

Before Mehinder Singh Sullar, J.
RITU KHURANA AND ANOTHER,—Petitioners
versus

BRIJ LAL CHOPRA,—Respondent

CRL. M. No. M-8227 of 2010

17th January, 2012

Criminal Procedure Code, 1973 - S. 482 - Indian Penal Code - Ss. 406/498-A - Complainant (father of girl) lodged FIR under Section 406/498-A IPC against the petitioners (married sisters of husband) and other co-accused - In police investigation, married sisters found innocent - 2nd Criminal Complaint filed on ground that police is not taking any action - Trial Court summoned the petitioners in complaint case - Petition under Section 482 Cr.P.C. for quashing complaint and summoning order - Petition allowed, High Court comes to conclusion that allowing criminal prosecution to continue would be an abuse of the process of court and ends of justice require proceedings should be quashed, it should not hesitate to do so, in exercise of inherent powers irrespective of other factors.

Held, That as ill-logical as it may seem, but strictly speaking, the tendency and frequency of the complainants of involving and roping all the relations of in-laws of the girl in the matter of cruelty and demand of dowry, have been tremendously increasing day-by-day, affecting the social edifice and fabric of the society and leaving the Courts in lurch, to separate the grain from the chaff. This tendency needs to be curbed. If not discouraged and in the wake of their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the wives have been found to be making efforts for involving other relations, in that eventuality, it will ultimately weaken the case of the prosecution even against the real culprits in this relevant behalf.

(Para 16)

Further held, That sequelly, if the crux of the allegations levelled against the petitioners is clubbed together and is perused, then to me, conclusion is inescapable that no indicated offence is made out and the

complainant has maliciously and vexatiously filed a false second complaint(Annexure P-4) against them, in order to wreck vengeance. If the complainant is permitted to prosecute the married sisters-in-laws of his daughter, then it will inculcate and perpetuate injustice to them. In this manner, the filing of the complaint against the petitioners is a deep misuse/abuse of the process of law. Likewise, the summoning Magistrate has also ignored all these vital aspects of the matter with impunity. Therefore, the impugned complaint (Annexure P-4) and the summoning order(Annexure P-5) qua the petitioners, deserve to be quashed in the obtaining circumstances of the case.

(Para 18)

A.D.S.Sukhija, Advocate, *for the petitioners.*

Ekta Thakur, Advocate, *for the respondent.*

MEHINDER SINGH SULLAR, J. (ORAL)

(1) The conspectus of the facts, which needs a necessary mention, for a limited purpose of deciding the core controversy, involved in the instant petition and emanating from the record is that, the marriage of Pinky, daughter of complainant-respondent Brij Lal Chopra(for brevity "the complainant") was solemnised with Udey Bhalla on 18.07.2008, according to the Hindu Rites and Ceremonies at Patiala. The marriage was stated to have also been attended by Asha Bhalla(mother), Ritu Khurana(petitioner No.1), Priya Yadav(petitioner No.2), Deepali Arora and Shimona Pathak, sisters of Udey Bhalla(husband), with their respective husbands. Sufficient cash, golden jewellery, clothes and dowry articles were claimed to have been given by her father at the time of solemnisation of the marriage. The complainant alleged that the husband and his relatives were not satisfied with the dowry articles. They demanded more cash and other dowry articles and since, their demand could not be met by the complainant, so, they started harassing his daughter Pinky.

(2) Levelling a variety of allegations and narrating the sequence of events, in all, according to the complainant that, petitioners-Ritu Khurana, Priya Yadav and their other co-accused treated his daughter Pinky with cruelty in connection with and on account of demand of dowry. That being the position, the complainant earlier lodged a complaint before the Senior

Superintendent of Police, U.T., Chandigarh. At the first instance and on the basis of aforesaid accusation, a criminal case was registered against the petitioners and their other co-accused, vide FIR No.384 dated 10.09.2009(Annexure P-3) under Sections 406 and 498-A IPC, by the police of Police Station Sector 39, Chandigarh.

(3) At the same time, the complainant filed another second criminal complaint(Annexure P-4) against the petitioners and their other co-accused on the same very allegations/grounds mentioning therein that the police is not taking any action against petitioners-Ritu Khurana and Priya Yadav, sisters of Udey Bhalla (husband). In the wake of second complaint, they were summoned to face the trial under Sections 406 and 498-A read with Section 34 IPC, by the Judicial Magistrate Ist Class, Chandigarh, by way of impugned summoning order dated 05.02.2010 (Annexure P-5).

(4) Petitioners-Ritu Khurana and Priya Yadav, already married sisters of Udey Bhalla(husband) did not feel satisfied and preferred the present petition for quashing the impugned complaint(Annexure P-4) and the summoning order (Annexure P-5), invoking the provisions of Section 482 Cr.P.C.

(5) The case set-up by the petitioners, in brief, insofar as relevant was that, the marriage of Ritu Khurana(petitioner No.1) was solemnised on 01.07.2002 with Vikrant Khurana and since then, they were residing firstly at Delhi and now at Mumbai, whereas the marriage of Priya Yadav(petitioner No.2) was solemnised on 09.12.1998 with Pankaj Yadav and since then, she is residing in her matrimonial home. They have no connection with the cruelty alleged by the complainant with regard to the demand of dowry from his daughter Pinky. According to the petitioners that, a false case was earlier registered against them, by virtue of FIR (Annexure P-3), in which, they were found innocent by the police. However, their brother and mother etc. are facing the trial in that regard. Now again, the complainant has levelled the same allegations in the present complaint, in order to falsely implicating them. No offence is stated to have been made out against them. On the strength of aforesaid grounds, the petitioners sought the quashment of the impugned complaint(Annexure P-4) and the summoning order(Annexure P-5), in the manner depicted hereinabove.

(6) As is clear from the record that, the efforts for reconciliation were proved futile. However, the complainant has refuted the prayer of the petitioners and reiterated the contents of the complaint (Annexure P-4) and prayed for dismissal of the instant petition.

(7) After hearing the learned counsel for the parties, going through the record with their valuable assistance and after deep consideration of the entire matter, to my mind, the present petition deserves to be accepted in this context.

(8) *Ex facie*, the argument of the learned counsel for the complainant that, no ground for quashing the impugned complaint (Annexure P-4) and the summoning order (Annexure P-5), is made out at this stage, is not only devoid of merit but misconceived as well.

(9) There is hardly any dispute with regard to the observations of this Court in case **Karnail Singh versus State of Punjab (1)** and of the Delhi High Court in case **Smt. Saroj Satija versus State (Delhi) (2)**, wherein it was observed that if alternative remedy is available, then the petition under Section 482 Cr.P.C. is not maintainable and if there is sufficient material, the accused have been specifically named and shown to be party of dowry demand in a **dowry death-case**, then the charges framed against them cannot be quashed. To me, the same would not come to the rescue of the respondent-complainant in the present controversy. This question is no more *res integra* and is well settled.

(10) A similar question arose before the Hon'ble Apex Court in case **Dhariwal Tobacco Products Limited and others versus State of Maharashtra and another (3)**. Having considered the law laid down by the Hon'ble Supreme Court in various judgments, including the cases **M/s Pepsi Foods Limited versus Special Judicial Magistrate (4)**, **Ashok Chaturvedi versus Shitul H. Chanchani (5)**, and **Central Bureau of Investigation versus Ravi Shankar Srivastava (6)**, it was held that

(1) 2002(1) R.C.R. (Criminal) 466

(2) 1994(2) Crimes 478

(3) 2009(2) SCC 370.

(4) 1998(5) SCC 749

(5) 1998(7) SCC 698

(6) (2006) 7 SCC 188

whenever the High Court comes to the conclusion that allowing the criminal prosecution to continue would be an abuse of the process of court and that the ends of justice require that the proceedings should be quashed, it would not hesitate to do so, in exercise of inherent powers irrespective of other factors.

(11) Such, thus, being the legal position and material on record, now the short and significant question, though important, that arises for determination in this petition is, as to whether there is sufficient material on record to prosecute the petitioners [already married sisters of Udey Bhalla (husband)] under Sections 406 and 498-A IPC or not.

(12) Having regard to the rival contentions of the learned counsel for the parties, to me, the answer must obviously be in the negative in this respect.

(13) As is evident from the record that, the petitioners are married sisters of Udey Bhalla, husband of Pinky (wife). It is not a matter of dispute that the marriage of petitioner No. 1 was solemnised on 01.07.2002, whereas the marriage of petitioner No. 2 was solemnised on 09.12.1998, much prior to the solemnization of the marriage of Udey Bhalla and Pinky (on 18.07.2008). Since then, the petitioners are residing with their husbands in their respective matrimonial houses at Mumbai and Chandigarh.

(14) Not only that, what cannot possibly be disputed here is that the present complainant has also earlier lodged a criminal case, by means of FIR (Annexure P-3) against the main accused, including the petitioners on the same very allegations. During the course of investigation, the police found the petitioners innocent and did not challan them on the ground that they are residing in their respective matrimonial houses, whereas a final police report was submitted against their remaining co-accused, who are facing the trial. Once, the petitioners were found innocent on the same allegations of cruelty in connection with the demand of dowry in a police case, then the complainant appears to have filed the present second false complaint (Annexure P-4) against them, without any basis/fresh material, maliciously, vexatiously and in order to wreck vengeance, which is not legally permissible.

(15) Above all, very very vague allegations are alleged against the petitioners in this relevant connection. There is neither a single cogent allegation in the complaint, nor any specific role is attributed to them that,

how, when and in what manner, they have interfered with in the married life of Udey Bhalla and Pinky and committed the indicated offence alleged against them in the second complaint (Annexure P-4). Moreover, it is very highly impossible to believe that the petitioners, who were married, much prior to the marriage of Pinky, would come to treat her with cruelty or demand the dowry articles from the complainant, who is an old man of more than 70 years of age and leading a retired life. It is now well-settled proposition of law that, in order to attract the penal provisions of the offence punishable under Sections 406 and 498-A IPC, there must be specific allegations/overt-acts and prima facie material against the petitioners, to indicate that the dowry articles were actually entrusted to them and they have misappropriated the same. For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases, where such accusation are made, the overt acts attributed to persons other than husband are required to be prima facie established. By mere conjectures and implications such relations cannot be held to be involved for the offence relating to demand of dowry. As, the benchmark and the essential ingredients to constitute the offence and complicity of the petitioners are totally lacking, therefore, to my mind, no criminal prosecution can legally be permitted to continue against them.

(16) As ill-logical as it may seem, but strictly speaking, the tendency and frequency of the complainants of involving and roping all the relations of in-laws of the girl in the matter of cruelty and demand of dowry, have been tremendously increasing day-by-day, affecting the social edifice and fabric of the society and leaving the Courts in lurch, to separate the grain from the chaff. This tendency needs to be curbed. If not discouraged and in the wake of their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the wives have been found to be making efforts for involving other relations, in that eventuality, it will ultimately weaken the case of the prosecution even against the real culprits in this relevant behalf.

(17) An identical question came to be decided by this Court in cases **Harjinder Kaur and others versus State of Punjab (7)**, **Labh Singh and others versus State of Haryana (8)**, **Rakesh Kumar and others**

(7) 2004 (4) RCR(Cr.) 332

(8) 2006 (2) RCR(Cr.) 296

versus State of Punjab and others (9), Mohinder Kaur and others versus State of Punjab and another (10) and Paramjit Kaur versus State of Punjab (11), wherein it was ruled that "the allegations against the relatives of the husband were vague, there is growing tendency to come out with inflated and exaggerated allegations roping in each and every relation of the husband and things have now taken a reverse trend. The women are abusing beneficial provisions of Section 498-A IPC". Hence, the contrary arguments of the learned counsel for the complainant "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances, as the law laid down in the aforesaid judgments "mutatis mutandis" is applicable to the facts of the present case and is the complete answer to the problem in hand.

(18) Sequelly, if the crux of the allegations levelled against the petitioners is clubbed together and is perused, then to me, conclusion is inescapable that no indicated offence is made out and the complainant has maliciously and vexatiously filed a false second complaint(Annexure P-4) against them, in order to wreck vengeance. If the complainant is permitted to prosecute the married sisters-inlaws of his daughter, then it will inculcate and perpetuate injustice to them. In this manner, the filing of the complaint against the petitioners is a deep misuse/abuse of the process of law. Likewise, the summoning Magistrate has also ignored all these vital aspects of the matter with impunity. Therefore, the impugned complaint (Annexure P-4) and the summoning order(Annexure P-5) qua the petitioners, deserve to be quashed in the obtaining circumstances of the case.

(19) In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial against the remaining accused, the instant petition is accepted. The impugned complaint(Annexure P-4) and the summoning order(Annexure P-5), in regard and relatable to the present petitioners only, are hereby quashed. They are accordingly discharged from the criminal prosecution in this relevant context.

A.K. Jain

(9) 2009 (2) RCR(Cr.) 565

(10) 2010 (2) RCR(Cr.) 597

(11) 2011(5) RCR(Cr.) 686