

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

CRR No.1014 of 2012 (O&M).
Decided on:-December 14, 2015.

Sukhpal Kaur.

.....Petitioner.

Versus

State of Punjab and another

.....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. T.S. Sangha, Senior Advocate with
Mr. H.S. Sangha, Advocate
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab
for respondent No.1-State.

Mr. L.S. Sidhu, Advocate
for respondent No.2.

HARI PAL VERMA, J.

Petitioner Sukhpal Kaur daughter of Karam Singh, resident of village Phaphre Bhaike, District Mansa has filed the present revision petition against the order dated 17.1.2012 passed by learned Additional Sessions Judge, Mansa whereby the petitioner has been summoned to face trial in case FIR No.122 dated 7.12.2010 under Section 304-B IPC registered at Police Station, Bhikhi.

On the statement of Sukhjit Singh, the aforesaid FIR was registered. The contents of the FIR read as under:

“We are two brothers and two sisters. I am elder, after me Sukhpal Kaur, younger to her Bhupinder Kaur and the youngest is Kulpreet Singh. My father Bharpur Singh died long time back. My elder sister Sukhpal Kaur was married with Yadwinder Singh son of Karam Singh, resident of village Phaphare Bhaike on 18.1.2008 in Asha Banquet Hall, Mansa. Yadwinder Singh is serving in the Army. At the time of marriage, we spent Rs.6 lacs beyond our capacity and gave dowry articles. We have also given one motorcycle Passion Plus but in-laws of my sister were not happy with the motorcycle and demanded car from us. My sister's husband Yadwinder Singh, father-in-law Karam Singh, mother-in-law Nirmal Kaur and Nanad Sukhpal Kaur started harassing and taunting my sister for car. They also gave beatings to her. We have given money also but they are adamant on the demand of car. About 5 months back, they turned out my sister out of her matrimonial house and sent her back. We took Panchayat many times to my sister's matrimonial home in our efforts to resettle her but they refused to hear our voice. About 10 days back my sister's mother-in-law came to our house and demanded Rs.1 lac for the marriage of my sister's Nanad but we refused to meet her demand due to our incapability. Today, I am attending a marriage at Chandigarh where I received a telephone from my brother who told me that at about 12 noon Yadwinder Singh had taken back our sister to her matrimonial home, because there is marriage of my sister's Nanad. In the evening my

brother-in-law Yadwinder Singh again gave a call to us to reach at Mansa, because my sister's condition is not well. When I started for Mansa, I again received a call and they informed me to reach DMC Ludhiana. I started from Chandigarh to Ludhiana in the way I again received a call from my sister-in-law about the death of my sister in the way from Mansa to Ludhiana and they brought back her to Mansa. I reached Civil Hospital, Mansa and saw the dead body of my sister lying in the hospital, where my brother and other persons were present. I have suspicion that in-laws of my sister gave something poisonous to her. Yadwinder Singh, father-in-law Karam Singh, mother-in-law Nirmal Kaur and Nanad Sukhpal Kaur were responsible for her death. Let action be taken against them. I have made by statement to you. It is correct and I have signed it.”

Learned counsel for the petitioner has contended that the petitioner is an unmarried sister-in-law of the deceased and there is no specific allegation of demand of dowry or harassment against the petitioner. He has further submitted that even the husband of the deceased has been acquitted in the case, though the mother-in-law of the deceased has been convicted by the trial Court. In the absence of any specific allegation against the petitioner, there was no justification for the trial Court to summon the petitioner on an application filed under Section 319 Cr.PC by the prosecution. The police did not find any evidence against the petitioner and, therefore, while presenting Challan, the police did not figure her name,

rather, she was kept in Column No.2. In order to summon the petitioner, there should be enough material before the Court.

Learned counsel for the petitioner has further contended that the marriage between deceased Sukhpal Kaur and Yadwinder Singh was solemnised on 18.1.2008 whereas said Sukhpal Kaur died on 17.12.2010. In support of his contentions, learned counsel for the petitioner has relied upon ***Kans Raj Versus State of Punjab and others 2000(2) RCR (criminal) 695 (SC); Lal Suraj alias Suraj Singh and another Versus State of Jharkhand AIR 2008 SC (Supp) 1114; Hukam Chand and another Versus State of Haryana and another 2007(3) RCR (Criminal) 141 (P&H) and Anita and others Versus State of Punjab 2003(4) RCR (Criminal) 313 (P&H).***

On the other hand, learned counsel for respondent No.2-complainant has argued that in the case in hand, deceased Sukhpal Kaur (wife) has died within 3 years of the marriage and the petitioner is the real sister-in-law and even if she is unmarried, it does not mean that she could not harass the deceased. There are specific allegations of complainant Sukhjit Singh that the petitioner along with husband Yadwinder Singh, father-in-law Karam Singh and mother-in-law Nirmal Kaur had started harassing and taunting his sister for a car.

I have heard learned counsel for the parties.

Initially, the FIR was registered on 7.12.2010 and the police in its investigation, did not find any incriminating material against the

petitioner and, therefore, while presenting Challan, kept her in Column No.2. Since the petitioner was put in Column No.2, it has appeared to the trial Court from the evidence collected during the trial that the petitioner, though has not been arraigned as an accused in the case, has committed an offence for which she need to be summoned. The trial Court was of the opinion that it had reasonable satisfaction from the evidence that the petitioner has committed the offence and, therefore, summoned her to face trial.

A bare perusal of the FIR shows that there is no specific allegation against the petitioner except a bald allegation that the husband of deceased, namely, Yadwinder Singh, father-in-law Karam Singh, mother-in-law Nirmal Kaur and Nanad Sukhpal Kaur i.e. the present petitioner had started harassing and taunting the deceased. There is no detail as to when such like harassment was given to the deceased. Moreover, in the case in hand, the husband, who is generally taken to be the main accused, but he has already been acquitted by the trial Court. It is only the mother-in-law, who has been convicted in the case.

In the case of ***Kans Raj (supra)***, Hon'ble Supreme Court has held that in the case of dowry death, the prosecution has to prove that the death was caused by burns or bodily injury; the death should have occurred within seven years of the marriage; the deceased should have been subjected to cruelty or harassment by her husband or by any relative of her husband; such cruelty or harassment should be for or in connection with demand of

dowry; and such cruelty or harassment should have been subjected to soon before her death. The relevant paragraphs No.8, 9 and 15 of the said judgment are being reproduced as under:

“8. The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable under Section 304B. In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:

(a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;

(b) such death should have occurred within 7 years of her marriage;

(c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;

(d) such cruelty or harassment should be for or in connection with the demand of dowry; and

(e) to such cruelty or harassment the deceased should have been subjected to soon before her death.

9. As and when the aforesaid circumstances are established, a presumption of dowry death shall be drawn against the accused under Section 113B of the Evidence Act. It has to be

kept in mind that presumption under Section 113B is a presumption of law. We do not agree with the submissions made by Mr. Lalit, learned Senior Counsel for the accused that the statement made by the deceased to her relations before her death were not admissible in evidence on account of intervening period between the date of making the statement and her death.

*15. No presumption under Section 113B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty, and harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the woman. The reliance placed by the learned counsel for the respondents on **Sham Lal v. State of Haryana [1997 (9) SCC 579]** is of no help to them, as in that case the evidence was brought on record to show that attempt had been made to patch up between the two sides for which Panchayat was held in which it was resolved that the deceased would go back to the nuptial home pursuant to which she was taken by the husband to his house. Such a Panchayat was shown to have held about 10 to 15 days prior to the occurrence of the case. There was nothing on record to show that the deceased was either treated with cruelty or harassed with the demand of dowry during the period between her having taken to the nuptial home and her tragic end. Such is not*

the position in the instant case as the continuous harassment to the deceased is never shown to have settled or resolved.”

Similarly, in the case of ***Lal Suraj alias Suraj Singh and another (supra)***, the Apex Court has observed in para Nos.14 and 15 of the judgment as under:

“14. No evidence worth the name, therefore, had been brought on record to arrive at a satisfaction that there was a reasonable prospect of conviction of the appellants.

15. The approach of the learned Sessions Judge was wholly incorrect. The principle of strong suspicion may be a criterion at the stage of framing of charge as all the materials brought during investigation were required to be taken into consideration, but, for the purpose of summoning a person, who did not figure as accused, a different legal principle is required to be applied. A court framing a charge would have before it all the materials on record which were required to be proved by the prosecution. In a case where, however, the court exercises its jurisdiction under Section 319 of the Code, the power has to be exercised on the basis of the fresh evidence brought before the court. There lies a fine but clear distinction.”

On the basis of the statement made by complainant Sukhjit Singh, the FIR was recorded and the matter was investigated by the police. During investigation, the police found the petitioner innocent and as such, her name was kept in Column No.2. During investigation of the police, statement of the complainant was also recorded in which he had not placed

new facts and there was no other new evidence before the trial Court on the basis of which the complicity of the petitioner could be established. For summoning a person under Section 319 Cr.PC, there must be some material before the Court which would indicate the complicity of the person who is sought to be summoned or some material should have come on record which may prompt the Court to believe that the person so accused is likely to be involved, and his conviction is likely to result in the eventuality of his facing the trial. The mere statement *ipso facto* cannot form the basis of summoning the person under Section 319 Cr.PC.

In my view, the allegations qua the petitioner are vague in nature and they have no concern with the demand of dowry or cruelty at all. In the recent past, it has been noticed that there is a tendency to involve all the relatives of the husband when the relations between the husband and the wife become strained. It is difficult to believe that unmarried sister of the husband would give cruelty or harassment to the deceased (sister of the complainant). The complainant has knitted a net wider in order to involve everybody in the in-laws family of the deceased.

This Court cannot ignore the fact that even the main accused i.e. the husband of the deceased has been acquitted by the trial Court, whereas mother-in-law of the deceased was convicted. Moreover, this Court while quashing the FIR in ***CRM-M-19161 of 2013*** decided on 29.9.2015 titled as ***Sukhdeep Kaur and another Versus State of Punjab and another*** has

noticed that in the recent past, a tendency has developed for roping in all the relations of husband in dowry cases in order to browbeat and pressurise the immediate family of the husband. Accordingly, sometimes even inflated and exaggerated allegations are levelled against them with oblique motive.

For the reasons recorded hereinabove, the present petition is allowed and the impugned order dated 17.1.2012 passed by learned Additional Sessions Judge, Mansa is set aside.

December 14, 2015
Yag Dutt

(HARI PAL VERMA)
JUDGE