

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.25755 of 2015.
Decided on:-August 05, 2015.

Urmila Devi.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. N.S. Shekhawat, Advocate
for the petitioner.

HARI PAL VERMA, J.

Prayer in this petition filed under Section 482 Cr.PC is to quash the order dated 9.7.2015 passed by the Court of Learned Sessions Judge, Kurukshetra whereby the application under Section 233 Cr.PC moved by respondents No.2 to 6 was allowed.

Briefly stated, the petitioner-complainant, namely, Urmila Devi lodged FIR No.56 dated 8.3.2011 under Sections 323, 328, 34 IPC at Police Station, Kurukshetra University, Kurukshetra. The allegations in the FIR were that the petitioner was given severe beatings and was made to take some poisonous substance by respondents No.2 to 6 in her matrimonial home. Respondent No.2 Sanjeev Kumar is husband, respondents No.3 and 5

are the parents-in-law, respondent No.4 is sister-in-law and respondent No.6 is the uncle-in-law of the petitioner. After administering the poisonous substance, the petitioner was confined in a room and was not taken in the hospital. However, the petitioner managed to call the Police Control Room on Helpline No.100 and the police got her freed and her father was called.

After thorough investigation, the police presented challan against respondents No.2 to 6 and the trial is in progress. However, during the course of trial, evidence of the prosecution was closed and thereafter, the accused moved an application dated 2.11.2013 (Annexure P-3) for summoning of the defence witnesses, but the witnesses who were not at all even relative, have been called just to prejudice the Court.

Learned counsel for the petitioner contends that respondents No.2 to 6 are moving applications one after the other and they have also moved an application dated 14.5.2015 (Annexure P-4) for summoning the defence witnesses. He further submits that the petitioner filed reply (Annexure P-5) to the said application pleading therein that filing the application to summon witnesses at this stage is nothing but an abuse of process of law. He further contends that on the one hand, the respondents-accused want to summon the alleged witnesses in defence, but on the other hand, they have moved the application under Section 233 Cr.PC and there is no provision under the Criminal Procedure Code to summon witnesses in defence by moving such false applications.

I have heard learned counsel for the petitioner and have gone

through the paper book.

Section 233 Cr.PC reads as under:

“233. Entering upon defence. - (1) Where the accused is not acquitted under section 232 he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.”

Learned counsel for the petitioner contended that through the instant application, the accused have prayed to summon those persons who are not concerned in the case and, therefore, they cannot be examined. Through the application (Annexure P-4), the respondents-accused prayed to summon two witnesses in their defence i.e. the investigating officer of Police Station, Butana, District Karnal, who investigated criminal case No.39/2014 in FIR No.258 dated 31.5.2014 under Sections 498-A, 506 IPC etc., and another person, namely, Shere Singh son of Bula Ram, resident of village Brana Khalsa, P.S. Butana, District Karnal and these persons are stranger in the lis.

Learned counsel for the petitioner has further contended that the

aforesaid two persons cannot be examined as they have no concern with the case and, therefore, the Court cannot issue summons to them to appear as witnesses in defence of the respondents-accused.

Learned trial Court while considering the contention put forward by the petitioner-complainant has observed in the impugned order dated 9.7.2015 (Annexure P-1) as under:

“6. Section 233 (3) of the Cr.P.C. provides that if the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the judge shall issue such process unless he considers, for reasons to be recorded, that such application shall be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of Justice.

7. The right of accused to examine defence witness is a statutory right. The provisions of section 233 of the Cr.P.C. providing for the accused to adduce evidence in defence are mandatory. At the stage of defence the accused has a right to summon any evidence which may be relevant for proper appreciation of the prosecution evidence and substantiate his defence. The accused has a right to seek the assistance of the court for summoning his defence witness by way of issuance of court process summons or warrant of arrest. In the present case evidence sought to be produced by the accused in their defence to impeach the credit of prosecution witnesses will assist the court in proper appreciation of the prosecution evidence and will substantiate their defence and the application cannot be said to have been filed for the purpose of vexation or delay or to defeat the ends of justice. In these facts and circumstances of

the case the application deserves to be allowed.

8. *In view of the above discussion the application is allowed and the applicants accused are allowed to summon the Investigating Officer of Case No.39/2014, titled State Vs. Surender @ Rinku, FIR No.258 dated 31.05.2014, under Sections 498A and 506 of the IPC, Police Station Butana and Sher Singh in their defence evidence.*

Announced in open Court:

(Arun Kumar Tyagi)

Dated:09.07.2015

Sessions Judge, Kurukshetra.”

I have considered the material available on record in the light of the provisions of Section 233 Cr.P.C.

Section 233(3) Cr.PC refers to the situation where the accused applies for the issue of any process for compelling the attendance of any witness and the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused being vexatious or aimed at to delay or defeat the ends of justice. The spirit of the provision is clear in the sense that the same is mandatory in nature. It is only in a situation where such process is to be refused, the Court has to pass a reasoned order. Since there is no ambiguity in the provision of Section 233(3) Cr.PC and unless the Court finds, for which the Court is required to give reason that the purpose of filing of such application is vexatious or aimed at to cause delay or to defeat the ends of justice, the Court has hardly an exception except to issue process. The right of accused to examine defence witness is a statutory right for which he has to seek assistance of the Court for summoning of his defence witnesses by way of issuance of court

process summons or warrant of arrest.

Therefore, having regard to the aforesaid facts and in the light of the provisions of Section 233 Cr.PC, this Court find no reason to interfere with the impugned order dated 9.7.2015 (Annexure P-1).

Accordingly, the present petition, being devoid of any merit, is dismissed.

August 05, 2015
'Yag Dutt'

(HARI PAL VERMA)
JUDGE