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

**CRR No.134 of 2014 (O&M)
Date of Decision: 27.05.2015**

Jagdev Krishan

.....Petitioner

Vs

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Mandeep S. Sachdev, Advocate
for the petitioner.

Mr. Arshdeep S. Kler, D.A.G., Punjab.

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]. Petitioner has assailed the order dated 15.10.2013 passed by Additional Sessions Judge, Jalandhar whereby order of charge under Section 306 IPC was passed and the petitioner was chargesheeted accordingly for the same offence.

[2]. Respondent No.2 lodged FIR No.272 dated 10.12.2012 under Section 306/34 IPC, Police Station Rama Mandi, District Jalandhar. In the said FIR, complainant alleged that his elder daughter Sonia was married to petitioner in the year 1998. Three children took birth from this wedlock. The allegations of harassment and dowry were made and it was alleged that the daughter of the complainant committed suicide by consuming poison due to

harassment meted to her by petitioner and his mother.

[3]. It has been alleged by petitioner that Police without proper investigation filed report under Section 173 Cr.P.C. on 07.02.2013. In the said challan it was mentioned by the Police that organ of deceased Sonia was sent to Medical College, Amritsar and report was awaited. The investigation was statedly pending and according to police on completion thereof, supplementary challan would be presented. In concluding part of the challan it was mentioned that during investigation till date recovery of base bat and handwriting are sufficient material to file challan against petitioner.

[4]. Additional Sessions Judge, Jalandhar framed charge against petitioner under Section 306 IPC vide order dated 04.03.2013. During course of investigation suicide note was recovered and the same was sent to FSL, Chandigarh for matching configuration with admitted writing of the deceased. The report of FSL, Chandigarh, endorsed the writing on suicide note as well as admitted document to be the same. For ready reference contents of suicide note are reproduced hereasunder:-

“Puri Sahib, I wanted to tell something but did not dare and those things, I am reducing in writing on paper. I was having illicit relations with your friend at your back, Avtar Plumber, who was residing opposite to our quarter, occassionally used to our house on one pretext or the other and used to talk, we were not having such like thing between each other. On one day I wanted to go on the roof to sit in sun shine and to go on roof, we used their stairs, I knocked their door to go on the roof and Avtar opened the

door, I went up to roof, I did not know that there was nobody in their home. After some time he came to the roof and told me that her wife is not in home, kindly make 2 chapattis for him, I made chapattis from my kitchen and told him to eat chappatis. Upon which Avtar told kindly keep chapattis in kitchen. When I went to the kitchen, he was in bathroom, Immediately after coming from bathroom Avtar caught hold me, I tried myself to free and told that I will disclose this to my husband but he did not mend his way and he raped me, Thereafter, I told him that I will disclose it to my husband Upon which is threatened me that he will alleged that earlier also I made physical relations with him and my husband come to know then he will definitely divorced me. Due to fear, I did not disclose you anything. He used to talk with you as usual and when he came to know that I did not disclose anything to you then he again committed rape with me. On those days, you went to school duty and used to come in late hours and gave less attention towards me. I was in worrying that why you were giving attention towards me. Therefore I made illicit relations with him. Which were gone for 5-6 years, But from the last two years, you were having suspicion on me that I have illicit relations with someone. But I diverted your attention, when you were not in home then he used to come and made illicit relations with me. Thereafter you were transferred to Chandigarh and you were to stay 4-5 days in Chandigarh Due to which he used to meet for long time. Whenever you come to home, you were having suspicion on me and due to which were having dispute with each other. I was pregnant from the loins of Avtar for four times. When you asked me for that I alleged to same on you, But you made physical relations with me by taking precautions, so that I may not pregnant, Hence, your guess

became true, You were done harassment with me on the pretext that I am having illicit relations. At that time you were trying to beat me, but I felt sorry, During that for 3-4 months when Avtar Plumber used to come he used to beat me because he wanted to get my illicit relations with some other person. But I did not agree it. Due to which he used to give me beatings. He used threaten me that if I do not make sex with his friends, he made my character assassination in the entire PAP. He used to blackmail me and I was in search of dying. On the other side you harassed me on the pretext of having suspicion on me, you were right on your part, On that day you quarreled with me a lot and I decided to disclose you whole of the truth. On the next day, you went to your duty and Avtar came on 11.00 AM and after making relations with me he said for one time made sex with his friends, I refused him that I cannot do this and I made relations with you under compulsion. On the one side I was cheating with my husband for the last 6 years and on the other side you were treating me badly, He told that if I made relations with him in spite of my husband then why not with his friends. Upon which I told that today, I narrated all this to my husband and don't come here after that but he gave me beatings and abuses, I did not sleep in night and was feeling to die, But I waited you that I want to say all this to you and then commit suicide because I am not capable for you. One day I made phone call to you and when you picked up then I was weeping by saying that I am not feeling good without you, so kindly come home immediately. You again made call in worry and asked why I am weeping. I told you that I am memorizing you lot. I love you very much. please come home on the next morning by taking leave and you came in the night of next day. I cried very much by hugging you and you

praised me. I was having very hate towards me that a person who loved me lot but I cheated with him. I wanted to speak truth but did not speak. Ongoing of your duty I always thought now what to do next under compulsion. He blackmailed me from the last many years and used to made illicit relations with me. Therefore I am writing all the facts because I am not having dared to speak, I put it in the pocket of your uniform and after reading this disclosed you decision on phone. I don't want to live but for the children, kindly heard me one a time. I met you if I alive, Yours loving Sonia."

[5]. It was established during the course of investigation that deceased Sonia was having illicit relation with co-accused Avtar Singh who started blackmailing her and the deceased committed suicide on that count. The attending circumstances have been elaborately mentioned in the suicide note, the genuineness of which was established by the Police with reference to matching configuration of writing.

[6]. After collection of aforesaid material, petitioner was found innocent. A rapat No.15 dated 27.03.2013 was prepared wherein offence under Section 376/506 IPC was added against co-accused Avtar Singh. Petitioner and his mother were found innocent and separate application for discharge of petitioner was moved in the Court of Additional Sessions Judge, Jalandhar. Thereafter report of further investigation in terms of Section 173(8) Cr.P.C. was also submitted before the Court wherein co-accused Avtar Singh was challaned for the offences under Section 306/506/376 IPC and it was recited therein that petitioner has been found innocent and

necessary approval has been obtained from the Commissioner and further application has been moved in a concerned Court on 13.03.2013 for getting the petitioner discharged from the case. Even the inquiry was also conducted by Additional Deputy Commissioner (Crime) Jalandhar on 23.05.2013 in which petitioner was found innocent.

[7]. Various interlocutory orders passed by trial Court in the context of application seeking discharge of petitioner show that the application for discharge remained under consideration of the trial Court on numerous occasions. Ultimately learned APP for the State stated before the Court that prosecution has not moved any application for withdrawal of the prosecution and matter may be decided on the basis of subsequent investigation qua which challan has been presented. Trial Court without adhering to the pending application seeking discharge and the report under Section 173(8) Cr.P.C., finding the petitioner to be innocent, ordered framing of charge wholly on erroneous grounds.

[8]. I have heard learned counsel for the parties.

[9]. Vide the impugned order of charge, petitioner as well as co-accused Avtar Singh have been chargesheeted for the offence under Section 306 IPC and 306/376(2)(n)/506 IPC respectively. Petitioner as well as co-accused have no community of interest or grouse in the alleged prosecution. Petitioner and the co-accused have no common grounds and have allegedly committed distinct offences.

[10]. Section 218 Cr.P.C. prescribes that separate charge has to

be famed for distinct offences and said charge has to be tried separately. Joint trial would prejudice the case of either party as the petitioner would be having conflicting interest with that of co-accused, because in view of supplementary investigation, petitioner has no role to play in the alleged occurrence and on the other hand co-accused Avtar Singh is accused of offences for which the petitioner is also equally aggrieved and is no less than the complainant. Section 218 Cr.P.C. reads as under:-

“(1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately: Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.

(2) Nothing in sub- section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223. Illustration A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.”

[11]. According to learned counsel for the petitioner the exception made in Sections 219, 220, 221 and 223 Cr.P.C., are not attracted to the facts of the present case.

[12]. Vide the impugned order the application for discharge of the petitioner filed by prosecution before the trial Court stands technically rejected by framing of charge. Learned counsel relies

upon **Balbir v. State of Haryana, 1999(4) RCR (Crl.) 839** to argue that concept of trial and clubbing of cases are applicable only in the cases where offence has arisen out of same transaction. The words “in the course of same transaction” have been dealt with. Continuity of action and commonalism of purpose and design are the conditions precedent for trying the accused in joint trial.

[13]. Apparently in the present case there was no commonality of alleged evil design nor there was meeting of mind between petitioner and co-accused, rather deceased was apprehensive that her relationship with co-accused Avtar Singh may not travel down to petitioner. Therefore, the scope of joint trial as discussed by Apex Court in Balbir's case (supra) is not applicable to the case in hand where petitioner in his individual capacity is also aggrieved of misconduct of co-accused Avtar Singh.

[14]. While taking into consideration, all the aforesaid features appearing on record this Court is of the view that trial Court should have passed appropriate order on the application filed by prosecution seeking discharge of the petitioner and trial Court should have applied its independent mind to the facts and evidence on record at the time of framing of charge. Even though at the time of framing of charge meticulous examination of allegations or defence is not to be undertaken by the trial Court but at the same time trial Court should have considered factum of filing of application for discharge and submission of supplementary challan in terms of Section 173(8) Cr.P.C., finding the petitioner to be innocent.

[15]. In view of aforesaid this revision petition is allowed. Impugned order dated 15.10.2013 passed by Additional Sessions Judge, Jalandhar is set aside, discharging the petitioner from the offences.

May 27, 2015

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**(RAJ MOHAN SINGH)
JUDGE**