J.

1. The present petition has been preferred under Section 482 of the Code of Criminal Procedure, 1978 (hereinafter 'Cr.P.C.') seeking quashing of FIR No. 18 dated 28.02.2019 registered under Sections 498-A, 406 IPC at Police Station City Morinda, District Rupnagar and all subsequent proceedings arising therefrom.

FACTUAL BACKGROUND

2. The FIR(supra) was registered at the instance of respondent No.2, father-in-law of petitioner No.1. The marriage between petitioner No.1 and Prabhjot Kaur, daughter of respondent No.2 was solemnised in village Rampur, District Fatehgarh Sahib, on 16.01.2011 and two children were born out of this wedlock. Soon after marriage, petitioner No.2, mother of petitioner No.1, started taunting Prabhjot Kaur on call, from Australia, in lieu of dowry.



Instigated by the same, petitioner No.1 started harassing her and demanded Rs.10,00,000/- and a car.

3. Prabhjot Kaur moved to Australia, after seven months of marriage and the expenses for the same were borne by her father. The petitioners continued harassing her there and demanded Rs.10,00,000/-. Jasmer Singh, the maternal uncle of petitioner No.1, who was also the mediator for the match, told respondent No.2 that the only way to settle his daughter would be to satisfy the demands of the petitioners. Accordingly, respondent No.2 gave him an unnamed cheque for Rs.9,00,000/- and Rs.1,00,000/- in cash. He also took the power of attorney from Prabhjot Kaur and released two FDRs of Rs.5,00,000/- and Rs.4,00,000/- respectively. In spite of this, on 29.11.2017, Prabhjot Kaur was shunned out of her matrimonial home in Australia.

CONTENTIONS

4. Learned counsel for the petitioners *inter alia* contends that both the petitioners are Australian citizens and have been residing in New South Wales for the last 9 months. The marriage between petitioner No.1 and Prabhjot Kaur was duly registered in India, as reflected by the marriage certificate (Annexure P-2). Thereafter, petitioner No.1 moved back to Australia and has not visited India since 08.02.2011. Once the petitioners received their Australian citizenship, Prabhjot Kaur was also called to Australia. She applied for citizenship, which was granted on 15.02.2016 (Annexure P-8). It was Prabhjot Kaur who willingly left her matrimonial home on 29.11.2017, leaving both her daughters behind. The petitioners later found out that Prabhjot Kaur had only entered into this marriage to get Australian citizenship. Prabhjot Kaur filed for divorce and the same was allowed vide order dated 21.05.2019 (Annexure P-12).



5. Learned counsel further submits that the rights and liabilities of both parties stand settled by way of mutual settlement (Annexure P-13). The couple has released each other from all actions, proceedings, claims, demands, costs and expenses in India and Australia. Furthermore, Prabhjot Kaur has already solemnised a second marriage with one Mr. Grewal, as indicated by photographs available at Annexure P-14. Prabhjot Kaur had separated from petitioner No.1 on 29.11.2017 of her own accord. However, respondent No.2 has filed a complaint before the police authorities in India on 22.05.2018, on the basis of which FIR (*supra*) was registered, alleging dowry harassment after seven years of marriage. All the allegations are from the year 2011. As such, the FIR (*supra*) has been registered in spite of the fact that the cognizance of the same is barred by limitation under Section 468 Cr.P.C. as the maximum sentence for offences under Sections 498-A and 406 IPC is 3 years. Finally, Prabhjot Kaur did not pursue any complaints in India even though she was residing there for seven months after marriage or after that in Australia.

OBSERVATIONS AND ANALYSIS

6. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that both petitioner No.1 and his wife-Prabhjot Kaur, daughter of respondent No.2, are Australian citizens. It appears that Prabhjot Kaur filed for divorce before the concerned Court in Melbourne which was allowed vide order dated 21.05.2019 by the learned Federal Circuit Court (Annexure P-12). It was also decreed that the divorce between the parties would take effect from 22.06.2019.

7. Pertinently, the concerned Court has passed an order under Section 79 of the Family Law Act, 1975 (Cth) to address the consequences of the breakdown of the marriage. The terms of settlement, available at Annexure P-



13, were consented to by both petitioner No.1 and Prabhjot Kaur, who have also signed the same. All matters pertaining to property, alimony, spousal support already stand settled. Moreover, as per clause 19 of the terms of settlement, both petitioner No.1 and Prabhjot Kaur have released each other from all actions, proceedings, claims and other liabilities in Australia as well as in India. The same is reproduced below:

“19. That both the Husband and Wife hereby release the other from all actions, proceedings, claims, demands, costs and expenses whatsoever and howsoever arising which either of them had or may have had against the other for or by reason of, or in respect of any act, cause, matter or thing in Australia and in India.” (emphasis added)

8. In spite of the settlement, respondent No.2 has initiated criminal prosecution against the petitioners in India by means of FIR(supra), especially since Prabhjot Kaur has already remarried. A two Judge bench of the Hon'ble Supreme Court in ***Ruchi Agarwal vs. Amit Kumar Agarwal 2004(4) R.C.R(Criminal) 949***, speaking through Justice Umesh C. Banerjee, opined as follows:

“6. It is based on the said compromise the appellant obtained a divorce as desired by her under Section 13B of the Hindu Marriage Act and in partial compliance of the terms of the compromise she withdrew the criminal case filed under Section 125 of the Criminal Procedure Code but for reasons better known to her she did not withdraw that complaint from which this appeal arises. That apart after the order of the High Court quashing the said complaint on the ground of territorial jurisdiction, she has chosen to file this appeal. It is in this background, we will have to appreciate the merits of this appeal.

7. Learned counsel appearing for the appellant, however, contended that though the appellant had signed the compromise deed with the above-mentioned terms in it, the same was obtained by the respondent-husband and his family under threat and coercion and in fact she did not receive lump sum maintenance and her Stridhan properties, we find it extremely difficult to accept this argument in the background of the fact that pursuant to the compromise deed the respondent-husband has given her a consent divorce which she wanted thus had performed his part of the obligation under the compromise deed. Even the appellant partially performed her part of the obligations by withdrawing her criminal complaint filed



under Section 125. It is true that she had made a complaint in writing to the Family Court where Section 125 Criminal Procedure Code proceedings were pending that the compromise deed was filed under coercion but she withdrew the same and gave a statement before the said court affirming the terms of the compromise which statement was recorded by the Family Court and the proceedings were dropped and a divorce was obtained. Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.”

9. Further, a Co-ordinate bench of this Court in ***Krishan Singh and Others vs. State of Punjab and Another 2020(4) R.C.R. (Criminal) 327***, speaking through Justice Jaishree Thakur, made the following observations:

*“7. The judgment as rendered in **Ruchi Agarwal (supra)** has subsequently been followed in **Mohd. Shamim vs. Smt. Nahid Begum, 2005 (1) RCR (Criminal) 697** and **Shlok Bhardwaj Vs. Runika Bhardwaj and others, 2015 (2) SCC 721**, wherein it has been held that after the matter has been settled between the parties the wife is estopped from continuing criminal proceedings. The judgment of **Mohd. Shamim vs. Smt. Nahid Begum(supra)** has subsequently been followed by this Court in '**Nirmal Sachdeva vs. State of Haryana and another, 2008 (27) RCR (Criminal)153**', '**Kamal Kishore and others vs. State of Punjab and another, 2006 (2) RCR (Criminal) 342**' , and '**Naveen and others vs. State of Haryana and another 2019 CrI. LJ 1004**' in CRM-M-17367-2018 decided on 06.12.2018 and '**Ram Lal and others Vs. State of Haryana and another, 2008(2) RCR (Criminal) 823**'.”(emphasis added)*

10. Further still, Prabhjot Kaur moved to Australia after seven months of the marriage and has been granted citizenship since. It is baffling that FIR(supra) propped up in India, at the instance of respondent No.2, while the divorce proceedings were underway in Australia, especially in view of the fact that Prabhjot Kaur had never pursued any criminal complaint against the petitioners in India or in Australia in eight years of marriage. The occurrence in India is limited to the uncle-in-law namely Jasmer Singh receiving an undated cheque for Rs. 9,00,000/- and cash amount of Rs.1,00,000/- from respondent No.2 and withdrawing money from FDRs using the general power of attorney



bestowed upon him by Prabhjot Kaur. It appears that Jasmer Singh, who is also the mediator of the match, has only been roped in the present FIR since he is the only one from the petitioner's immediate family who resides in India. All the allegations qua harassment in lieu of dowry against the petitioners are omnibus in nature and appear to be coloured by malicious intent. A two Judge bench of the Hon'ble Supreme Court in ***Preeti Gupta vs. State of Jharkhand (2010) 7 SCC 667*** quashed the complainant against the sister-in-law of the complainant noting that the sole purpose of filing the complaint was to humiliate her and allowing criminal prosecution to continue would amount to an abuse of process of law. Speaking through Justice Dalveer Bhandari, the following was observed:

"34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law."

Reliance in this regard can also be placed on the judgments of the Hon'ble Supreme Court in ***Girdhar Shankar Tawde vs. State of Maharashtra (2002) 5 SCC 177***, ***Abhishek vs. State of Madhya Pradesh 2023(4) R.C.R. (Criminal) 239*** and ***Mahalakshmi and others vs. State of Karnataka Criminal 2024(1) R.C.R.(Criminal) 70***.



11. Moreover, Section 468 of Cr.P.C. provides limitation period for taking cognizance of offences. The same is reproduced below:

Section 468. Bar to taking cognizance after lapse of the period of limitation.—

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment. (emphasis added)

12. The offence under Section 498-A, 406 IPC is punishable with 3 years of imprisonment each, therefore, as per Section 468(2)(b) of Cr.P.C., the period of limitation for taking cognizance of the same would be three years. A Constitution Bench of the Hon'ble Supreme Court in ***Sara Mathew vs. Institute of Cardio Vascular Disease and Others 2014(14) R.C.R. Criminal 10***, has categorically held that for the purpose of calculating the period of limitation under Section 468 of Cr.P.C., the relevant date would be the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance or the date of issuance of process by the Court. In the case at hand, the complaint was filed on 22.05.2018. The FIR(supra) states that the incidents of harassment while Prabhjot Kaur was in India started soon after marriage, which took place on 16.01.2011. As such, it appears that the



complaint on the basis of which FIR(supra) was registered, was filed about 6-7 years after the alleged occurrence. Resultantly, the concerned Court would be barred from taking cognizance of the present matter as the prosecution was instituted beyond the period of limitation.

CONCLUSION

13. Of late, this Court has observed a disturbing trend where criminal prosecution is initiated in matrimonial disputes in India by foreign nationals, who have voluntarily availed citizenship of another country and are in continuous residence there. In doing so, they have submitted themselves to the jurisdiction of foreign Courts of the competent jurisdiction. As in the present case, more often than not, the couple involved have already obtained a divorce and settled issues pertaining to spousal support, custody of children and such by the approaching the Courts of the country of their residence. However, merely for the purpose of harassment, criminal complaints are filed in India. When the matrimonial disputes stand settled by the concerned forum abroad, proxy litigation in India cannot be allowed to be commenced in India to satisfy personal spite. This Court strongly condemns such unscrupulous and unethical practice and is of the stern opinion that the stream of justice must not be allowed to be clogged by ill-intended, vexatious proceedings which further burdens the already overworked Courts. The odious act of initiating criminal prosecution to harass hapless relatives residing in India is clearly an atrocious abuse of the process of law, which cannot go unchecked. The sanctity of the judicial process cannot be allowed to be smeared by letting ill-intentioned, resentful litigants to use it as an instrument of oppression.



14. In view of the discussion above, the present petition is allowed and FIR No. 18 dated 28.02.2019 registered under Sections 498-A, 406 IPC at Police Station City Morinda, District Rupnagar and all subsequent proceedings arising therefrom are quashed qua the petitioners.

15. Pending miscellaneous application(s), if any, shall also stand disposed.

(HARPREET SINGH BRAR)
JUDGE

05.12.2024
Neha

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