

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

**Crl. Misc. No.M-17560 of 2014 (O&M)
Date of decision : 18.05.2016**

Malika Arora

.....Petitioner(s)

Versus

U.T. Chandigarh and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. R.S. Ahluwalia, Advocate
for the petitioner.

Ms. Ashima Mor, APP, UT, Chandigarh.

Mr. J.S. Brar, Advocate
for respondents no.2 to 4.

ANITA CHAUDHRY, J.

1. The petitioner has challenged the order dated 26.08.2013, passed by Judicial Magistrate Ist Class, Chandigarh and the order dated 15.03.2014, passed by the Additional Sessions Judge, vide which the application filed by the petitioner under Section 319 Cr.P.C. seeking to summon respondents no.3 to 6 as additional accused had been dismissed.

2. The petitioner was married to respondent no.2 Deepak Verma on 21.01.2006 at Zirakpur. A complaint was lodged with the police in February, 2011. The police had filed the challan only against the husband. An application under Section 319 Cr.P.C. was filed and the petitioner wanted to summon the remaining persons named by her.

3. After obtaining the reply and hearing the parties, the trial Court dismissed the application. It had observed that the allegations were not specific and the brother in law and the sister in law were residing at Sikandrabad and the brother in law was living in Africa, it noted that the complainant had never demanded any dowry article back from them and they had been implicated with a view to harass them.

4. A revision was filed against the order, which was dismissed by the Additional Sessions Judge on 15.03.2014. It found no grounds to interfere.

5. I have heard the counsels of both the sides.

6. The counsel for the petitioner contends that the power under Section 482 Cr.P.C. can be invoked as second revision is not maintainable and it is a case of mis-carriage of justice and the petitioner had named respondents no.3 to 6 in her complaint as well as in her statement recorded in the Court and the inherent powers can be invoked to correct the mistake. The counsel contends that the father in law had filed a suit for damages against the petitioner and the husband is seeking custody of the minor child. Reliance was placed upon *Manoj and others Vs. Prem Lal 2006(4) AICLR 706*.

7. Counsel for the private respondents had urged that the complainant had earlier filed a complaint on the same facts which was withdrawn and she had again filed a complaint and had not disclosed that the first complaint had been withdrawn. The counsel further contends that the allegations against the mother in law are only that she had taunted her. It was urged that allegations were levelled that injuries were given but there is no MLR and the mother in law was suffering from cancer from April, 2007

onwards. The counsel further contends that the father in law is a Principal of a Medical College and was posted out since April, 2005 and the police after verification had filed the challan only against the husband. It was urged that the family was facing eight cases. It was urged that the complainant had stated that the demand was made before marriage but there is no complaint and she was living in the same house. It was urged that in the First Information Report, the complainant had stated that she had asked for her ornaments back which was refused but in the Court she states that she did not ask for her ornaments and there are no allegations that there was any misappropriation. It was urged that the petition under Section 482 Cr.P.C. would not be maintainable as it virtually amounts to a second revision which is expressly barred. It was urged that there is no material to summon the additional accused and the proceedings are an abuse of the process of the Court. Reliance was placed upon ***Deepti @ Arati Rai Vs. Akhil Rai & Ors. 1995 SCC (Cri) 1020, Mohit alias Sonu and another Vs. State of UP and another 2013(7) SCR 86.***

8. The complainant had got married in January, 2006. The child was born in March, 2009. As per the complaint, the complainant had gone back to her parent's house some time in July/August, 2009. The complaint was filed in February, 2011. The complainant got admitted in Thapar University for higher education in May, 2006. The complainant had alleged that her mother in law forced her to go for higher studies. She had alleged that the admission fees was given by her parents. Complainant in her statement in the Court stated that her mother in law was diagnosed with cancer in 2007 and that she used to take care of them and in June, 2008 she conceived the child and she left home in the last month. She stated that her

husband and father in law came to see the child but they went back the same afternoon and never returned. She stated that her husband visited her 2 – 3 times while she was in the hospital. She had deposed that the husband forced her to sit for the interview in Thapar University after 15 days of her delivery. She had alleged that she was beaten up on 13.05.2009 and forced her to give her signatures on blank papers. She stated that she did not ask for any article back and the articles and jewellery was in possession of the in-laws. She admitted that articles mentioned serial no.1 to 144 were taken into possession by her.

9. The petitioner in her petition has admitted that her mother in law was suffering from cancer but according to her she got cured in 2008. She was turned out of matrimonial home in May, 2009. The petitioner does not dispute that the brother in law was serving at Africa but had alleged that his wife never joined him at Africa and was living at Patiala.

10. The Police after investigating the case had only challaned the husband. The application filed by the complainant had been dismissed. The revision also met with the same fate. The petitioner has now approached this Court under Section 482 Cr.P.C. It is settled that power under Section 482 of Cr.P.C. have to be exercised sparingly and such power is not to be utilised as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397(1) of the Code, as it is prohibited under Section 397(3) of Criminal Procedure Code. However, the High Court can entertain a petition under Section 482 of the Code, when there is serious miscarriage of justice and abuse of the process of the Court or when mandatory

provisions of law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional Court.

11. In *State V. Navjot Sandhu, 2003(2) RCR (Crl.) 860:2003 SCC (Crl.) 1545* the power of the High Court under Section 482 of Criminal Procedure Code came up for consideration and it was held in para 29, which is as under:-

*“Section 482 of the Criminal Procedure Code starts with the words 'Nothing in this Code'. Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However, as is set out in **Satya Narayan Sharma V. State of Rajasthan, 2001(4) RCR (Cri.) 377 (SC): 2001(8) SCC 607**, this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers of the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice.”*

12. The same was reiterated in ***Kailash Verma V. Punjab State Civil Supplied Corporation and another, 2005(1) RCR (Crl.) 727: 2005(1) Apex Criminal 339 (SC): 2005(2) SCC 571:***

“Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under

Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the Court or when mandatory provisions of law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional Court.”

13. The trial Court refused to summon the additional accused. The aggrieved party had availed the remedy under Section 397 Cr.P.C. The second revision would not be maintainable. The High Court can exercise inherent jurisdiction only when it finds that the Courts below have committed a grave error in passing the impugned order. It is not so in the present case. The petitioner did not bring any additional material. The Courts below did not have material to record satisfaction that it was a fit case for summoning the additional accused. For summoning the additional accused, there has to be some material against the newly summoned accused, which is missing. The difference in the degree of satisfaction for summoning the subsequent accused is different. I am of the view that the orders passed by both the Courts below does not suffer from any legal infirmity. Hence, no interference is called for. No case is made out to invoke the inherent jurisdiction under Section 482 Cr.P.C.

The petition is accordingly dismissed.

18.05.2016

Sunil

(ANITA CHAUDHRY)
JUDGE