

*Before T.P.S. Mann, J.*

**BIR BAHADUR SINGH AND OTHER—Petitioners**

*versus*

**STATE OF PUNJAB & ANOTHER—Respondents**

**CRIMINAL MISC. NO. 33310/M OF 2002**

28th August, 2006

*Indian Penal Code, 1860—Ss. 406, 498-A, 494 & 120-B—General & vague allegations by wife of cruelty, misappropriation of dowry articles & contracting second marriage without getting divorce—No specific allegation regarding harassment & beating—Allegations related to a period of more than 4/5 years earlier to registration of FIR—S. 468 prescribes period of limitation of 3 years for taking cognizance of such offences—No case u/ss 406 and 498-A made out against petitioners—Contracting of second marriage when earlier marriage stood dissolved by an ex parte decree—Ex parte decree of divorce is as good as any other decree till it is set aside—Petitioners cannot be convicted for offence u/s 494 IPC—Petition allowed, FIR and all consequent proceedings quashed.*

*Held that, there were no specific allegations against the petitioners regarding harassment and beating of Balwinder Kaur. Only general and vague allegations were made that the accused wanted to get rid of the complainant due to which they started harassing and beating her. Even the so called allegations pertain to a period which was about 4/5 years earlier to the time when the FIR was registered. Similarly, the allegations regarding misappropriation of dowry articles/Istri Dhan are missing from the FIR. Even if it is taken that any offence under Sections 406 and 498-A IPC was made out, the cognizance of the same could not be taken as the period of limitation prescribed for these offences under Section 468 Cr. P.C. had run out. Moreover, the main grievance of the complainant is in respect of her husband's contracting second marriage for which, according to her, the accused were liable for an offence under Section 494 IPC.*

(Para 5)

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*Further held*, that even in respect of the offence u/s 494 IPC *ex parte* decree of divorce is as good as any other decree till the time it is set aside. On 4th December, 1999, *ex parte* decree of divorce was granted. As per the FIR Bir Bahadur Singh accused contracted second marriage with Charanjit Kaur on 17th April, 2000. An application was moved by respondent No. 2 before the Court for setting aside *ex parte* decree on 12th October, 2000. It is, thus, clear that on 17th April, 2000, the day when Bir Bahadur Singh contracted second marriage with Charanjit Kaur, his earlier marriage with Balwinder Kaur, respondent No. 2 stood dissolved, though by an *ex parte* decree.

(Para 9)

R.K. Gupta, *Advocate, for the petitioners.*

Ravinder Kaur Nihalsinghwala, DAG, Punjab, *for respondent No. 1.*

B.P.S. Dhaliwal, *Advocate, for respondent No. 2.*

### JUDGEMENT

**T.P.S. MANN, J.**

(1) On 17th April, 2002, on the basis of an application submitted by respondent No. 2, namely, Balwinder Kaur, F.I.R. No. 165 was registered at Police Station, Lalru, District Patiala, against the petitioners under Sections 406, 498-A, 494, 120-B I.P.C. It was alleged, therein, that the marriage of Balwinder Kaur was solemnized with Bir Bahadur Singh, petitioner in the year 1988. Her father had spent Rs. 3 lacs on her marriage. From this marriage, a son and a daughter were born to the couple. It was alleged that Bir Bahadur Singh, husband, Kesar Singh, father-in-law, Chint Kaur, sister-in-law and Paras Ram, sister-in-law's husband of Balwinder Kaur, started harassing her and beating her by saying that her parents had spent very nominal amount at the marriage and they asked her to fetch a Maruti Car from her parents. She, however, did not narrate all these facts to her parents as she thought that it would disturb them. About 4/5 years earlier, the accused kept

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children with them and sent Balwinder Kaur alone to her parental village. A Panchayat was convened to resolve the matter but it was all in vain. In the meantime, on 26th March, 1999, Bir Bahadur Singh filed a divorce petition which was later on decreed *ex-parte*. On learning about the same, an application was filed by Balwinder Kaur for setting aside the same. Notice of the application was served upon Bir Bahadur Singh and the same was, thereafter, fixed for evidence on 1st June, 2002. During this period, accused Bir Bahadur Singh contracted second marriage on 17th April, 2000 with Charanjit Kaur. Under these circumstances, Balwinder Kaur, respondent No. 2 sought registration of a case against her husband and three others for treating her with cruelty, mis-appropriating the dowry articles and for contracting second marriage without getting divorce from the first wife.

(2) After the registration of the case, investigation was taken up by the police and the challan was finally submitted in the court against the petitioners. However, Charanjit Kaur, was found innocent and she was placed in column No. 2 of the challan.

(3) Learned counsel for the petitioners has sought the quashing of the F.I.R. on the ground that no specific instance of maltreatment or cruelty was mentioned by the complainant when she submitted an application to the police on the basis of which, the present F.I.R. was registered. The offences under Section 406 and 498-A IPC were punishable with a maximum imprisonment for three years and as per the provision of Section 468 Cr. P.C., cognizance of the said offence could only be taken within a period of three years. Perusal of the F.I.R. clearly shows that the allegations in respect of the offences under Sections 406 and 498-A IPC related to a period of more than 4/5 years before the F.I.R. itself was registered. In respect of the offence under section 494 IPC, learned counsel for the petitioners has submitted that before Bir Bahadur Singh, petitioner contracted second marriage with Charanjit Kaur, his earlier marriage with Balwinder Kaur, respondent No. 2 stood dissolved by decree of divorce dated 4th December, 1999. Mere fact that it was an *ex-parte* decree of divorce was no ground to make Bir Bahadur Singh, petitioner liable for the offence under Section 494 IPC. In this respect, learned counsel for the petitioners has relied upon “**Krishna Gopal Divedi versus Prabha Divedi (1).**”

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(1) 2002(2) Criminal Courts Cases 362 (S.C.)

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(4) Learned counsel for respondent No. 2 has submitted that the allegations made by respondent No. 2 have been investigated and, thereafter, the challan has been presented in the court. As such, no case was made out for quashing of the F.I.R. in question.

(5) From a bare reading of F.I.R., it is clear that there was no specific allegations against the petitioners regarding harassment and beating of Balwinder Kaur. Only general and vague allegations were made that the accused wanted to get rid of the complainant due to which, they started harassing and beating her. Even the so called allegations pertain to a period which was about 4/5 years earlier to the time when the F.I.R. was registered. Similarly, the allegations regarding mis-appropriation of dowry articles/Istri Dhan are missing from the F.I.R. Even if, it is taken that any offence under Sections 406 and 498-A IPC was made out, the cognizance of the same could not be taken as the period of limitation prescribed for these offences under Section 468 Cr. P.C. had run out. Moreover, the main grievance of the complainant is in respect of her husband's contracting second marriage for which, according to her, the accused were liable for an offence under Section 494 IPC.

(6) Offence under Section 494 IPC is non cognizable in nature. The aggrieved person could file a complaint and the Magistrate could not take cognizance of the said offence on a police report. In "**Surjit Singh versus State of Punjab (2)**", it was held as under :—

"The grievance of the petitioner appears to be genuine one. Section 198 Cr. P.C. debars the police from taking cognizance of such an offence since it is shown to be a non-cognizable one, not the Ilaqa Magistrate could take cognizance of the offence on police report. Section 198 Cr. P.C. empowers taking cognizance of an offence under Section 494/495 IPC by the Magistrate only upon a complaint made by some person aggrieved of the offence. Section 198(c) Cr. P.C. provides as under :

"198. Prosecution for offences against marriage-(1) No Court shall take cognizance of an offence punishable

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under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence :—

Provided that :

(a) xxx      xxx      xxx      xxx

(b) xxx      xxx      xxx      xxx

(c) Where the person aggrieved by an offence punishable under Section 494 or Section 495 of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, or with the leave of the court by any other person related to her by blood, marriage or adoption."

6. Admittedly, no complaint was made before the Magistrate by the aggrieved persons, at all, i.e. by Sinder Kaur respondent No. 2. The action of respondent No. 3-ASI Karnail Singh in taking cognizance of the offence and making a report to the Magistrate was without any jurisdiction. Similarly, taking of cognizance of the offence by the Magistrate on such a report was also against the provisions of Section 198 Cr. P.C."

(7) The complainant seems to be conscious of this fact and with a view to avoid filing of the complaint, she chose the present way of lodging the F.I.R. by levelling general and vague allegations regarding her harassment as well while simultaneously alleging second marriage by her husband. As is clear from the F.I.R., there is no material from which it could be made out that the petitioners committed the offence under Section 406 I.P.C. and also under Section 498-A I.P.C.

(8) Even in respect of the offence under Section 494 I.P.C. *ex-parte* decree of divorce is as good as any other decree till the time it is set aside. On 4th April, 1999, *ex-parte* decree of divorce was granted. As per the F.I.R. Bir Bahadur Singh accused contracted second marriage with Charanjit Kaur on 17th April, 2000. An

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application was moved by respondent No. 2 before the Court for setting aside *ex-parte* decree on 12th October, 2000. It is, thus, clear that on 17th April, 2000, the day when Bir Bahadur Singh contracted second marriage with Charanjit Kaur, his earlier marriage with Balwinder Kaur, respondent No. 2 stood dissolved, though by an *ex-parte* decree. In "**Krishna Gopal Divedi's case (supra)**", second marriage contracted by the husband therein before the setting aside of the *ex-parte* decree of divorce was held to be not sufficient for convicting him for the offence under Section 494 IPC. It was observed :

4. Learned counsel for the respondent (first wife) did not dispute the fact that she moved for setting aside the *ex-parte* decree and succeeded in it when an order was passed on 31st March, 1994. As per that order the *ex-parte* decree of divorce dated 6th July, 1990 was set aside. If that be so, appellant cannot possibly be convicted for the offence under Section 494 of IPC on premise that he had undergone a ceremony of marriage with another on 25th May, 1993.
5. Learned counsel for the respondent contended that the appellant is guilty of adultery at least from the date 31st March, 1994. We are not considering that aspect since no complaint has been filed by the wife against the appellant on that score.
6. As it is, we feel that the criminal proceeding now pending against the appellant for the offence under Section 494 of the IPC is only an exercise in futility. We do not want the criminal Court to waste its time for that purpose."

(9) In view of the above, the present petition is allowed and the F.I.R. 165 dated 17th April, 2002 registered at Police Station, Lalru, District Patiala, under Sections 406, 498-A, 494, 120-B I.P.C. is hereby quashed.

(10) All the proceedings taken thereunder, in pursuance to the aforementioned F.I.R. are also set aside.

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**R.N.R.**