

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

**CRM M-31805 of 2012 (O&M)
Decided on : 19.10.2015.**

Ram Mohan Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Jagjit Beniwal, Advocate for
Mr. Vikram Sheoran, Advocate,
for the petitioner.

Mr. Sanjiv Gupta, Advocate,
for respondent No.2.

JITENDRA CHAUHAN, J.

The present petition, under Section 482 of Code of Criminal Procedure, has been filed for quashing of the complaint No. 190-I dated 3.7.2008 titled 'Anil Kumar Gupta vs. Smt. Archana Gupta and another' under Sections 497, 323, 504, 506 IPC pending before the Additional Chief Judicial Magistrate, Hisar (Annexure P-1) and the summoning order dated 5.2.2011 (Annexure P-2).

It is contended that the respondent No.2 (complainant) filed the complaint, Annexure P-1, against the petitioner and Smt. Archana Gupta. The petitioner as per the complaint had illicit

relations with the wife of the complainant. It was further alleged in the complaint that the complainant was posted as a Sub Divisional Engineer at Narwana and their marriage was solemnized on 8.7.1997 at Jind. Two children were born out of the wedlock. The wife of the complainant was posted as Ayurvedic Medical Officer, at Ludas, District Hisar. The complainant was transferred to Nuh, District Mewat in January, 2006. Later on, the complainant was transferred to Narwana in August, 2007. It was further the allegation that the wife had not been treating the complainant properly and would not approve of his visits to her. The complainant was told by the neighbours that the petitioner used to visit his house and both the petitioner and the wife of complainant moved around frequently. They used to go to cinema and even both of them slept in a room for the night. On 5.6.2008, the petitioner was present in the house of the wife of the complainant, the complainant requested the petitioner not to come to his house and indulge in illegal activities upon which, both the accused started quarreling with the complainant. On 29.6.2008 at about 1.45/2.00 pm, the complainant along with his friend Raj Kumar son of Sh. Bhag Singh resident of village Jakhod Khera, District Hisar, came to his house No.1157, Sector 13-A Hisar. The complainant found none in the house. However, on seeing the room cooler on, he lifted the window of the said room. The complainant and said Raj Kumar removed the cooler in order to see inside the room. They were shocked to see that the petitioner and wife of the complainant were naked. They were in a

compromising position and were having sexual intercourse. On hearing the sound of cooler and also on seeing the complainant and said Raj Kumar, they got up, put on their clothes and immediately came out of the room. The wife of the complainant started abusing him, caught him by his collar and asked the petitioner to beat him up. Both of them started beating the complainant. Raj Kumar tried to save the complainant from the clutches of the accused upon which, both the accused started abusing the complainant and Raj Kumar. Both the accused threatened to kill the complainant in case he dared to come to her house again or in case he dared to complain about the incident to anybody else or to the police.

On behalf of the petitioner, it is contended that the complainant has not named the persons who allegedly informed him of the illegitimate activities of his wife. He further contends the two children, aged 11 years and 9 years, born out the wedlock had been residing with their mother. The day of alleged incident was Sunday and the children were present in the house whereas, the complaint suggests that nobody was present at home. There is no medical report in respect of alleged beatings given by the petitioner. In fact, to secure a decree of divorce on the ground of adultery, a false complaint had been filed against the petitioner.

On the other hand, learned counsel for the respondent No.2 refers to the finding recorded by the District Judge,

Family Court, Hisar, in a petition under Section 13 of the Hindu

Marriage Act, 1955 (Annexure R-2/1) that Smt. Archana Gupta-accused No.1 had been living in adultery. He further states that there are voluminous call records between Smt. Archana and the petitioner even at odd hours, the details of which are annexed as Annexure R-2/2 and R/3. It is further contended that the present petition is not maintainable as against the complaint, Annexure P-1 and the summoning order, Annexure P-2, the petitioner filed a revision petition before the Court of Session and the same was dismissed by the Additional Sessions Judge, Hisar vide order dated 12.4.2012, Annexure P-3.

I have heard learned counsel for the parties and have gone through the case file.

The petitioner, who is the accused in the complaint, Annexure P-1, has sought the quashing of complaint as well as the summoning order. In the complaint, serious allegations of adultery have been levelled against the petitioner. Against the summoning order, Annexure P-2, the petitioner filed revision petition before the Additional Sessions Judge, Hisar which came to be dismissed vide order dated 12.4.2012, Annexure P-3. The order dated 12.4.2012, Annexure P-3 has not been challenged. In other words, Annexure P-3 has attained its finality. Now, it does not lie in the mouth of the petitioner to challenge the same order, Annexure P-2 before this Court because order Annexure P-2 has merged into the order Annexure P-3.

It is now order, Annexure P-3 which is capable of being challenged.

The same has not been challenged by the petitioner. The matter does not rest here. Even there is a finding of adultery recorded by the District Judge, Family Court, Hisar in the order dated 17.11.2011, Annexure R-2/1. The call details between the petitioner and accused No.1 Smt. Archana Gupta have been annexed as Annexure R-2/2 and R-2/3. There is prima-facie, sufficient material on record to summon the accused. The arguments raised by learned counsel for the petitioner are based on facts. The detailed questions of facts cannot be determined in a petition under Section 482 Cr.P.C. The correctness or falsity of the allegations will be determined by the trial Magistrate after adducing evidence by both the parties. Lest anything said here should prejudice the mind of the trial Magistrate. Therefore, the present petition is dismissed.

Anything said hereinabove will not affect the case of either parties before the trial Magistrate.

19.10.2015.
SN

(JITENDRA CHAUHAN)
JUDGE