

In the High Court of Punjab and Haryana at Chandigarh

CRR-1727 of 2013(O&M)

Date of Decision:20.1.2015

Sweety

---Petitioner

versus

State of Punjab and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Bipan Ghai, Senior Advocate
with Mr. Paras Talwar, Advocate
for the petitioner

Mr. Ankur Jain, AAG, Punjab
for respondent No.1-State

Mr.Vishal Sharma, 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 present petition has been directed against the order dated 4.5.2013 passed by the Additional Sessions Judge, Ludhiana whereby the petitioner has been summoned to face trial for offence punishable under Section 304-B of the Indian Penal Code (in short "IPC") by invoking provisions of Section 193 of the Code of Criminal Procedure(in short

“Cr.P.C.”).

Counsel for the petitioner contends that the petitioner is the married sister-in-law of deceased Babneet Kaur who performed love marriage with Balpreet Singh on 14.4.2012. On completion of investigation in FIR No. 149 dated 18.12.2012 registered at Police Station Division No. 8, Ludhiana on the statement of Davinder Singh, father of the deceased, challan was presented in the court against Balpreet Singh(husband), Manjinder Singh (father-in-law) and Manjit Kaur (mother-in-law) as the petitioner and her husband were found to be innocent. An application was filed under Section 193 Cr.P.C. for summoning the petitioner and her husband Hitesh Ghai @ Honey which was partly allowed by the Additional Sessions Judge, Ludhiana vide impugned order dated 4.5.2013 whereby the petitioner was ordered to be summoned but prayer for summoning her husband was declined. Operation of the impugned order dated 4.5.2013 was stayed qua the petitioner and during pendency of proceedings before this Court, trial against the accused already before the court stood concluded and they have been convicted for the offence charged against them.

It is argued that during trial before the Court of Sessions, Davinder Singh complainant and Taranjit Kaur, paternal aunt (Bua) of the deceased were examined and in their testimonies (Annexures P-5 and P-6), they have not attributed any such allegations against the petitioner to prima facie constitute an offence punishable under Section 304-B IPC, therefore, the impugned order is liable to be set aside. For this purpose, counsel has carried me through statements of the aforesaid material witnesses and highlighted the relevant portion wherein name of the petitioner or her

husband figured in their testimonies. It is further submitted that the learned trial court has noticed that the petitioner performed love marriage with Hitesh Ghai @ Honey and for that reason, parents of the petitioner did not have cordial relations with their son-in-law and thus, annoyance of parents-in-law of the deceased on account of her love marriage with Balpreet Singh is understandable.

Counsel for the contesting respondent has submitted that at the time of notice of motion, the only plea raised by the petitioner was that the trial court is competent to summon an additional accused only in exercise of power under Section 319 Cr.P.C. and not under Section 193 Cr.P.C. in the light of judgment of the Hon'ble Supreme Court of India ***Ranjit Singh vs. State of Punjab 1998(4) RCR(Criminal) 552***. It is further argued that judgment in ***Ranjit Singh's case (supra)*** has been overruled by the Hon'ble Supreme Court of India in ***Dharam Pal and others vs State of Haryana and another, 2013(2)RCR (Criminal) 787***. The petitioner has been summoned in exercise of jurisdiction under Section 193 Cr.P.C. and at that point of time, the court has only to consider if there is a prima facie case against the accused. Keeping in view the allegations against the petitioner in the first information report and the statements of the witnesses recorded under Section 161 Cr.P.C., no fault can be found in the order impugned.

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

This is an admitted position of the case that during pendency of the present petition, operation of the impugned order was stayed by this Court while issuing notice of motion. The brother and parents of the petitioner were subject to trial for committing offence punishable under

Section 304-B IPC in regard to unnatural death of Babneet Kaur wife of Balpreet Singh and the said proceedings culminated in the judgment of conviction and order of sentence dated 31.3.2014 whereby the accused already faced trial have been convicted and sentenced for the charged offence. There is no denial that the material witnesses of the prosecution namely Davinder Singh(father of the deceased) and Taranjit Kaur (sister of Davinder Singh) were examined and they had deposed in regard to role attributed to the accused who faced trial as well as others who were sought to be summoned under Section 193 Cr.P.C. No doubt, for the purpose of summoning an additional accused by invoking the provisions of Section 193 Cr.P.C., the court has to consider if there is prima facie case against the person to be summoned, in view of the report submitted under Section 173 Cr.P.C. and the supporting material relied upon by the prosecution.

Now the question arises whether keeping in view the developments which took place during interregnum i.e. that the prosecution examined all material witnesses during trial, can it be said that this Court has to revert back to the materials relied upon by the prosecution for the purpose of framing of charge or the statements of the witnesses examined during trial are also to be taken into consideration for decision if the petitioner should be directed to face rigmarole of criminal trial despite conclusion of proceedings against her co-accused. I am of the considered opinion that as the witnesses on whose statements the prosecution has relied upon to summon the petitioner has already been examined before the Court, their testimony on oath is to be appreciated to analyse correctness and legality of the impugned order.

The petitioner is admittedly the married sister of Balpreet Singh. Counsel for the respondents has not denied that the petitioner performed love marriage.

Davinder Singh PW2 in his testimony has sought to indict the petitioner and a relevant extract in this regard reads as follows:-

“About 4/5 days prior to the incident, the sister and brother in law of Balpreet Singh had visited the house of accused in the evening. On the next day accused Balpreet Singh and her parents had a quarrel with my daughter. On 13.12.202012, my daughter had called up my sister i.e. Taranjit Kaur and had told my sister that the accused are harassing her and are demanding more money.”

Taranjit Kaur PW5, paternal aunt (Bua) of the deceased, in regard to the role attributed to the petitioner, has deposed in the following terms:-

“After about 20-25 days, my niece met me and told me that her in-laws and husband have turned out to be very greedy people. Manjinder Singh father in law of my niece alongwith his wife and daughter Sweety had started compelling my niece to bring money from her father for settling, enhancing the business of Balpreet Singh husband of my niece.

Though counsel for the petitioner has submitted that statement of these witnesses to the aforesaid effect are the result of improvement upon

their earlier version with which they were confronted during course of examination but leaving aside that fact, a reading of the aforesaid allegations would not make out a prima facie case much less more than that of prima facie to direct the petitioner to face trial for commission of offence punishable under Section 304-B IPC. I would hasten to add that a criminal trial causes unimaginable agony and trauma to the accused which would be much more to a married girl, staying with her in-laws and leading a happy married life. Keeping in view the facts elicited during examination of material witnesses cited by the prosecution, I do not think it to be a fit case wherein the impugned order should be allowed to sustain.

In view of what has been discussed hereinabove, the petition is allowed and the impugned order dated 4.5.2013 is set aside. Any observations made by this Court are confined to disposal of the present petition and would not enure to benefit of the accused, already stands convicted.

(REKHA MITTAL)
JUDGE

20.1.2015
PARAMJIT