

209 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.38769 of 2011(O&M)

Date of Decision: 27.05.2015

KULJIT SINGH

.....Petitioner

Vs

STATE OF HARYANA AND OTHERS

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Promila Nain, Advocate
for the petitioner.

Mr. Rajesh K. Sheoran, Addl. A.G., Haryana.

Mr. N.C. Kinra, Advocate
for respondent No.3.

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

RAJ MOHAN SINGH, J.

[1]. Prayer made in this petition is for quashing of Calendra/proceeding under Sections 182 and 211 IPC dated 23.03.2011 (Annexure P-11) initiated by respondent No.2.

[2]. Brief facts culminating in filing the present petition are that Neelu @ Neelisha Singh (niece of the petitioner) was married to Manish Ahlawat. Her mother was mentally retarded and father Raj Singh was living separately under some understanding with his wife. Petitioner being maternal uncle of Neelu Neelu @ Neelisha Singh and brother of her mother used to take care of them.

[3]. It has been alleged that Neelu @ Neelisha Singh was tortured by her husband Manish Ahlawat and his family members on

account of dowry. She told petitioner about the atrocities committed by her husband and his family members. Many a times Panchayats were convened to settle Neelu @ Neelisha Singh in her matrimonial house keeping in view welfare of children and indifferent health of her mother. Seeing all the circumstances petitioner fulfilled demands of Manish Ahlawat and his family members to the best of his capabilities.

[4]. It has also been alleged that on 22.06.2007 Manish Ahlawat and his family members hatched a conspiracy to murder Neelu @ Neelisha Singh and they caused beatings to her, resulting in damage to her ear drums and she also sustained injuries in the brain. Neelu @ Neelisha Singh had to run from matrimonial house to save her. Manish Ahlawat straightaway lodged false DDR without searching her anywhere, and stated that she might have gone to her grandmother or to the house of petitioner after fight with his cousin sister. Even the talk between Neelu @ Neelisha Singh and Manish Ahlawat on 23.06.2007 from Delhi was not disclosed to anybody. She was in regular touch with Manish Ahlawat but this fact was conspicuously concealed by Manish Ahlawat. She was intentionally kept away from matrimonial house under threat of killing her as well as her children. Thereafter Manish Ahlawat himself informed Police about the whereabouts of Neelu @ Neelisha Singh who ultimately traced her. The Police also acted in tandem with Manish Ahlawat.

[5]. She was brought before the Magistrate for recording

statement under Section 164 Cr.P.C. In her statement she stated that petitioner had provided sufficient dowry including house, car, gold, silver utensils, clothes and every kind of gift but her in-laws were not satisfied. They kept on torturing her physically as well as mentally. She was pregnant and Manish Ahalwat used to hit on the stomach. Her both ear drums were damaged and her left side of brain was having swelling and right side of brain developed blood clot due to injuries given by Manish Ahalwat and her mother-in-law. The instances of cruelty and harassment to Neelu @ Neelisha Singh were stated by her in the statement recorded under Section 164 Cr.P.C.

[6]. She also narrated incident of 15.06.2007 that Jyoti Ahlawat and Suman started abusing her as well as her mother and also called them as prostitute. All the three namely, Jyoti, Manish Ahalwat and Sulekha gave beatings. Manish Ahlawat asked her to pack her belongings as they were going to leave her at her parental house forever. At that time she decided to pack her luggage and left the house on 22.06.2007 at about 2.30 p.m. without informing anybody from either side. She went to Delhi by bus. From Delhi she went to Calcutta and got job offer from IBM Daksh. She worked there about 2 months. Due to ill health she joined Reliance Company and then got job offer from Intechsys and lastly she changed to Menpho Exports and till then she was working there.

[7]. On 20.11.2007, Police from Crime Branch came to her

office along with one Mohinder and they disclosed that her maternal uncle (petitioner) has filed missing report and, therefore she accompanied them to Rohtak. She narrated the instances where in-laws tried to kill her three times and in order to save her life she had to leave the house. She left the house of her own.

[8]. Petitioner being a well-wisher of Neelu @ Neelisha Singh had no option on coming to know about her missing except to lodge report with the Police. Seeing the pathetic attitude of Police, petitioner filed **CRM No.44941-M of 2007, Kuljeet Kularia v. State of Haryana and others**, which was withdrawn by petitioner in order to avail alternative remedy on 07.09.2007.

[9]. Manish Ahlawat also filed **CRM No.41857-M of 2007** and sought CBI inquiry. Petitioner also appeared in the said case and brought all the facts before the High Court. The complaints filed before the Police Authorities ultimately resulted in lodging of FIR No.134 dated 15.11.2007, under Sections 364, 498-A, 406/34 IPC, P.S. Shivaji Colony, Rohtak against Manish Ahlawat and his family members. In the aforesaid case Special Investigating Team headed by I.G. Crime, Rohtak was constituted.

[10]. According to learned counsel for the petitioner One FIR No.577 dated 01.12.2007 under Sections 406, 420, 467, 468, 464, 506, 120-B IPC, Police Station Civil Lines, Hisar was also registered against Manish Ahlawat by Smt. Bimla Devi mother of Neelu in respect of grabbing of house. Manish Ahlawat was neither the owner

of the house nor had any right to lease out the same. Allegations of forgery were leveled against Manish Ahlawat. Manish Ahlawat sought to get the aforesaid FIR quashed by filing **CRM No.2614-M of 2008** which was dismissed by the High Court on 10.02.2010 and the order was upheld by Apex Court vide order dated 07.05.2010. The aforesaid case is not relevant for deciding the controversy involved in the present case.

[11]. Manish Ahlawat also got registered FIR No.254 dated 25.11.2009 against petitioner and others for the offences under Sections 365, 389, 211, 506, 182,120-B IPC. The said FIR was cancelled and same was accepted by Judicial Magistrate Ist Class, Rohtak on 24.09.2010. Thereafter an application was filed by Manish Ahlawat for recalling of order dated 24.09.2010 which was dismissed by the said Magistrate on 10.11.2010. This case also, has no relevancy in the present context.

[12]. Special Investigating Team investigated the FIR No.134 dated 15.11.2007 under Sections 364, 498-A, 406, 34 IPC and found to be false and cancellation report was prepared on 23.12.2012. However, Police/SHO is alleged to have prepared Calendra on 23.03.2011 even before preparation of cancellation report.

[13]. The filing of Calendra is being assailed primarily on the ground that the same is not maintainable in view of non-acceptance of cancellation report by the Court till date as well as on the ground that preparation of Calendra itself is bad having suffered with vices

of illegality of arbitrariness as the same was prepared even before preparation of cancellation report. The Calendra is claimed to be barred by limitation in view of Section 468 Cr.P.C. The limitation for filing Calendra would start when the Police filed cancellation report and not from the date on which the alleged cancellation report is accepted by the Court.

[14]. That when the cancellation report dated 23.12.2012 was submitted before the Judicial Magistrate, Ist Class, the Court passed the following order:-

“CANCELLATION REPORT.

*Present: Sh. Vijender Khatri APP for the State assisted by
S.I. Raj Kumar.*

None for the complainant.

Cancellation report presented today. It be checked and registered. The presence of the complainant could not be secured inspite of receiving the notice under Section 160 Cr.P.C. Keeping in view the cancellation report and also in view of the fact that complainant is not present, file be sent to the office of Superintendent of Police, Rohtak for consignment. However, the file shall not be destroyed without prior permission to this Court and shall be put before this Court as and when the accused is apprehended.

*Announced:
19.1.2013*

*Sd/ (Nitin Raj)
Judicial Magistrate Ist Class,
Rohtak.”*

Perusal of aforesaid order shows that the cancellation report was checked and registered on its presentation on

19.01.2013. No notice of this cancellation report is shown to have issued to complainant by Judicial Magistrate Ist Class, Rohtak, except notice issued by the Police under Section 160 Cr.P.C. The Magistrate in the second breath without passing any order of cancellation or rejection of cancellation report, consigned the file.

[15]. The aforesaid order may give different interpretation in law, but fact remains that the cancellation report has not been accepted by the Magistrate after issuance of notice to complainant. It is a settled principle of law that on filing cancellation report, Magistrate is required to issue notice to complainant. Issuance of notice under Section 160 Cr.P.C. by the Police cannot be equated with notice issued by the Magistrate on receipt of cancellation report in the Court. Magistrate sent the file to the office of Superintendent of Police for its consignment which amounts to non-acceptance of cancellation report till date. Even the subsequent proceedings on the subject initiated by the Police, affirms the aforesaid fact that the cancellation report was not accepted by the Magistrate on 19.01.2013.

[16]. Now question arises what is the status of Calendra under Section 182 IPC dated 23.03.2011 filed by the Police without acceptance of cancellation report by the Court?

In **Tarlochan Singh v. State of Punjab, 2007(3) RCR (Crl.) 791**, this Court had observed the proceedings in terms of Section 182 IPC during pendency of private complaint on the same

facts before Magistrate would be an abuse of process of law.

[17]. In the said case, complainant filed criminal complaint on the same facts. Irrespective of fact whether cognizance was to be taken on private complaint by the Magistrate or not, mere pendency of criminal complaint on the same fact before the Magistrate was considered as a ground to quash Calendra under Section 182 IPC and it was held that Calendra was evidently an abuse of process of the Court. In the present case even the stage of summoning complainant has not arrived as no notice was issued by the Magistrate on receipt of cancellation report. Notice issued by the Police under Section 160 Cr.P.C., cannot suffice to hold that notice was issued by the Magistrate after receipt of cancellation report. Issuance of notice to complainant on receipt of cancellation report is mandatory.

[18]. Similarly in **State of Punjab v. Brij Lal Palta, AIR 1969 SC 355** it was held by the Hon'ble Supreme Court that complaint pending before the Magistrate on same facts and allegations as in FIR would debar the Magistrate from taking cognizance of any offence alleged to have been committed under Section 211 IPC. Even though offences under Sections 211 and 182 IPC are distinct and, therefore, prosecution of Calendra under Section 182 IPC during pendency of the complaint would be an abuse of process of Court. The aforesaid judgment relates to the second stage when on receipt of notice by the Court, complainant files a protest petition.

Here is a case in which even notice has not been issued by the Magistrate on receipt of cancellation report.

[19]. The aforesaid judgment was followed by this Court in **Banta Singh v. State of Haryana, 1985 (3) RCR (Crl.) 133.**

Similarly in **Kehar Singh v. State of Punjab, 2012(1) RCR (Crl.) 458** and **Neeraj Jain v. State of Punjab, 2012 (2) RCR (Crl.) 257,** this Court deprecated the aforesaid practice of filing Calendra for the offence under Section 182 IPC.

[20]. The limitation for taking cognizance for the offence under Section 182 IPC would be one year under Section 468 Cr.P.C. In view of sentence provided under Section 182 IPC, the limitation of one year would start when Police files cancellation report. Apparently from the date of filing of cancellation report, period of one year has already expired, and therefore, legality of Calendra cannot stand to reasons on this premise also.

[21]. Since the Magistrate has not accepted the cancellation report till date, therefore, impugned action is wholly erroneous. Consequently Calendra/proceeding under Sections 182 IPC/211 IPC dated 23.03.2011 and entire proceedings, if any undertaken in pursuance thereof stand quashed.

May 27, 2015

Atik

(RAJ MOHAN SINGH)
JUDGE