

In the High Court of Punjab and Haryana at Chandigarh

CRM-M-31933 of 2014
Date of Decision:16.2.2015

Om Parkash and others

---Petitioners

versus

State of Haryana and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.S.K.Garg Narwana,Senior Advocate
with Mr. Naveen Gupta, Advocate
for the petitioners**

Mr. Rajesh Gaur, Addl. Advocate General, Haryana

**Mr. Rakesh Nehra, Advocate
for respondent No. 2**

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

REKHA MITTAL, J.

The petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure (in short "Cr.P.C.") for quashing criminal complaint No. 16 dated 17.7.2013 filed by respondent No. 2 (Annexure P-1), summoning order dated 22.7.2014 passed by the Judicial

Magistrate Ist Class, Rohtak for offence under Sections 302, 148, 149, 120-B of the Indian Penal Code (in short "IPC") (Annexure P-2) and proceedings emanating therefrom.

Counsel for the petitioners contends that Om Parkash son of Dhoop Singh father of deceased Neelam has filed the instant complaint under Sections 302, 148, 149, 120-B, 167, 218, 468 IPC against the petitioners and others on the allegations that Neelam was married to Suresh (since deceased) son of petitioner Om Parkash son of Mansa Ram on 30.4.2002. One son namely Sulab was born out of their wedlock on 16.2.2003. After the marriage, Suresh and his family members had been harassing Neelam for dowry and his daughter lodged FIR No. 424 dated 8.12.2012 against the petitioners and Suresh under Sections 498-A, 406, 323, 506 read with Section 34 IPC at Police Station, Shivaji Colony, Rohtak. Five days before death of Neelam, a compromise was effected between Suresh and Neelam due to which Neelam used to go to her husband in the morning and had been coming back to her parental house in the evening. On 26.3.2013, Neelam on the asking of her husband had taken their son Sulab @ Sanju along with her but when she did not return on 27.3.2013, the complainant sent his son Ravinder to enquire about Neelam. On 28.3.2013, the complainant tried to talk to his daughter but her mobile was switched off and at 10'O Clock, two policemen came to their house and took them to the house of his daughter at Amrit Colony, Rohtak. The complainant saw dead body of his daughter and son-in-law lying in a pool of blood. After post mortem of the dead bodies, Sulab was handed over to

the complainant and when complainant came back with Sulab, he told him that his grandfather-Om Parkash, father Suresh, Tau-Varinder, Chacha Davinder and Ramesh have killed his mother and then went away. Thereafter, his father closed the door from inside.

Counsel for the petitioners further argued that the criminal complaint and the summoning order are liable to be quashed only on the following grounds”-

(i)Learned trial court has not property appreciated the records pertaining to FIR No. 129 dated 28.3.2013 produced by Shamsheer Singh ASI CW11 which contained the suicide note written by Suresh on the basis whereof, the complainant/respondent No. 2 along with others were indicted for committing offence punishable under Sections 306 read with Section 34 IPC in regard to abetment of suicide committed by deceased Suresh. In addition, it is submitted that suicide note was sent by the prosecution to the Forensic Science Laboratory for comparison and as per FSL report dated 15.11.2013 (Annexure P-5), the suicide note was found to be in handwriting of Suresh. Further argued that the suicide note demolishes version of the complainant that Neelam was murdered by Suresh alongwith the petitioners on the intervening night of 27/28.3.2013.

(ii)In the first version got recorded by the complainant in FIR No. 129 dated 28.3.2013, the stand of the complainant was

that only Suresh had killed Neelam by causing injuries with *kulhari* and *kassi* and thereafter, he committed suicide by consuming sulfas tablets. The story narrated in the complaint filed in July 2013 is the result of an afterthought and concoction to put pressure upon the petitioners and create defence in the proceedings launched against the complainant party under Section 306 IPC.

(iii) The complainant submitted complaint No. 500 SPR dated 25.6.2013 produced before the trial court by Narinder Kumar ASI CW9. In the said complaint, respondent No. 2 raised the same allegations as set up in the complaint dated 17.7.2013 filed in the Court (Annexure P-1). Investigation in the said complaint was conducted by ASI Mohinder Singh and he submitted his report dated 4.7.2013 to Station House Officer, Police Station Shivaji Colony, Rohtak. The SHO concerned verified the report and submitted his report dated 5.7.2013 to Assistant Superintendent of Police and thereafter it was verified by Assistant Superintendent of Police, Rohtak. It was found during enquiry that the complainant has filed the said complaint for escaping his arrest and to save his skin. He has referred to the documents Annexures P-10 to P-13 in support of his contention.

(iv) FIR No. 424 dated 8.12.2012 under Sections 498-A, 406, 323, 506 read with Section 34 IPC was lodged by deceased

Neelam against her husband and the petitioners. The petitioners were found innocent and were kept in column No. 2 of the report under Section 173 Cr.P.C. The petitioners were residing separate from Neelam and Suresh as is clear from the copies of ration cards of Suresh and Neelam (Annexure P-16), Om Parkash and his wife (Annexure P-17) and Davinder and his family (Annexure P-18). It is further argued that Neelam lodged the aforesaid FIR as a counter blast to complaint No. 2976-Pesi dated 26.9.2012 made by Suresh to Superintendent of Police, Rohtak upon which calendra (DD No. 26 dated 1.10.2012, Police Station Urban Estate, Rohtak) under Section 107/151 Cr.P.C. was registered by Suresh against his wife Neelam. For this purpose, counsel has referred to documents Annexures P-19 to P-21.

(v) Sulab CW1 examined before the trial court during preliminary enquiry is a tutored witness and his statement recorded before the Court (Annexure P-7) is contrary to his earlier statement recorded by the police under Section 161 Cr.P.C. (Annexure P8) wherein he has not levelled any allegation against the petitioners. It is further argued that the child was under influence of his maternal grandparents when his statement was recorded in the Court and is not even allowed to go to school as is apparent from report of the District Child Protection Officer, Rohtak to Haryana State

Commission for Protection of Child Rights (Annexure P22)

Counsel has argued with vehemence that summoning a person to face criminal proceedings is a very serious matter and in the light of facts on record, the trial court has committed a serious error rather illegality by summoning the petitioners to face trial for commission of heinous crime punishable under Section 302 IPC. It is further submitted that the criminal complaint filed by respondent No. 2, summoning order issuing process against the petitioners and proceedings emanating therefrom being the result of abuse and misuse of process of law are liable to be quashed in exercise of jurisdiction under Section 482 Cr.P.C. In support of his contention with regard to maintainability of the petition, he has referred to judgments of the Hon'ble Supreme Court of India **Bhushan Kumar and another vs. State (NCT of Delhi) and another 2012 SC 1747** and **Gambhirsinh R. Dekare vs. Falgunibhai Chimanbhai Patel and another 2013(2) RCR (Criminal)311.**

Counsel for the petitioners has also raised a legal issue with regard to maintainability of the proceedings by filing a private complaint. It is argued that on the basis of FIR No. 129 dated 28.3.2013 after completion of investigation, the police has submitted a final report indicting the complainant/respondent and others for committing offence punishable under Section 306 IPC in regard to suicide committed by Suresh. If during course of evidence in the said case, any evidence is adduced proving complicity of the petitioners in the crime, it is for the Sessions Court to summon additional accused in exercise of jurisdiction under Section 319 Cr.P.C. It is

argued that in view of ratio laid down by the Hon'ble Supreme Court of India in **Jile Singh vs. State of U.P. and another 2012(1) RCR (Criminal) 583**, the criminal proceedings initiated by the respondents and summoning order passed by the Judicial Magistrate cannot be allowed to sustain and thus liable to be set aside.

Counsel for the contesting respondent Sh. Rakesh Nehra, Advocate, on the contrary, has submitted that the petitioners have invoked jurisdiction of this Court by raising disputed questions of facts which are not amenable to adjudication under Section 482 Cr.P.C. Neelam, daughter of the complainant was the victim of harassment and cruelty meted out to her at the hands of her husband and his family members and she along with her child had been staying at her parental house. Few days before the occurrence, the accused in pursuance of their well thought of plan persuaded Neelam to come back to matrimonial home with a promise to keep her well. Neelam had been going to her matrimonial home, staying there during day time and coming back to her parental home in the evening. On 27.3.2013, at the asking of her husband, Neelam had taken her son alongwith as it was Holi festival. Little knowing about planning of her husband and his family members, she did not return to her parental home in the evening and was made to stay back in the matrimonial home on the pretext of 27.3.2013 and 28.3.2013 being days of festivity in connection with Holi. On the intervening night of 27/28.3.2013, Suresh and his family members brutally murdered Neelam and in the post mortem examination of Neelam, 14 injuries were found on her body and her unfortunate parents

saw their daughter lying in a pool of blood. Sulab, a child aged about 10 years was rendered orphan and saw gruesome murder of his mother and narrated his tale of woe during his examination in the Court. It is argued with vehemence that at this stage, statement of Sulab cannot be entertained with doubt in view of submissions made by counsel for the petitioners which, at best, can be the pleas raised in defence during trial. Further submitted that at the pre process stage, the accused have no right to be heard in the matter nor it is open for the Court to entertain much less appreciate any plea likely to be raised during defence. The complainant has explained as to the circumstances under which the FIR was registered by the police by recording his statement themselves on blank signatures of the complainant with an intent to save the culprits of their criminality. Any suicide note purported to be left behind by the deceased is a matter of evidence to be led before the court and can be appreciated at an appropriate stage of the proceedings.

Counsel is at pains to contend that the complainant party lost their daughter who met a very unfortunate end and have been falsely implicated in regard to suicide committed by Suresh. It is submitted that it is against human conduct that a person after committing murder of his wife brutally would be in a position to scribe a suicide note before terminating his life. Perusal of the alleged suicide note would make it evident that the same makes reference that he has already committed suicide but still writing a note and this fact creates a serious doubt that the writing Annexure P4 was authored by deceased Suresh. On the said writing, there appears to be

signatures of Neelam and if the suicide note was scribed after murder of Neelam, how can the writing be signed by the deceased.

I have heard counsel for the parties and perused the records.

Before advertng to the rival submissions made by counsel for the parties, it is appropriate to recount the legal position with regard to scope of enquiry under Section 202 Cr.,P.C. laid down by the Hon'ble Supreme Court of India in **Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi and others 1976 SC 1947**. In para 03 of the judgment, there is reference to the earlier decisions of the Hon'ble Supreme Court of India **Chandra Deo Singh v. Prokash Chandra Bose, (1964) SCR 639** and **Vadilal Panchal v. Dattatrya Dulaji 1961 1 SCR 1**. A relevant extract from paras 3 and 4 of the judgment germane to the present controversy, is quoted thus:-

“3.In **Chandra Deo Singh v. Prokash Chandra Bose, (1964) SCR 639** this Court had after fully considering the matter observed as follows:

"The courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned Judges in some of these cases have been at pains to observe that an enquiry under Section 202 is not to be likened to a trial which can only take place after

process is issued, and that there can be only one trial. No doubt, as stated in sub-section (1) of Section 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant."

Indicating the scope, ambit of Section 202 of the Code of Criminal Procedure this Court in **Vadilal Panchal v. Dattatrya Dulaji 1961 1 SCR 1** observed as follows:

"Section 202 says that the Magistrate may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and direct an inquiry for the purpose of ascertaining the truth or falsehood of the complaint; in other words, the scope of an inquiry under the section is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of process. The inquiry is for the purpose of

ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can be legally called upon to answer; the accusation made against him only when a process has issued and he is put on trial."

4. It would thus be clear from the two decisions of this Court that the scope of the inquiry under Section 202 of the Code of Criminal Procedure is extremely limited—limited only to the ascertainment of the truth or falsehood, of the allegations made in the complaint—(i) on the materials placed by the complaint before the Court. (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all advert to any defence that the accused may have. In fact it is well settled that in proceedings under Section 202 the accused

has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not.”

In para 05, the Court has culled out certain cases by way of illustration to provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.

A plain reading of the aforesaid extract particularly para 04 makes it crystal clear that at the pre process stage, there is no scope for the trial court to decide question of summoning of the accused by advertng to any defence that the accused may have nor the accused has locus standi to be heard on the question whether the process should be issued against him or not. Counsel for the petitioners has referred to judgment of the Hon'ble Supreme Court of India ***Bhushan Kumar and another's case (supra)***, may be in support of his contention that petition under Section 482 Cr.P.C. can be maintained to quash summoning order. A reference to paras 13 and 17 of said judgment is relevant, quoted thus:-

“13) In Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi & Ors. (1976) 3 SCC 736, this Court held that it is not the province of the Magistrate to enter into a detailed discussion on the merits or demerits of the case. It was further held that in deciding whether a process should be issued, the Magistrate can take into consideration improbabilities appearing on the face of the complaint or in the evidence led by the complainant in

support of the allegations. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. It was further held that once the Magistrate has exercised his discretion, it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused.

17) It is inherent in Section 251 of the Code that when an accused appears before the trial Court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code.”

There is no dispute between the parties that Neelam was murdered during her stay in the matrimonial home. There is no challenge to version of the complainant/respondent that minor child of Neelam and

Suresh namely Sulab aged 10 years was present in the house on the day of occurrence. Counsel for the petitioners has raised factual controversy supported by documents that can be probable defence of the accused amenable to adjudication during trial on the basis of evidence to be adduced by the parties. However, it is appropriate to mention that case of the complainant is based upon an eye witness account unfolded by minor Sulab examined during preliminary enquiry. On the other hand, the petitioners have sought to rely upon the alleged suicide note left behind by the deceased, report of forensic science laboratory, the FIR got registered by complainant Om Parkash, statement of Sulab recorded under Section 161 Cr.P.C. and so on. The report in regard to suicide note alleged to be authored by deceased Suresh is based upon opinion evidence but indisputably the science of comparison of handwriting is not a perfect science. The report of the forensic science laboratory requires examination by the Court at an appropriate stage of the proceedings and the same on the face of it cannot be accepted to find fault in the statement of the eye witness and the summoning order passed by the Judicial Magistrate.

So far as lodging of FIR by complainant Om Parkash, he has raised a categorical plea in the complaint that his signatures were obtained on blank papers and thereafter his statement, purported to be first information report, was scribed by the police officials. This apart, the FIR is not a substantive piece of evidence and is a previous statement made by the author which can be used for the purpose of contradiction or corroboration. Similarly, the statement of Sulab recorded under Section 161 Cr.P.C., at

best, can be put to the witness during his cross examination in order to seek his explanation in regard to contents thereof. There is no such document on record which is sufficient to record a conclusive finding that the criminal proceedings initiated by the respondent amounts to abuse and misuse of process of law and liable to be quashed.

Counsel for the petitioners has challenged maintainability of the proceedings in view of the judgment passed by the Apex Court in ***Jile Singh's case (Supra)***. In the FIR lodged by respondent Om Parkash, offence under Section 306 IPC was added and on completion of investigation, the respondent and his family members have been charged for committing offence punishable under Section 306 IPC in respect of suicide committed by Suresh. There are no proceedings pending before the Court of Sessions in regard to murder of Neelam and, therefore, there is no occasion for the Court to summon any accused for committing murder of Neelam in proceedings pending qua offence punishable under Section 306 IPC. The judgment in ***Jile Singh's case (Supra)*** can be attracted only if any matter in regard to murder of Neelam was pending before the Court of Sessions as in that eventuality, it could be held that question of summoning any additional accused with regard to murder of Neelam is only within the domain of Court of Sessions, in exercise of jurisdiction under Section 319 Cr.P.C. In this view of the matter, I find myself unable to accept submissions of counsel for the petitioners that criminal proceedings initiated by the respondent on the basis of a private complaint cannot be allowed to sustain in the light of ratio laid down in ***Jile Singh's case (Supra)***.

Before parting with this order, it needs to be clarified that this court has not dealt in detail the allegations supplemented by documents so that it may not cause prejudice to any of the parties during trial. Nevertheless, it is stated at the cost of repetition that the allegations raised by the petitioners and the documents relied upon, at best, gives rise to probable defence based upon disputed questions of fact and, therefore, cannot be entertained at this stage to find fault in the summoning order when examined in the light of observations made by Hon'ble the Supreme Court of India in *Bhushan Kumar and another's case (supra)*, cited by counsel for the petitioners.

In view of what has been discussed hereinabove, finding no merit, the petition is dismissed leaving the parties to bear their own costs. However, nothing stated in this order shall prejudice adjudication of the case on merits, by the court below.

(REKHA MITTAL)
JUDGE

16.2.2015
PARAMJIT