

PASHAURA SINGH

v.

STATE OF PUNJAB & ANR.
(Criminal Appeal No. 2122 of 2009)

NOVEMBER 13, 2009

[TARUN CHATTERJEE AND R.M. LODHA, JJ.]

Code of Criminal Procedure, 1973 – s. 482 – FIR u/ss. 498A, 494 and 506/34 IPC – By relative of first wife against the husband and his family members – Alleging second marriage and demand of dowry – Petition u/s. 482 – Plea of husband that second marriage performed after obtaining divorce from his first wife from a foreign court – High Court quashing the FIR as regards family members – FIR against husband not quashed – On appeal, held: FIR against husband liable to be quashed – FIR is attended with malafides and actuated with ulterior motive – Allegations under the provisions of IPC not made out – Prosecution was abuse of process of law – Penal Code, 1860 – ss. 498A, 494 and 506/34.

Penal Code, 1860 – s. 494 – Offence under – Ingredients of – Discussed.

Appellant married 'K' and went to Canada. He took a judgment of divorce from 'K', from the court in Canada. Coming back to India, he remarried. Brother of 'K' lodged FIR against the appellant and his family members u/ss. 494, 498A and 506/34. Appellant and his family members filed two separate petitions u/s. 482 Cr.P.C. High Court allowed the petition quashing the FIR as regards the family members. Petition of the appellant was not allowed. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. The FIR is manifestly attended with *malafides* and actuated with ulterior motive. The prosecution of the appellant is not at all legitimate, rather it is frivolous, vexatious, unwarranted and abuse of process. The

A appellant has made out a case for quashing the first information report and all subsequent proceedings pursuant thereto. [Para 11] [932-D-E]

2. The observation of the High Court, that the appellant married second time, although his marriage has not been dissolved, is *ex-facie* contrary to record. The certificate of divorce issued by the New Westminster Registry, Supreme Court of British Columbia shows that the marriage of the appellant and 'K' stood dissolved on February 8, 2001. This fact is noticed in the order dated April 29, 2004 whereby the High Court quashed the F.I.R. and the subsequent criminal proceedings against the family members of the appellant. In the affidavit filed by Deputy Superintendent of Police in response to the petition filed by the appellant under Section 482 Cr.P.C., before the High Court, it has been admitted that during investigation on March 14, 2002, photocopy of divorce certificate purporting to have been issued by the Supreme Court of British Columbia was produced. [Para 7] [931-A-D]

3. Section 494 IPC, *inter-alia*, requires the following ingredients to be satisfied, namely, (i) the accused must have contracted first marriage; (ii) he must have married again; (iii) the first marriage must be subsisting and (iv) the spouse must be living. In the present case, the appellant's first marriage was not subsisting when he is said to have married second time. Affidavit filed by the first wife of appellant states that she was not aware of the divorce proceedings. However, from this affidavit, it is apparent that her husband has obtained a divorce judgment. There is nothing in the affidavit that divorce judgment has been stayed or set aside. On the face of the allegations made in the FIR therefore, ingredients of the offence under Section 494 IPC are not satisfied. [Para 8] [931-D-G]

4. Insofar as offence under Section 498-A IPC is concerned, the High Court in its earlier order in the petition filed by the family members, observed that no demand of dowry has been made by the petitioners in the FIR nor was

there any specific entrustment, as alleged in the FIR of dowry articles to the petitioners. Moreover, in the affidavit filed by the first wife, there is not a word about demand of dowry or harassment on account of dowry by the appellant. [Para 9] [931-H; 932-A-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 2122 of 2009.

From the Judgment & Order dated 24.05.2006 of the High Court of Punjab & Haryana at Chandigarh in Criminal Misc. No. 8526 of 2005.

Sushil Kumar Jain, Puneet Jain, Eshila Barua, Ms. Pratibha Jain, for the Appellant.

Vivek K. Goyal, A.A.Genl., Kuldip Singh for the Respondents.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. Leave granted.

2. In this appeal by special leave, the appellant has challenged the order dated May 24, 2006 passed by the High Court of Punjab and Haryana. By the said order, the petition filed by the appellant under Section 482 of Code of Criminal Procedure for quashing F.I.R. No. 9 dated January 21, 2002 registered at Police Station Sehna under Sections 498-A, 494, 506/34, IPC has been dismissed.

3. Kamaljeet Kaur is a landed immigrant of Canada. On May 7, 1997, she married Pashaura Singh Sidhu – appellant – at village Ghall Kalan, District Moga, Punjab. She left for Canada on May 15, 1997. She sponsored her husband and, accordingly, Pashaura Singh went to Canada in 1998. They stayed together for few months and then relations between them became strained. Kamaljeet, thereafter, started living separately in Ontario. Pashaura Singh applied for divorce and dissolution of marriage before the Supreme Court of British Columbia and a divorce judgment was passed in his favour and their marriage stood dissolved with effect from February 8, 2001. After the dissolution of marriage, Pashaura Singh came to India and remarried on

A January 2, 2002. Pashaura Singh went back to Canada with his newly wedded wife and both of them have been residing there.

4. On January 21, 2002, Kamaljeet's brother Balwant Singh lodged a first information report being F.I.R. No. 9 at Police Station Sehna against Pashaura Singh, Hakam Singh (father of Pashaura Singh), Randhir Singh (brother of Pashaura Singh), Charanjit Kaur (wife of Randhir Singh) and Harbans Kaur (mother of Pashaura Singh) alleging therein that on May 7, 1997 he performed his sister Kamaljeet Kaur's marriage with Pashaura Singh; that at the time of marriage, according to his status, he gave rupees four lacs in cash, gold jewelry, utensils, almirah, fifty-one suits, five bags etc. but the accused started harassing his sister Kamaljeet Kaur and threatened to kill her if she did not bring car, electronic items etc. and that he has now come to know that Pashaura Singh has entered into second marriage in the first week of January, 2002. A case under Sections 498-A, 494, 506/34, IPC was registered against the accused persons and it appears that the police submitted challan against them in the court of Judicial Magistrate First Class, Barnala.

5. Randhir Singh, Charanjit Kaur (Rajinder Kaur), Hakam Singh and Harbans Kaur filed a petition under Section 482 of the Code of Criminal Procedure for quashing the F.I.R. No. 9 and criminal prosecution against them. Vide order dated April 29, 2004, the High Court allowed the petition and quashed F.I.R. No. 9 dated January 21, 2002 registered against them and all subsequent proceedings.

6. Pashaura Singh by a separate petition under Section 482 of the Code prayed for quashing F.I.R. No. 9/2002 and the subsequent criminal proceedings against him but, as noticed above, the High Court by its order dated May 24, 2006 dismissed his petition. The High Court in its cryptic order, while dismissing the petition, observed that Pashaura Singh has married second time on January 2, 2002 while he was already married with Kamaljeet Kaur and the aforesaid marriage has not been dissolved.

7. Having heard the learned Counsel for the parties and upon careful perusal of the materials placed before us, in our

judgment, the order of High Court cannot be sustained for more than one reason. In the first place, the High Court gravely erred in observing that Pashaura Singh married second time on January 2, 2002 while he was already married with Kamaljeet Kaur and the aforesaid marriage has not been dissolved. The certificate of divorce dated February 26, 2001 issued by the New Westminster Registry, Supreme Court of British Columbia shows that the marriage of Pashaura Singh and Kamaljeet Kaur stood dissolved on February 8, 2001. As a matter of fact, this fact is noticed in the order dated April 29, 2004 whereby the High Court quashed F.I.R. No. 9 and the subsequent criminal proceedings against the family members of Pashaura Singh. In the affidavit filed by Gurmail Singh, Deputy Superintendent of Police in response to the petition filed by the appellant under Section 482 before the High Court, it has been admitted that during investigation on March 14, 2002 Hakam Singh had produced photocopy of divorce certificate purporting to have been issued by the Supreme Court of British Columbia. The observation of the High Court, thus, that Pashaura Singh married second time, although his marriage has not been dissolved, is *ex-facie* contrary to record.

8. Section 494, IPC, *inter-alia*, requires the following ingredients to be satisfied, namely, (i) the accused must have contracted first marriage; (ii) he must have married again; (iii) the first marriage must be subsisting and (iv) the spouse must be living. Insofar as present case is concerned the appellant's marriage with Kamaljeet Kaur was not subsisting on January 2, 2002 when he is said to have married second time. Pertinently before the High Court, along with reply, the complainant Balwant Singh annexed copy of an affidavit filed by Kamaljeet Kaur which states that she was not aware of the divorce proceedings filed by her husband Pashaura Singh. However, from this affidavit, it is apparent that her husband has obtained a divorce judgment. There is nothing in the affidavit that divorce judgment has been stayed or set aside. On the face of the allegations made in the first information report, therefore, ingredients of the offence under Section 494, IPC are not satisfied.

9. Insofar as offence under Section 498-A is concerned, the

A High Court in its earlier order dated April 29, 2004 in the petition filed by the family members, observed thus:

“I have perused the First Information Report registered against the petitioners.

B The only allegation against the petitioner is that they started harassing Kamaljeet Kaur Gill for not bringing more dowry. No demand of dowry has been made by the petitioners, nor is there any specific entrustment, as alleged in the First Information Report of dowry articles to the petitioners. Parties have divorced each other, as per the order of the Supreme Court of British Columbia (Annexure P-1). Order is dated February 25, 2001. It is after this divorce that Pishora Singh got married in India on January 2, 2002.”

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D 10. Moreover, in the affidavit of Kamaljeet Kaur referred to hereinabove, there is not a word about demand of dowry or harassment on account of dowry by the appellant.

E 11. We have no hesitation in holding that the first information report lodged by Balwant Singh is manifestly attended with malafides and actuated with ulterior motive. The prosecution of the appellant is not at all legitimate, rather it is frivolous, vexatious, unwarranted and abuse of process. The appellant has made out a case for quashing the first information report and all subsequent proceedings pursuant thereto.

F 12. For the reasons indicated above, appeal is allowed and order dated May 24, 2006 passed by the High court of Punjab and Haryana is set aside. Resultantly, F.I.R. No. 9 dated January 21, 2002 registered at Police Station Sehna and all subsequent proceedings pursuant thereto stand quashed and set aside.

13. The pending applications stand disposed of.

K.K.T.

Appeal allowed.