

Supreme Court of India

Inderjit Singh Grewal vs State Of Punjab & Anr on 23 August, 2011

Author: . B Chauhan

Bench: P. Sathasivam, B.S. Chauhan

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1635 of 2011

(Arising out of SLP(Crl.) No. 7787 of 2010)

Inderjit Singh Grewal

...Appellant

Versus

State of Punjab & Anr.

...Respondents

#### J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. Leave granted.

2. The instant appeal reveals a very sorry state of affair where the wife files a criminal complaint before the competent court to initiate criminal proceedings against her husband alleging that they had obtained decree of divorce by playing fraud upon the court without realising that in such a fact-situation she herself would be an accomplice in the crime and equally responsible for the offence. More so, the appeal raises a substantial question of law as to whether the judgment and decree of a competent Civil Court can be declared null and void in collateral proceedings, that too, criminal proceedings.

3. This criminal appeal arises from the judgment and final order dated 9.8.2010 in Criminal Misc. No. M-29339 of 2009 (O&M) passed by the High Court of Punjab & Haryana at Chandigarh, by

which the High Court has dismissed the application filed by the appellant under Section 482 of Code of Criminal Procedure, 1973 (hereinafter called as 'Cr.P.C.') for quashing the complaint No. 87/02/09 dated 12.6.2009 filed by respondent no. 2 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter called the 'Act 2005').

4. Facts and circumstances giving rise to present case are as under:

A. That the appellant and respondent no. 2 got married on 23.9.1998 at Jalandhar as per Sikh rites and from the said wedlock a son, namely, Gurarjit Singh was born on 5.10.1999. The parties to the marriage could not pull on well together because of temperamental differences and decided to get divorce and, therefore, filed HMA Case No. 168 of 19.9.2007 before the District Judge, Ludhiana under Section 13-B of Hindu Marriage Act, 1955 (hereinafter called the 'Act 1955') for dissolution of marriage by mutual consent. In the said case, statements of appellant and respondent no. 2 were recorded on 19.9.2007 and proceedings were adjourned for a period of more than six months to enable them to ponder over the issue.

B. The parties again appeared before the court on 20.3.2008 on second motion and their statements were recorded and both of them affirmed that it was not possible for them to live together and, therefore, the learned District Judge, Ludhiana vide judgment and order dated 20.3.2008 allowed the said petition and dissolved their marriage.

C. Respondent no. 2 filed a complaint before Senior Superintendent of Police, Ludhiana against the appellant on 4.5.2009 under the provisions of the Act 2005 alleging that the decree of divorce obtained by them was a sham transaction. Even after getting divorce, both of them had been living together as husband and wife. She was forced to leave the matrimonial home. Thus, she prayed for justice. The said complaint was sent to SP, City-I, Ludhiana for conducting inquiry.

The said SP, City-I conducted the full-fledged inquiry and submitted the report on 4.5.2009 to the effect that the parties had been living separately after divorce and, no case was made out against the present appellant. However, he suggested to seek legal opinion in the matter.

D. Accordingly, legal opinion dated 2.6.2009 was sought, wherein it was opined that the parties had obtained the divorce decree by mutual consent and the allegations made by respondent no. 2 against the appellant were false and baseless and the purpose of filing the complaint was only to harass the appellant.

E. Respondent no. 2 subsequently filed a complaint under the Act 2005 on 12.6.2009. The learned Magistrate issued the summons to the appellant on the same date. The Magistrate vide order dated 3.10.2009 summoned the minor child for counseling. The appellant, being aggrieved of the order of Ld. Magistrate dated 12.6.2009, filed application dated 13.10.2009 under Section 482 Cr.P.C. for quashing the complaint dated 12.6.2009.

F. In the meanwhile, respondent no. 2 filed Civil Suit on 17.7.2009 in the court of Civil Judge (Senior Division), Ludhiana, seeking declaration that the judgment and decree dated 20.3.2008, i.e.

decree of divorce, was null and void as it had been obtained by fraud.

The said suit is still pending.

G. Respondent no. 2 also filed application dated 17.12.2009 under Guardians and Wards Act, 1890 for grant of custody and guardianship of the minor child Gurarjit Singh and the same is pending for consideration before the Additional Civil Judge (Senior Division), Ludhiana.

H. Respondent no. 2 on 11.2.2010 also lodged an FIR under Sections 406, 498-A, 376, 120-B of the Indian Penal Code, 1860 (hereinafter called 'IPC') against the appellant and his mother and sister.

I. The High Court vide impugned judgment and order dated 9.8.2010 dismissed the application filed by the appellant.

Hence, this appeal.

5. Shri Ranjit Kumar, learned senior counsel appearing for the appellant has submitted that the High Court erred in rejecting the application of the appellant under Section 482 Cr.P.C., as none of the reliefs claimed by the respondent no.2 could be entertained by the criminal court while dealing with the complaint; the complaint itself is time barred, thus, the Magistrate Court could not take cognizance thereof. The complaint has been filed because of malice in order to extract money from the appellant. More so, the plea of fraud alleged by the respondent no.2 in the complaint for obtaining the decree of divorce before the Civil Court as per her own version, succinctly reveals that she herself had been a party to this fraud. The High Court failed to appreciate as to what extent her version could be accepted as she herself being the accomplice in the said offence of fraud committed upon the court. Even if the allegations made therein are true, she is equally liable for punishment under Section 107 IPC. More so, the reliefs claimed by the respondent no. 2 in the civil suit for declaring the decree of divorce as null and void and in another suit for getting the custody of the child referred to hereinabove, would meet her requirements. Thus, the appeal deserves to be allowed.

6. On the contrary, Shri Manoj Swarup, learned counsel appearing for the respondent no.2 has vehemently opposed the appeal contending that decree of divorce is a nullity as it has been obtained by fraud. The relationship of husband and wife between the appellant and respondent no.2 still subsists and thus, complaint is maintainable.

The court has to take the complaint on its face value and the allegations made in the complaint require adjudication on facts. The issue of limitation etc. can be examined by the Magistrate Court itself.

The appeal lacks merit and is liable to be dismissed.

7. We have considered the rival submissions made by learned counsel for the parties and perused the record.

8. Before we proceed to determine the case on merit, it is desirable to highlight the admitted facts of the case:

I. Appellant and respondent no.2 are highly qualified persons.

Both of them are employed and economically independent. Appellant is an Assistant Professor and respondent no. 2 is a Lecturer. The appellant is Ph.D and respondent no.2 has registered herself for Ph.D.

They are competent to understand the complications of law and other facts prevailing in the case.

II. Both of them got married in year 1998 and had been blessed with a son in year 1999. There was no complaint by respondent no.2 against the appellant of any cruelty, demand of dowry etc. before getting the decree of divorce dated 20.3.2008 by mutual consent.

III. The decree of divorce has been obtained under Section 13-B of the Act 1955. Respondent no.2 was examined by the court on first motion on 19.9.2007 wherein she stated, inter-alia, as under:

"We are living separately from each other since 23.9.2005. Now there is no chance of our living together as husband and wife."

IV. Respondent no.2 was examined in the second motion by the learned District Judge, Ludhiana on 20.3.2008, wherein she stated as under:

"My statement was recorded on 19.9.2007 alongwith the statement of my husband Inderjit Singh Grewal. Six months time was given to us to ponder over the matter but we could not reconcile. One child was born from our wedlock namely Gurarjit Singh Grewal whose custody has been handed over by me to my husband Inderjit Singh Grewal and he shall look after the welfare of the said child. We have settled all our disputes regarding dowry articles and past and future permanent alimony. Now there is nothing left out against each other. A draft of Rs.3,00,000/- ....has been received by me towards permanent alimony and maintenance and in lieu of dowry articles left by me in the matrimonial home. We are living separately since 23.9.2005. After that there is no co-habitation between us. There is no scope of our living together as husband and wife. I will remain bound by the terms and conditions as enshrined in the petition. I have left with no claim against petitioner No.1. Our marriage may be dissolved by passing a decree of divorce by mutual consent."

V. The learned District Judge, Ludhiana granted the decree of divorce dated 20.3.2008 observing as under:

"They have settled all their disputes regarding dowry articles, past and future alimony....They are living separately from each other since 23.9.2005...The petitioners have not been able to reconcile....The petitioners have settled all their

disputes regarding dowry, stridhan and past and future permanent alimony....The custody of the son of the petitioners is handed over to Inderjit Singh Grewal by Amandeep Kaur. The petition is allowed. The marriage between the petitioners is henceforth declared dissolved...."

VI. The complaint dated 4.5.2009 filed by respondent no. 2 before the Senior Superintendent of Police, Ludhiana was investigated by the Superintendent of Police, City-I, Ludhiana. He recorded statements of several neighbours and maid servant working in appellant's house and submitted the report to the effect that as the husband and wife could not live together, they obtained the decree of divorce by mutual consent.

However, the complainant Amandeep Kaur had alleged that she was induced by her husband to get divorce for settling in the United States and it was his intention to kick her out from the house. However, the husband stated that she had been paid Rs.3,00,000/- in the court by draft and Rs.27,00,000/- in cash for which the husband Inderjit Singh Grewal had entered into an agreement to sell his ancestral property.

The complainant had not been living with the appellant after the decree of divorce and they were not having physical relationship with each other. It was further suggested in the report that legal opinion may also be taken.

VII. Legal opinion dated 2.6.2009 had been to the effect that the parties had taken divorce by mutual consent due to their differences.

The allegation to the extent that they had been living together even after divorce were false and baseless and had been labelled only to harass the appellant.

9. The instant case is required to be considered in the aforesaid factual backdrop.

So far as the complaint dated 12.6.2009 is concerned, there had been allegation of mis-behaviour against the appellant during the period of year 2005. Respondent no. 2 alleged that during that period she had not been treated well by the appellant, thus, she had to take shelter in the house of her parents; all her belongings including the dowry articles were kept by the appellant and his parents. She has further given details how both of them have obtained decree of divorce by mutual consent as they wanted to settle in United States and therefore, they had decided to get divorce on paper so that the appellant may go to U.S.A. and get American citizenship by negotiating a marriage of convenience with some U.S. citizen and divorce her and again re-marry the complainant. She further alleged that even after decree of divorce she had been living with the appellant till 7.2.2009 and continued co-habitation with him. They had visited several places together during this period. The child had been forcibly snatched from her by the appellant. Therefore, she was entitled to the custody of the minor child along with other reliefs.

10. The question does arise as to whether reliefs sought in the complaint can be granted by the criminal court so long as the judgment and decree of the Civil Court dated 20.3.2008 subsists.

Respondent no.2 has prayed as under:

"It is therefore prayed that the respondent no.1 be directed to hand over the custody of the minor child Gurarjit Singh Grewal forthwith. It is also prayed that the respondent no.1 be directed to pay to her a sum of Rs.15,000/- per month by way of rent of the premises to be hired by her at Ludhiana for her residence. It is also prayed that all the respondents be directed to restore to her all the dowry articles as detailed in Annexure A to C or in the alternative they be directed to pay to her a sum of Rs.22,95,000/- as the price of the dowry articles. Affidavit attached."

Thus, the reliefs sought have been threefolds:

(a) Custody of the minor son; (b) right of residence; and (c) restoration of dowry articles.

11. It is a settled legal proposition that where a person gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eyes of the law as fraud unravels everything. "Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law". It is a trite that "Fraud and justice never dwell together"

(fraus et jus nunquam cohabitant). Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. Fraud and deception are synonymous. "Fraud is an anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine". An act of fraud on court is always viewed seriously. (Vide: Meghmala & Ors. v. G. Narasimha Reddy & Ors., (2010) 8 SCC 383)

12. However, the question does arise as to whether it is permissible for a party to treat the judgment and order as null and void without getting it set aside from the competent court.

The issue is no more res integra and stands settled by a catena of decisions of this Court. For setting aside such an order, even if void, the party has to approach the appropriate forum. (Vide: State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) & Ors., AIR 1996 SC 906; and Tayabhai M.

Bagasarwalla & Anr. v. Hind Rubber Industries Pvt. Ltd., AIR 1997 SC 1240).

13. In Sultan Sadik v. Sanjay Raj Subba & Ors., AIR 2004 SC 1377, this Court held that there cannot be any doubt that even if an order is void or voidable, the same requires to be set aside by the competent court.

14. In M. Meenakshi & Ors. v. Metadin Agarwal (dead) by Lrs. & Ors., (2006) 7 SCC 470, this Court considered the issue at length and observed that if the party feels that the order passed by the court or a statutory authority is non-est/void, he should question the validity of the said order before the

appropriate forum resorting to the appropriate proceedings. The Court observed as under:-

"It is well settled principle of law that even a void order is required to be set aside by a competent Court of law, inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non-est. An order cannot be declared to be void in collateral proceedings and that too in the absence of the authorities who were the authors thereof." (Emphasis added) Similar view has been reiterated by this Court in *Sneh Gupta v.*

*Devi Sarup & Ors.*, (2009) 6 SCC 194.

From the above, it is evident that even if a decree is void ab initio, declaration to that effect has to be obtained by the person aggrieved from the competent court. More so, such a declaration cannot be obtained in collateral proceedings.

15. Respondent no.2 herself had been a party to the fraud committed by the appellant upon the civil court for getting the decree of divorce as alleged by her in the impugned complaint. Thus, according to her own admission she herself is an abettor to the crime.

A person alleging his own infamy cannot be heard at any forum as explained by the legal maxim "*allegans suam turpetudinem non est audiendus*". No one should have an advantage from his own wrong (*commonandum ex injuria sua memo habere debet*). No action arises from an immoral cause (*ex turpi cause non oritur action*). Damage suffered by consent is not a cause of action (*volenti non fit injuria*). The statements/allegations made by the respondent no.2 patently and latently involve her in the alleged fraud committed upon the court.

Thus, she made herself disentitled for any equitable relief.

16. The offence of abetment is complete when the alleged abettor has instigated another or engaged with another in a conspiracy to commit offence. (Vide: *Faguna Kanta Nath v. The State of Assam*, AIR 1959 SC 673; and *Jamuna Singh v. State of Bihar* AIR 1967 SC

553). If more than one person combining both in intent and act, commit an offence jointly, each is guilty, as if he has done the whole act alone. Offence has been defined under Section 40 IPC and Section 43 IPC defines illegality. Making false statement on oath before the court is an offence under Section 191 IPC and punishable under Section 193 IPC.

17. While granting the decree of divorce, the statement of respondent no.2 had been recorded in the first as well as in the second motion as mentioned hereinabove. Period of more than 6 months was given to her to think over the issue. However, she made a similar statement in the second motion as well.

18. As per the statutory requirement, the purpose of second motion after a period of six months is that parties may make further efforts for reconciliation in order to save their marriage. There is also

obligation on the part of the court under Section 23(2) of the Act 1955 to make every endeavour to bring about a reconciliation between the parties.

In Jagraj Singh v. Birpal Kaur, AIR 2007 SC 2083, this Court held that conjugal rights are not merely creature of statute but inherent in the very institution of marriage. Hence, the approach of a court of law in matrimonial matters should be "much more constructive, affirmative and productive rather than abstract, theoretical or doctrinaire". The court should not give up the effort of reconciliation merely on the ground that there is no chance for reconciliation or one party or the other says that there is no possibility of living together.

Therefore, it is merely a misgiving that the courts are not concerned and obligated to save the sanctity of the institution of marriage.

19. In Smt. Sureshta Devi v. Om Prakash, AIR 1992 SC 1304, this Court held that mere filing the petition for divorce by mutual consent does not authorise the court to make a decree for divorce. The interregnum waiting period from 6 to 18 months is obviously intended to give time and opportunity to the parties to reflect on their move and seek advice from relations and friends. In this transitional period one of the parties may have a second thought and change the mind not to proceed with the petition. The court must be satisfied about the bona fides and the consent of the parties for the reason that court gets jurisdiction to make a decree for divorce only on mutual consent at the time of enquiry. The consent must continue to decree nisi and must be valid subsisting consent when the case is heard. Thus, withdrawal of consent can be unilateral prior to second motion. The Court further observed:

"The 'living separately' for a period of one year should be immediately preceding the presentation of the petition. It is necessary that immediately preceding the presentation of petition, the parties must have been living separately. The expression 'living separately', connotes to our mind not living like husband and wife. It has no reference to the place of living. The parties may live under the same roof by force of circumstances, and yet they may not be living as husband and wife. The parties may be living in different houses and yet they could live as husband and wife. What seems to be necessary is that they have no desire to perform marital obligations and with that mental attitude they have been living separately for a period of one year immediately preceding the presentation of the petition. The second requirement that they 'have not been able to live together' seems to indicate the concept of broken down marriage and it would not be possible to reconcile themselves. The third requirement is that they have mutually agreed that the marriage should be dissolved." (Emphasis added)

20. For grant of divorce in such a case, the Court has to be satisfied about the existence of mutual consent between the parties on some tangible materials which demonstrably disclose such consent. (Vide:

Hitesh Bhatnagar v. Deepa Bhatnagar, AIR 2011 SC 1637).



21. Respondent no.2, who did not change her stand in the second motion and obtained a sham decree of divorce as alleged by her asked the criminal court to sit in appeal against the judgment and decree of the competent Civil Court. The complaint was filed before the Magistrate, Jalandhar while the decree of divorce had been granted by the District Judge, Ludhiana i.e. of another district. Therefore, it is beyond our imagination as under what circumstances a subordinate criminal court can sit in appeal against the judgment and order of the superior Civil Court, having a different territorial jurisdiction.

22. In the facts and circumstances of the case, the submission made on behalf of respondent no.2 that the judgment and decree of a Civil Court granting divorce is null and void and they continued to be the husband and wife, cannot be taken note of at this stage unless the suit filed by the respondent no.2 to declare the said judgment and decree dated 20.3.2008 is decided in her favour. In view thereof, the evidence adduced by her particularly the record of the telephone calls, photographs attending a wedding together and her signatures in school diary of the child cannot be taken into consideration so long as the judgment and decree of the Civil Court subsists. On the similar footing, the contention advanced by her counsel that even after the decree of divorce, they continued to live together as husband and wife and therefore the complaint under the Act 2005 is maintainable, is not worth acceptance at this stage.

23. In *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469, this Court considered the expression "domestic relationship" under Section 2(f) of the Act 2005 placing reliance on earlier judgment in *Savitaben Somabhai Bhatiya v. State of Gujarat & Ors.*, (2005) 3 SCC 636 and held that relationship "in the nature of marriage" is akin to a common law marriage. However, the couple must hold themselves out to society as being akin to spouses in addition to fulfilling all other requisite conditions for a valid marriage.

The said judgments are distinguishable on facts as those cases relate to live-in relationship without marriage. In the instant case, the parties got married and the decree of Civil Court for divorce still subsists. More so, a suit to declare the said judgment and decree as a nullity is still pending consideration before the competent court.

24. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 Cr.P.C., that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the Act 2005 read with Rule 15(6) of The Protection of Women from Domestic Violence Rules, 2006 which make the provisions of Cr.P.C. applicable and stand fortified by the judgments of this court in *Japani Sahoo v. Chandra Sekhar Mohanty*, AIR 2007 SC 2762; and *Noida Entrepreneurs Association v. Noida & Ors.*, (2011) 6 SCC 508.

25. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the Act 2005 is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere

with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same.

26. The appeal succeeds and is allowed. The impugned judgment and order dated 9.8.2010 is hereby set aside. Petition filed by the appellant under Section 482 Cr.P.C. is allowed. Complaint No. 87/02/09 pending before the Magistrate, Jalandhar and all orders passed therein are quashed.

Before parting with the case, we clarify that respondent no.2 shall be entitled to continue with her other cases and the court concerned may proceed in accordance with law without being influenced by the observations made herein. The said observations have been made only to decide the application under Section 482 Cr.P.C. filed by the appellant.

.....J.

(P. SATHASIVAM) .....J.

(Dr. B.S. CHAUHAN) New Delhi August 23, 2011