

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

Crl. Misc.M-10271-2014 (O&M)
Date of Decision: December 14, 2016

Priyanka and others

...Petitioners

Versus

Parul

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Manish Soni, Advocate
for the petitioners.
Mr. Gurinder Pal Singh, Advocate
for the complainant.

JAISHREE THAKUR, J.

The instant petition has been filed for quashing of Criminal Complaint No.232 dated 01.11.2012 filed under Sections 148, 323, 354, 379, 506 read with Section 149 of Indian Penal Code titled as “*Parul vs. Priyanka and others*” and the summoning order dated 22.04.2013.

In brief, the facts are that the marriage of petitioner No.1- Priyanka was solemnized with one Mohit on 16.02.2010. Petitioner No.1 was ill-treated and beaten by her in-laws on account of non-fulfillment of their dowry demands. Unable to bear the harassment, petitioner No.1 left her matrimonial home on 21.02.2012. Husband of the complainant filed a case in Family Court, Gurgaon, wherein a compromise was entered into, in which it was decided that petitioner No.1 would reside separately with her

husband. However, when petitioner No.1 went to the house to collect her articles, she was again beaten. Thereafter, family members of the husband of petitioner No.1 and her family members (the present petitioners) decided to meet on 08.04.2012 for affecting a compromise at Parkash Vatika, Gurgaon. An altercation took place between the family members, resulting in abuses being hurled at one another, as well as an injury blow being given on the knee of one Sh. Virender Adlakha. Apart from that, petitioner no.1 received kick and fist blows from Parul, her sister-in-law and her mother in law. The injured person went to the hospital, where the doctor after examination found that left knee of Virender Adlakha-petitioner No.7 was fractured. On the statement of said Virender Adlakha, an FIR No.125 dated 12.04.2012 under Sections 323, 325, 34 of Indian Penal Code was registered at Police Station, Sector 5, Gurgaon against petitioner No.1's husband and her husband's elder brother Bhupesh. Another DDR was also registered on 08.04.2012 at Police Station, Sector 5, Gurgaon, at the instance of Parul wife of Bhupesh. The petitioner also lodged an FIR No.408 dated 21.07.2012, under Section 498-A, 406, 506, 34 of Indian Penal Code at Police Station Gurgaon City, Gurgaon, against her in-laws including her elder brother-in-law's wife Parul. A complaint case No.232 dated 01.11.2012 titled as ***"Parul vs. Priyanka and others"*** was filed under Sections 323, 354, 379, 506, 148, 149 of Indian Penal Code before the courts at Gurgaon, in which, petitioner No.1 and her family members have been summoned vide impugned order dated 22.04.2013.

Aggrieved against the said complaint and the summoning order, the instant petition has been filed.

Mr. Manish Soni, Advocate, appearing on behalf of the petitioners contends that the complaint is sheer abuse of process of law and has been filed with oblique motive as a counter-blast to the FIRs lodged i.e. FIR No.125 dated 12.04.2012 under Sections 323, 325, 34 of Indian Penal Code registered at Police Station, Sector 5, Gurgaon and FIR No.408 dated 21.07.2012, under Section 498-A, 406, 506, 34 of Indian Penal Code registered at Police Station Gurgaon City, Gurgaon. Even otherwise, the said complaint has been filed on 11th of November, 2012, after a delay of about 07 months and is not supported by the medical evidence that was conducted. It is also argued that the matter was investigated by the police and offences under Sections 323, 325, 34 of Indian Penal Code have been found to be committed against the petitioners and thus, the impugned complaint and the summoning order being nothing, but a counter-blast to the FIRs ought to be quashed and set aside.

Per contra, Mr. Gurinder Pal Singh, Advocate, appearing on behalf of the respondent submits that the summoning order is revisionable and if there is any grievance, the same should have been challenged in revision. It is also argued that the complainant-respondent herein was attacked by the petitioners, resulting in injuries, which were severe in nature and therefore, the petitioners have rightly been summoned.

I have heard learned counsel for the parties.

Admittedly, there is a dispute, which occurred between the parties and a DDR too was registered on 08.04.2012 on behalf of respondent-Parul, giving information about the incident, which took place on 08.04.2012. Subsequent to the fight which took place between the parties, an FIR was registered at the behest of one Virender Adhlakha who

suffered injuries. Petitioner No.1 has got an FIR registered under Sections 498-A, 406, 506, 34 of Indian Penal Code on 12.07.2012. The learned Magistrate has recorded the preliminary evidence of complainant Parul as CW1, Bharat as CW2, Constable Virender as CW3 and Dr. Anil Kumar as CW4, who examined the injured and proved the MLR on record, in the impugned complaint case. After appreciating the preliminary evidence on record, at the stage of summoning, the learned JMJC, Gurgaon, formed an opinion that there are sufficient grounds to proceed against the accused persons under the offences, as alleged by the complainant.

The process of summoning of an accused in a criminal case is a serious matter. It has been held in various judgments that the criminal law cannot be set into motion as a matter of course. It is only after the statement of the complainant, evidence of some of the witnesses to the occurrence is considered, the summoning order is to be passed. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and case law applicable thereto. The Magistrate is not a silent spectator at the time of recording of preliminary evidence before summoning of an accused but he is to scrutinize the evidence brought on record and in case a prima-facie offence is made, should proceed in the matter.

For this court to interfere in the summoning order, no prima facie case has to be made out and it is for the court to assess whether the Judicial Magistrate has passed the order in a mechanical manner. However, in the instant case, the Judicial Magistrate has recorded the preliminary evidence of the complainant, the eye-witness present on the spot, the constable as well as the doctor and after recording the preliminary evidence

of these witnesses, a conscious decision of summoning the accused, petitioners herein, has been taken. Merely because the complaint was lodged after a delay of 7 months from the date of occurrence, the complaint cannot be dismissed. The complaint mentions that after the DDR was lodged on 8.4.2012, the day of the occurrence, the police did not take action and thereafter a complaint was sent to the Commissioner of Police who marked it to the policed station. Since no action was taken thereon a complaint case was filed under Section 156(3) Cr.P.C. thus, it cannot be said that there is a delay in lodging the complaint .

In view of the above, this court does not find any infirmity or illegality in the impugned order and accordingly, the petition in hand is hereby dismissed.

December 14, 2016

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No