

**HIGH COURT OF JAMMU, KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 06.07.2022
Pronounced on: 01.09.2022

***CRMC No. 43/2018
(IA 1/2018) CrIM 1281/2019)***

1. S. Rawail Singh and others vs. Gurinder Jeet Kour

Mr. Pranav Kohli, Sr. Advocate with
Farhan Mirza, Advocate

Mr. Anil Sethi, Advocate

2. CRMC No. 51/2018 (IA No. 1/2018)

S. Rawail Singh and others vs. State of J&K and anr.

Mr. Pranav Kohli, Sr. Advocate with
Farhan Mirza, Advocate

Mr. Amit Gupta
Mr. Anil Sethi, Advocate

3. CRMC No. 36/2018 (IA 01/2018)

Gurinder Jeet Kour vs. State of J&K & anr.

Mr. Anil Sethi, Advocate

Mr. Amit Gupta, AAG

Coram:

**HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE
JUDGMENT**

As the issue involved in all the afore-captioned petitions is identical in nature, therefore, all have been clubbed, heard together and are being decided by a common order.

CRMC No. 43/2018

1. Petitioners in the instant petition seek quashment of the complaint titled ***Gurinder Jeet Kaur Versus S. Baldev Singh and Ors.*** filed under Section 12(1) of the J&K Protection of Women from Domestic Violence, Act (for

brevity 'impugned complaint') which is pending before the Court of Learned JMIC, Sub-Judge, Jammu (for brevity 'trial Court'), wherein process has been issued by the trial Court against the petitioners herein.

2. The aforesaid complaint has been filed by the respondent-complainant- Gurinder Jeet Kaur on 20.12.2017, wherein she complained about being subjected to domestic violence by the accused-petitioners herein.

3. In brief, the acts of domestic violence are that she and the petitioner No. 4-Baldev Singh were married on 19.01.2007 as per the Sikh rites (Anand Karaj) and rituals at Gurudwara Shri Guru Singh Sabha, Greater Kailash Kunjwani, Jammu and out of the said wedlock one child, namely, Gurshish Singh has born. She alleges in the complaint that at the time of solemnizing of the marriage sufficient dowry in the shape of articles, i.e., Refrigerator, washing Machine, Air-conditioner, TV and Gold ornaments were given to the petitioners and in addition to the said articles, cash amount of Rupees one lac was also given to them. She alleges that after solemnizing of marriage she was residing in H.No.98 Sector No. 9, Nanak Nagar, Jammu with the petitioners and their attitude from the very beginning was cruel and unbecoming towards her. They used to taunt her for bringing fewer dowries and were pressurizing her to fulfill other demands of dowry. The petitioners started torturing and harassing her on one pretext or another and also not being provided proper food and cloths and other basic amenities. Even after the birth of the child, their attitude did not change, but turned bad to worst. Her husband-Baldev Singh who is working in Germany, used to come to Jammu after 4-6 months and when she asked him to accompany her, he used to abuse and beat her, she was thus, maltreated by the accused-Baldev Singh. In the complaint it was further alleged that complainant

was thrown out of her house on 02.09.2010 and was threatened not to come back unless she brings Rs. 02 lacs for them. She on hearing that her husband-Baldev Singh was leaving for Germany on 10.10.2010 she also booked her tickets and went to Germany along with her son. On reaching Germany, she was not treated properly by her husband-Baldev Singh and was not allowed to reside with him. She was compelled to live in a separate accommodation. It was alleged that all the articles of Stridhan have been retained by the petitioners herein. She completed her studies in Jammu in the month of November, 2017 and now she is residing at Jammu and her minor son is studying in Class-IIIrd in Germany and his expenses are incurred by her and her daily needs and that of minor child are approximately one lac per month which are being borne by her. She claims in the complaint that petitioner-Baldev Singh is doing his business in Germany and earning Rs. 02 lac per month and has no liability except to maintain her and child.

4. The petitioners have challenged the complaint as well as the process issued by the trial Court precisely, on the ground that there is no relationship of husband and wife between the petitioner No. 4-Baldev Singh and respondent-Gurinder Jeet Kaur. The petitioners submit that the allegations contained in the complaint filed by her under the Domestic Violence, Act are false and frivolous. It is submitted that after the marriage both the complainant-respondent herein and petitioner No. 4-Baldev Singh shifted to Germany where Baldev Singh was settled and working since 2002 on account of his employment. Both of them became the permanent residents of Germany, in support of their contention they have placed on record copy of the divorce issued by the District Court Wisman, Germany. It is stated that after shifting to Germany the relationship between the

complainant and petitioner No. 4-Baldev Singh became hostile. Petitioner No. 4-Baldev Singh in the month of February 2014 came to India for 10 days and when he returned back to Germany, he found that the respondent-complainant had left her matrimonial house along with all gold ornaments and other goods as well as money and had went to some place and to know her whereabouts, he made efforts, but she remained untraceable. The respondent-complainant thereafter filed a false and frivolous case in Germany against the petitioner No. 4-Baldev Singh and started residing separately. The Court at Germany made several attempts for reconciliation between them, but all such efforts failed and she flatly refused to stay with him and ultimately he approached the District Court Wisman, Germany and filed a petition for divorce. The respondent-complainant thereafter caused her appearance, he filed her objections, the Court after hearing both the parties and the perusing the evidence led by them allowed the divorce petition under Section 98 Sub-Clause 261 No. 2, Family Law and under Sections 122, 113 of Family Law, 261 Sub-Clause 261 Sub-Clauses 3 No.2 Zivil Process Act, and passed a Decree of Divorce vide Judgment and Decree dated 20.07.2017. The said decree of divorce passed by the said Court has been placed on the record of the instant petition.

5. Regarding petitioners 1 to 3 it is submitted that the complainant-respondent herein never resided with them, they never visited Germany, while petitioner- Baldev Singh and complainant-respondent were in Germany.

6. The petitioners have thus, challenged the complaint and the process issued mainly on the ground that there is no relationship of husband and wife existing since passing of the decree whereby the marriage stands dissolved inter se them and, as such, decree being binding upon the parties, as the same has not

been challenged, therefore, provisions of Domestic Violence, Act cannot be invoked in this case.

7. The petitioners' case is that once the complainant-respondent herein had lost the status of wife she cannot maintain a petition under the Domestic Violence, Act as she has no domestic relationship with the petitioner No. 4- Baldev Singh.

8. Now the question that arises for consideration in this case is, as to whether the marriage between the parties stands dissolved and the complainant-respondent herein has lost the status of wife, and that there is no domestic relationship between the parties in order to invoke the provisions of Domestic Violence, Act.

9. Learned counsel for the petitioners in support of the contention that there is no domestic relationship between the parties, i.e. complainant-respondent herein and petitioner No. 4- Baldev Singh has relied upon the Decree of Divorce dated 20.07.2017, passed by the District Court Wisman, Germany.

10. There is no dispute with regard to the fact that the petitioner No. 4 - Baldev Singh was settled in Germany since 2002 on account of his employment. He married the complainant-respondent herein and after marriage she also went to Germany and both of them were residing there. They became the permanent residents of Germany. After having stayed in Germany and becoming permanent residents of Germany, the relationship between them became hostile to each other and both of them started living separately. Thereafter, petitioner No. 4- Baldev Singh approached the District Court, Wisman and filed a petition for divorce.

11. The complainant-respondent herein contested the same before that Court, but petitioner No. 4-Baldev Singh succeeded in getting the marriage dissolved. The fact that the petitioner No. 4-Baldev Singh has approached the District Court Wisman, Germany and the said Court having dissolved the marriage by pronouncement of a judgment, petitioners have produced a certified copy of the judgment and decree dated 20.07.2017.

12. Perusal of the said judgment would show that both petitioner No. 4-Baldev Singh and complainant-respondent herein were residing in Germany when proceedings to dissolve the marriage were initiated by petitioner -Baldev Singh. Both of them had been represented by lawyer and the Court after hearing the parties, passed the decree of divorce dissolved the marriage.

Section 13 CPC reads as under:-

13. When foreign judgment not conclusive.

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except--

- (a) where it has not been pronounced by a Court of competent jurisdiction;***
- (b) where it has not been given on the merits of the case;***
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of ¹ [India] in cases in which such law is applicable;***
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;***
- (e) where it has been obtained by fraud;***
- (f) where it sustains a claim founded on a breach of any law in force in ¹ [India].***

13 Circumstances are shown in Section 13 Clauses (a) to (f) when foreign judgment would not be conclusive.

14. In the present case, the Court had passed the decree of divorce after being contested by the parties and judgment has been passed on merits.

15. The complainant-respondent herein in the complaint has nowhere stated that such a decree of divorce has been obtained by fraud or has been passed in breach of any law enforced in India nor any ground has been stated as mentioned in clauses (a) to (f) of Section 13 of CPC. In the absence of any condition as contained in clauses (a) to (f) presumption regarding the fact that such judgment is conclusive is attached to the said judgment.

16. In this case, the District Court Wisman, Germany, as is evident, had given opportunity to the complainant-respondent herein before passing the decree of divorce. Petitioner No. 4-Baldev Singh and complainant-respondent herein, at the time when proceedings were initiated and decree of divorce passed admittedly were permanent residents of Germany and, therefore, laws of Germany were applicable to them.

17. The petitioners having produced the certified copy of the judgment, therefore, provisions of Section 14 CPC presumption is attached to the said judgment that same has been pronounced by a Court of competent jurisdiction, however, such presumption can be displaced by proving for want of jurisdiction, no such ground is alleged in this case, even the complainant-respondent herein has not made a whisper about the passing of this judgment. The judgment so passed has also not been challenged separately by the complainant-respondent herein.

18. In case titled *Alcon Electronics (P) Ltd. vs. Celem S.A.of France*, (2017) 2 SCC 253, the Apex Court has held that once an order or decree is obtained after following the judicial process by giving reasonable notice and

opportunity to all proper and necessary parties to put forth their case, executing Court cannot enquire into validity, legality or otherwise of the said judgment
Paras 14 to 16 of this judgment reads as under:-

“14.A plain reading of Section 13, CPC would show that to be conclusive an order or decree must have been obtained after following the due judicial process by giving reasonable notice and opportunity to all the proper and necessary parties to put forth their case. When once these requirements are fulfilled, the executing Court cannot enquire into the validity, legality or otherwise of the judgment.

15.A glance on the enforcement of the foreign judgment, the position at common law is very clear that a foreign judgment which has become final and conclusive between the parties is not impeachable either on facts or law except on limited grounds enunciated under Section 13, CPC. In construing Section 13, CPC we have to look at the plain meaning of the words and expressions used therein and need not look at any other factors. Further, under Section 14, CPC there is a presumption that the Foreign Court which passed the order is a Court of competent jurisdiction which of course is a rebuttable presumption. In the present case, the appellant does not dispute the jurisdiction of the English Court but its grievance is, it is not executable on other grounds which are canvassed before us.

16.The appellant contends that the order of the English Court is not given on merits and that it falls under Section 13(c) of the CPC as a result of which it is not conclusive and therefore inexecutable. We cannot accept such submission. A judgment can be considered as a judgment passed on merits when the Court deciding the case gives opportunity to the parties to the case to put forth their case and after considering the rival submissions, gives its decision in the form of an order or judgment, it is certainly an order on merits of the case in the context of interpretation of Section 13(c) of the CPC.”

19. In case titled *Harbans Lal Malik vs. Payal Malik*, 2010 SCC Online Del 2516, while dealing with the question of presumption as to foreign judgment, in Paras 18, 21 & 22, the Court observed and held as under:-

“18. Thus, in order to constitute a family and domestic relationship it is necessary that the persons who constitute domestic relationship must be living together in the same house under one head. If they are living separate then they are not a family but they are relatives related by blood or consanguinity to each other. Where parents live separate from their son like any other relative, the family of son cannot include his parents. The parents can be included in the family of son only when they are dependent upon the son and/or are living along with the son in the same house. But when they are not dependent upon the son and they are living separate, the parents shall constitute a separate family and son, his wife and children shall constitute a separate family. There can be no domestic relationship of the wife of son with the parents when the parents are not living along with the son and there can be no domestic relationship of a wife with the parents of her husband when son along with the wife is living abroad, maintaining a family there and children are born abroad. I, therefore consider that Harbans Lal Malik could not have been made as a respondent in a petition under Domestic Violence Act as he had no domestic relationship with aggrieved person even if this marriage between her and her husband was subsisting.

21. The next question which arises is whether the learned Court of MM could have ignored the decree granted by the Court of New Jersey, USA. Section 14 of CPC reads as under:

14. Presumption as to foreign judgments. - The Court shall presume upon the production of any document purporting to be a certified copy of a foreign judgment that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

22. It is evident from the reading of this provision that the Court has to presume, if a certified copy of foreign judgment is produced that such judgment was pronounced by a Court of competent jurisdiction unless the contrary appears on record or is proved. Obtaining of divorce by husband from New Jersey Court is not denied in this case. Prima facie New Jersey, USA Court had jurisdiction is evident from the fact that husband and wife lived together in New Jersey for 7½ years. The laws of New Jersey provided that the jurisdiction in a matrimonial matter can be assumed by the Court if the parties have ordinarily lived there for one year. In the present case admittedly the parties lived there for 7½ years

thus prima facie there was no issue whether the Court of New Jersey had jurisdiction or not.”

20. In case titled *Kashmira Kale vs. Kishore Kumar Mohan Kale*, 2010 SCC Online Bom 324, the Court in Paras 18, 19, 20, 21, 24 & 31 has observed as under:-

18. To show that the husband was domiciled in India, the husband has produced xerox copies of certain documents as follows:-

(i) Xerox copy of his ration card which was issued on 14.11.2001 prior to his marriage which showed the earlier ration card issued on 28.11.2000. This was before or at the time he left for the US on deputation of the Company in which he then served. Thereafter he took up a fresh new independent employment in the US and remained there since.

(ii) Xerox copy of his driving licence on 30.10.1999, which was obtained prior to his initial departure to the US.

(iii) Voter s card issued on 8.1.1995 even prior to the above documents.

(iv) Passport which was initially issued on 5.8.1999 prior to his initial departure to the US which has been extended until 2019.

None of these documents shows his intention to reside in India permanently; his Green Card shows his intention to reside in the US.

19. Consequently, it is seen that since the parties were domiciled in the US, the Hindu Marriage Act cannot apply to them.

20. The jurisdiction of the Court under Section 19 of the Hindu Marriage Act would be where the marriage was solemnised where the Respondent, at the time of the presentation of the Petition resided or where the parties to the marriage last resided together. The aforesaid chronology shows that the parties to the marriage last resided together in the US, after the husband left for the US on 17th January 2008 and the wife joined him on 27th February 2008 until September 2008. In fact, it is the case of the husband in his Petition that the parties resided for a single night stay in his

parents house at Pune before he left for his official duties on 17th January 2008. It is also his case in his Petition that his wife left for the US on 27th February 2008 and joined the Petitioner (husband) .

21. Consequently, it is seen that the parties last resided together in the Michigan, US and, therefore, that Court has territorial jurisdiction to decide their divorce dispute.

24. It is seen that the judgment has been passed on merits of the claim of the wife. It has been passed after due service of the summons upon the husband. The husband has accepted the service of the summons and filed his Written Statement. He thereafter did not appear but instead came to India and filed his own Petition within a week of filing his Written Statement in the US.

31. The order of the learned Judge of the Family Court, Pune, concluding that the parties last resided together in Pune and even though their residence is for a single day it would give the Court jurisdiction based upon the judgments cited in the impugned order suffers from a material irregularity and is required to be interfered with, since it assumes territorial jurisdiction not vested in it and since the Act itself does not apply to the parties consequent upon their domicile in the US and also because the rights between the parties have been settled by a judgment conclusive between them. The husband may be entitled to challenge the judgment in the Court in which it is pronounced following the due legal process required in that jurisdiction consequent upon his absence, if need be. However, the husband cannot confer jurisdiction on the Court in Pune in which the parties never resided together for any length of time in their own matrimonial home, they having had their matrimonial home in the US.

21. From the aforesaid discussion, it is clear that the petitioner No. 4-Baldev Singh and complainant-respondent herein were permanent residents of Germany and were subjected to the laws of that country and the District Court Wisman, Germany having jurisdiction had decided the petition filed by the petitioner No. 4-Baldev Singh for divorce and has dissolved the marriage. By passing of the decree of divorce dated 20.07.2017, the marriage/relationship

between the petitioner No. 4-Baldev Singh and complainant-respondent herein came to an end and has ceased to exist.

22. Learned counsel for the respondent however, submits that the judgment which is being relied upon by the petitioners in support of their contention that the relationship between the petitioner No. 4-Baldev Singh and respondent herein has come to an end is not binding upon, in view of the law laid down in case titled *K. Radha Krishanan Nayyar vs. Smt. Radha*, J&K (8) SCC Online 1990. While relying upon the said judgment he submits that the marriage between the petitioner No. 4-Baldev Singh and respondent herein had taken place in Jammu and Kashmir, therefore, they are governed by the Jammu and Kashmir Hindu Marriage, Act. Therefore, District Court Wisman, Germany was not having the jurisdiction, and as such, the said order dissolving the marriage between the parties, is without any jurisdiction.

In para 7 of the said judgment Court has held as under:-

“The important question of law to be determined in the case is as to whether the forum of jurisdiction is to be determined with reference to the parties or the solemnisation of marriage between them or on the basis of their residence, under Section 21 of the State Act. Section 21 of the State Act corresponds to Section 19 of the Central Act and the words, 'residing outside the territories to which this Act extends' used in both the sections is explicit in terms and without any ambiguity.' In other words, the provisions of Section 21 of the Act shall apply or required to be applied to the parties with reference to their solemnisation of the marriage. If the marriage between two Hindus, whether residents of the State or not, is solemnised within the territorial jurisdiction to which the State Act extends, the forum for presentation of the petition under the State Act shall be determined under Section 21 of the Act but not otherwise. If any other interpretation is put to the said section, disastrous results may follow resulting in the failure of justice on account of contradictory judgments and decrees. In a case where a non-State subject is married to a person who is governed

*by the provisions of the **State Act**, the forum of jurisdiction for seeking the relief under the Act cannot be left to the discretion of the parties inasmuch as they may choose to approach the different courts, one governed by the **Central Act** and the other by the **State Act**. In that event passing of the conflicting judgments and decrees cannot be ruled out/ This Court in that event may not be in a position even to consolidate the proceedings or transfer the same from one court to another to avoid conflicting judgments. The forum for getting relief under the Act has, therefore, to be chosen keeping in view the place of solemnization of the marriage between the parties irrespective of their permanent residence or domicile. If the marriage is solemnized within the State the provisions of **Section 21** would be applicable and if the respondent at that relevant time was residing outside the territories of the State the petitioner may be justified in presenting the petition in any court in the State where he or she is living. A perusal of Sub-section (2) of **Section 1** of the two Acts would clearly show that the **State Act** is intended to be made applicable to the State of Jammu and Kashmir whereas the **Central Act** extends to whole of India except this State and "applies also to Hindu domicile in the territories to which this Act extends, who are outside the said territories". It is pertinent to note that the latter words used in Sub-section (2) of the **Central Act** as referred to hereinabove have been omitted by the **State Act** in Sub-section (2) of **Section 1**. "Domicile" has nowhere been defined either under the **State Act** or the **Central Act** but it denotes the relationship between a person and a particular territorial unit possessing his own system of law which is different from nationality or citizenship. It determines a person's personal status and the law applicable to him in the matters such as majority or minority, marriage, divorce and succession. A person can acquire a domicile of his choice by a conscientious act. Mere residence at a particular place is not the only test to determine the domicile and the court is required to consider the quality and character of residence for determining the domicile of a citizen. The territorial jurisdiction of the **State Act** is, however, applicable to all the Hindus, Budhists, Jains and Sikhs who have been specified in **Section 2** of the Act irrespective of their residence or domicile. Point No. 1 is, therefore, decided by holding that **Section 21** of the Act is applicable to persons specified in **Section 2** of the State Act whose marriage is solemnized within the State of Jammu and Kashmir irrespective of their domicile."*

23. This Court in K. Radha's case (supra) held that the marriage of the parties was solemnized at Madras a place where the State Act is not applicable and the appellant was not justified in approaching the State-Courts under Section 21(iv) of the State Act and the trial Court has rightly dismissed the petition on the ground of jurisdiction.

24. The aforesaid judgment would not be applicable in the present case, because in the present case both the husband and wife, after they solemnized their marriage in Jammu, shifted to Germany on 10.10.2010 and became the citizens of Germany and being the citizens of Germany the laws of Germany would be applicable to them and not the State as and they would be governed by the local law.

25. In the present case, the husband-Baldev Singh filed a divorce petition before a competent Court of law in Germany and the judgment has been passed on merits, after due service of summon upon the wife- Gurinder Jeet Kaur as well as after hearing both the parties.

26. The decree of divorce dated 20.07.2017, unless and until challenged, is binding upon both the parties. The child born out of the said wedlock as stated by the complainant-respondent herein is still residing in Germany, where he is undergoing studies.

27. Therefore, for the reasons stated hereinabove, it is held that the judgment/decree of divorce dated 20.07.2017 passed by the District Court Wisman, Germany whereby the marriage has been dissolved is conclusive and binding upon the parties. The said judgment/decree has not been challenged by the complainant-respondent herein, therefore, it is held that the relationship of

husband and wife between petitioner No. 4-Baldev Singh and respondent - Gurinder Jeet Kaur has come to an end.

28. The complainant-respondent herein after passing of the aforesaid decree of divorce dated 20.07.2017 filed a complaint against the petitioners without observing that the marriage has been dissolved, by the District Court Wisman, Germany. The relationship between petitioner No. 4-Baldev Singh and complainant-respondent herein has come to an end and they are no more husband and wife after passing of the decree of divorcé. The question now arises as to whether petition filed under Section 12(1) of the J&K Protection of Women from Domestic Violence, Act could have been filed and whether it can continue. Complaint under the provisions of Protection of Women from Domestic Violence, Act can be instituted by a person who is aggrieved, aggrieved person is defined in Section 2 (a) of the Act, which reads as under:-

“Definitions.—In this Act, unless the context otherwise requires, — (a) “aggrieved person” means any woman who is in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent ;”

Domestic relationship is defined in clause (f) of Section 2 of the Act, which reads as under:-

“domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, adoption or are family members living together as a joint family ;

29. In case *Amit Aggarwal vs. Sanjay Aggarwal*, 2016 SCC Online P&H 4200, the Court while dealing with the similar matter in paras 24, 27 & 30 has observed as under:-

24. It is apparent that domestic relationship arises between the two persons, who have lived together in a shared

household and when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The definition speaks of living together at any point of time however it does not speak of having relation at any point of time. Thus, if the domestic relationship continued and if the parties have lived together at any point of time in a shared household, the person can be a respondent but if the relationship does not continue and the relationship had been in the past and is not in the present, a person cannot be made respondent on the ground of a past relationship. The domestic relationship between the aggrieved person and the respondent must be present and alive at the time when the complaint under Domestic Violence Act is filed.

27. It is apparent that the provisions under the D.V.Act can be invoked only when the domestic relationship is in existence. Where the domestic relationship ceases, the provisions under the D.V.Act cannot be invoked.

30. Considering the above, it is held that the present complaint is an abuse of the process of the Court. The domestic relationship had come to an end. The complainant had impleaded relatives who were not living in the 12 of 13 shared house and permitting the Magistrate to proceed with the complaint would be an abuse of the process of law. The complaint and the proceedings therein are quashed.

30. The proceedings in this case are sought to be quashed by exercising the power under Section 561-A Cr.P.C corresponding to Section 482 Cr.P.C.

31. In the aforesaid discussion it has been held that there is no domestic relationship existing between the parties when the domestic relationship is not existing between the parties the provisions of the Domestic Violence, Act cannot be invoked. Such provisions can be invoked only when such relationship exists between the parties.

32. The Trial Court on the basis of a complaint has taken cognizance and issued process to the petitioners. Section 482 Cr.P.C provides for inherent power of the High Court and such power are wide, but are to be exercised under exceptional circumstances.

33. In case titled *State of Haryana vs. Bhajan Lal, 1992*, reported in Supp (1) SCC 335, the Hon'ble Supreme Court, in exercise of the inherent powers under Section 482 of the Code of Criminal Procedure, has given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice while cautioning and holding that such discretion should be exercised in the rarest of the rare cases:-

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the

concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

34. While having regard to the facts and circumstances of the case, the case in hand falls under rarest of the rare cases in which the discretion is required to be exercised, because there is no domestic relationship between the parties and in the absence of such domestic relationship provisions of Domestic Violence, Act cannot be invoked.

35. Therefore, the allegations made in the complaint would not constitute commission of any offence under the provisions of Domestic Violence, Act which requires existence of domestic relationship. The allegations in the complaint thus, are absurd and inherently improbable and on the basis of such allegations there is no sufficient ground for proceeding against the petitioner-accused in the complaint. These criminal proceedings are thus, manifestly attended with mala fide and ulterior motive for wreaking vengeance on the petitioners. Thus, the grounds taken in the petition made out a case in favour of the petitioners for quashing of the proceedings. Accordingly, the complaint as well as the proceedings initiated thereon are quashed.

36. Writ petition is *allowed*.

34 Registry to forward a copy of this order to learned Sub-Judge, Jammu JMIC, Jammu for information.

CRMC No. 51/2018

1. In the instant petition, petitioners seek quashment of FIR No. 248/2017 dated 30.12.2017 for offences punishable under Sections 498-A and 420 RPC, registered with the Police Station, Gandhi Nagar, Jammu, registered against them.

2. A perusal of the FIR in question reveals that the complainant-Gurinder Jeet Kour has made allegations against the petitioners to the extent that at the time of her marriage, her husband and his father stated that Baldev Singh-petitioner No. 2 herein is unmarried, B.Com graduate and was owing a readymade garments shop in Germany, whereas after marriage with time things imploded and she came to know that her husband is a fraud. He had a girl child with a German lady born on 05.04.2004, namely, Josephine Renate Hentschel, neither he owns any a shop in Germany nor is he a B. Com graduate. It was further alleged that petitioner No. 2 herein is also trying to hatch a conspiracy of marriage again with another girl in Jammu. It was also alleged that during the course of marriage she was harassed mentally and physically and demanded more dowry.

3. As observed above, the relationship of petitioner-Baldev Singh and Gurinder Jeet Kour as husband and wife has come to an end with the passing of the decree of divorce, once the relationship of husband and wife has come to an end, proceedings under Section 498-A Cr.P.C cannot be initiated.

Section 498-A Cr.P.C provides as under:-

“498-A. Husband or relative of husband of a woman subjecting her to cruelty-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation – For the purpose of this section, “cruelty” means –

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

4 The above Section itself talks about the cruelty by the husband or relative of the husband towards woman. It makes it clear that there should be relationship existing between the parties as husband and wife. In the absence of such relationship the provisions of Section 498 Cr.P.C cannot be invoked and person who is not the husband or who is not in relation cannot be accused of such offence.

5. As has been discussed and observed in CRMC No. 43/2018, the marriage between petitioner-Baldev Singh and Gurinder Jeet Kour stands dissolved, meaning thereby that domestic relationship between them as husband and wife has come to an end. The decree of divorce passed by the District Court Wisman, Germany has nowhere been challenged, as such, there is no such domestic relationship, the registration of FIR and investigation consequent upon such FIR amounts to abuse of process of law. Thus, provisions of Section 482 Cr.P.C are required to be invoked in this case.

6. Therefore, for the reasons stated hereinabove, the petition is ***allowed*** and FIR No. 248/2017 dated 30.12.2017 for offences punishable under

Sections 498-A and 420 RPC, registered with the Police Station, Gandhi Nagar, Jammu is quashed.

CRMC No. 36/2018

1. In the instant petition, petitioner-Gurinder Jeet Kour has challenged the order dated 30.12.2017, passed by the by the learned Chief Judicial Magistrate, Jammu in a complaint filed by the petitioner titled ***Gurinder Jeet Kaur Versus S. Baldev Singh and Ors.*** with the prayer for directing the respondent No. 1 to 3 to register the FIR against the private respondents No. 4 to 8.

2. The case of the petitioner is that at the time of her marriage with respondent No. 4- Baldev Singh, her parents were harassed and victimized for more dowry which was beyond their limits. The petitioner was harassed and ill-treated by the private respondents No. 4 to 8 and his relatives for securing much dowry.

3. As noted above, in terms of the decree of divorce dated 20.07.2017 passed by a competent Court at Germany, the marriage between the petitioner-Gurinder Jeet Kaur and Baldev Singh respondent No. 4 herein has come to an end and there is no domestic relationship existing between them. The trial Court while taking note of the same has rightly rejected the application filed by the petitioner-Gurinder Jeet Kour seeking registration of an FIR against the respondent- Baldev Singh. Since there was no domestic relationship existing between the parties as husband and wife, as their marriage stood dissolved validly by passing of decree of divorce by the District Court Wisman, Germany, therefore, the impugned order dated 30.12.2017 passed by the Court of learned

Chief Judicial Magistrate, Jammu does not suffer from any illegality, irregularity or impropriety. Thus, the impugned order dated 30.12.2017 is upheld and the petition is, accordingly, *dismissed*.

4. Registry to place a copy of this order on each file.

(VINOD CHATTERJI KOUL)
JUDGE

Jammu
01.09.2022
Bir

Whether approved for reporting? Yes/No

