

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.15541 of 2015

Date of decision: July 27, 2015.

Ram Karan

... **Petitioner**

v.

Bachna Ram and others

... **Respondents**

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

CORAM: **HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Shri Munish Mittal, Advocate for the petitioner.

Darshan Singh, J. (Oral):

Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1908 (hereinafter mentioned as the Code) for quashing the order dated 8.7.2014 (Annexure P-1) passed by the learned Sub Divisional Judicial Magistrate, Bilaspur, District Yamuna Nagar and the order dated 19.2.2015 (Annexure P-2) passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhari whereby criminal complaint filed by the petitioner for the offences punishable under Sections 316, 506, 120-B of the Indian Penal Code (hereinafter mentioned as the IPC), has been dismissed.

2. The brief facts of the case are that petitioner Ram Karan was

married with Savita, respondent No.3. After the marriage, they lived as husband and wife at Jammu. Respondent No.3 became pregnant from the petitioner and was medically examined on different dates for the growth of foetus and expected time of delivery but respondent No.3 Savita in conspiracy and with the help of respondent No.1, 2 and 4 aborted the pregnancy. The petitioner got registered a police case bearing FIR No.11 dated 22.1.2011 at Police Station Bilaspur, District Yamuna Nagar against the respondents narrating the entire facts in detail. The investigation was carried out in that case and finally a cancellation report was filed in the court on 2.5.2012. The present petitioner filed the protest petition which was treated as complaint. The petitioner led the preliminary evidence in support thereof.

3. On appreciating the preliminary evidence and other material available on record, the learned Sub Divisional Judicial Magistrate dismissed the complaint of the petitioner vide impugned order dated 8.7.2014. Aggrieved with the aforesaid order, he preferred a criminal revision. The same was also dismissed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhari vide the impugned order dated 19.2.2015.

4. Shri Munish Mittal, Learned Counsel for the petitioner, contended that the evidence adduced by the petitioner has not been properly appreciated by the courts below. He contended that it is an admitted fact respondent No.3 was pregnant. It is also an admitted fact that her pregnancy was terminated. In the medico-legal report Annexure (P-5), it

has been mentioned that the bleeding has occurred due to some medicine given by the local doctor but the name of said doctor is not mentioned. Respondent No.3 Savita has given the contrary statements in case FIR No.5 dated 14.1.2011 under Sections 498-A, 406, 323, 506, 120-B IPC, PS Bilaspur with respect to termination of the pregnancy. In the news report, she has denied the factum of pregnancy. These facts have been ignored by the courts below. He contended that the entire findings of the learned Magistrate and the learned Additional Sessions Judge are based on the police investigation, which is not the right approach. The preliminary evidence adduced by the petitioner should also have been taken into consideration which clearly shows the prima facie case to proceed against the respondents. Thus, he pleaded that the impugned orders are illegal and cannot be sustained in the eye of law.

5. I have given my thoughtful consideration to the aforesaid contentions.

6. The summoning of a person as an accused in a criminal case is a serious matter. The criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only few witnesses to support his allegations in the complaint to have a criminal law set into motion. To support this view, reference can be made to case Pepsi Food Limited v. Special Judicial Magistrate, 1997(4) RCR (Crl.) 761. The same ratio of law has been reiterated by this Court in case Arun Jha and another v. State of Haryana and another, 2006(1) RCR (Crl.) 300.

7. In the present case, the petitioner has levelled allegations that

respondent No.3 Savita, his wife, has got terminated her pregnancy in conspiracy and with the help of respondents No.1, 2 and 4. He has even got registered a police case bearing FIR No.11 dated 22.1.2011 at Police Station Bilaspur, District Yamuna Nagar but after thorough investigation of the case, finally a cancellation report was presented in the court. The present petitioner filed the protest petition which was treated as a complaint but the learned Judicial Magistrate dismissed that complaint vide the impugned order dated 8.7.2014 and the petitioner also remained unsuccessful in the revision petition decided by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhari.

8. The foundation of the allegations levelled by the petitioner is that Pushpa Rani, respondent No.2, who was working as an Anganwari/Asha Worker, had got examined respondent No.3 Savita for determination of sex of the foetus which was found to be of a female child and as a result thereof, the pregnancy was got aborted. So the basic cause of termination of the pregnancy alleged by the petitioner is that respondent No.3 Savita was having a female child in her womb but there is absolutely no evidence to prima facie substantiate these allegations. There is no evidence as to how and when said sex determination test was carried out. It appears that these allegations are only figment of imagination. These allegations are unfounded and without any foundation. Thus the allegations of the petitioner with respect to the termination of pregnancy by the respondents due to this reason has no legs to stand.

9. Annexure P-5 is the copy of the medico-legal report of

respondent No.3 Savita prepared by Dr. Shelly Goyal wherein there is an endorsement that as per the patient, she had fever and taken medicine for fever from local doctor and had bleeding after ingestion of the medicine. This brief history given in the medico-legal report counters the allegations levelled by the petitioner.

10. It is alleged that sex of the foetus was got determined at the house of respondent No.4 at village Kail but the petitioner has not examined any resident of village Kail to support his version that respondents No.1 to 3 were ever seen together at village Kail. The complainant has also not disclosed as to from which medical practitioner the pregnancy was got terminated by the respondents. During the investigation of the police case got registered by the petitioner, it was found on the basis of the medical opinion that the bleeding which resulted due to taking of some medicine by respondent No.3 Savita can lead to miscarriage.

11. There is also no material on record to show as to how the petitioner came to know about the involvement of respondents No.1, 2 and 4 for causing the termination of the pregnancy of respondent No.3. The learned Additional Sessions Judge has rightly observed that it is not convincing as to why respondent No.3 and her family members would cause termination of pregnancy of the first child of respondent No.3.

12. No doubt at the stage of issuing the summoning order, the court has only to find out as to whether there are sufficient grounds for proceeding against the accused or not but at the same time there should be material on record to satisfy the basic ingredients of the offence. In order to

attract Section 316 IPC, the petitioner was required at least prima facie to show that the respondents had committed any act under such circumstances, that if they thereby caused death, they would be guilty of culpable homicide and they did by their such act the death of a quick unborn child. In the absence of sufficient and reliable evidence on record, the aforesaid ingredients are not attracted.

13. It is also not disputed that on the basis of the complaint made by respondent No.3 Savita, a criminal case bearing FIR No.5 dated 14.1.2011 under Sections 406, 498-A, 323, 506, 120-B IPC was registered against the petitioner and his family members at Police Station Bilaspur, District Yamuna Nagar. The petitioner has got registered the police case with respect to this alleged occurrence on 22.1.2011, i.e., after the registration of the case against him and his family members on the basis of the complaint filed by respondent No.3 Savita. So, it can be a counter-blast.

14. Thus, keeping in view my aforesaid discussion, the petitioner has not been able to make out a case for setting into motion the criminal law against the respondents and to summon them as accused to face the trial for the offences mentioned in the complaint. Consequently, I do not find any illegality and infirmity in the impugned orders passed by the courts below.

15. Resultantly, the present petition is without any merit and the same is hereby dismissed.

July 27, 2015.
kadyan

[Darshan Singh]
Judge