

Crl. Misc. No. M-19410 of 2016

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-19410 of 2016

DATE OF DECISION: 31.05.2016

Yashpal Parmar and another

.....Petitioners

Versus

State of Haryana and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspaper may be allowed to see judgment? (Yes/No)**
- 2. To be referred to reporters or not? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest? (Yes/No)**

Present:- Mr. J.S. Bedi, Senior Advocate with
Ms. Diya Sodhi, Advocate
for the petitioners.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No. 263 dated 29.9.2014 registered under Sections 323,324,498-A,406 and 506 IPC at Police Station Chandimandir, District Panchkula, report under Section 173 (2) Cr.P.C., order dated 2.7.2015 vide which charges have been framed and order dated 25.2.2016 passed by Sessions Judge, Panchkula in the revision petition.

Brief facts of the case as mentioned in the petition are that son of the petitioners, namely, Major Varun Parmar was married to Parul Parmar (respondent No.2) on 28.5.2010. After marriage, respondent No.2 and son

of the petitioners resided separately at the places where the son of the

petitioners was posted. On 4.8.2014, respondent No.2 made a complaint against her husband and in laws for ill treatment but the same was got compromised with the intervention of the respectables. On 25.9.2014, respondent No.2 was beaten mercilessly at night by her husband and after giving beatings, her husband talked with his father through his mobile. Complainant-respondent No.2 also complained to her father-in-law about the beatings given by her husband but she was not heard. The merciless beatings resulted into her being admitted in the Command Hospital. Thereafter on a complaint dated 29.9.2014 made by respondent No.2, aforesaid FIR was registered against the petitioners and their son. Accused were arrested and were released on bail by the trial Court. Complainant-respondent No.2 again made a complaint on 30.10.2014 levelling certain allegations of demand of dowry and harassment and causing injury to her, on which, Sections 498-A,406,324 IPC were added in the aforesaid FIR. After completion of investigation, challan was presented and charges under Sections 498-A,406,323,324,506 IPC were framed by the trial Court against the petitioners and their son vide order dated 2.7.2015. The order framing charge was challenged by the petitioners by way of filing revision petition, whereby, impugned order was set aside and the matter was remanded for fresh consideration on charges. Now the present petition has been filed by the petitioners for quashing of FIR, order framing charge as well as order passed in the revision petition.

Learned senior counsel for the petitioners contends that initially father of complainant-respondent No. 2 made a complaint to Superintendent of Police, Women and Child Protection Wing, U.T., Chandigarh on 23.2.2012 with the allegations that the marriage of respondent No.2 has not

consummated and nothing was said against the petitioners. In the subsequent complaint dated 4.8.2014 made by respondent No.2 to SHO, Police Station Chandimandir, allegations regarding cruelty and non-consummation of marriage were levelled against the husband but with the intervention of respectables and the members of the society, the matter was compromised on the same day. Learned senior counsel further submits that on the basis of third complaint made on 29.9.2014, the present FIR was registered under Sections 323 and 506 IPC against the petitioners and their son. They were arrested on 1.10.2014 and were released on regular bail on 2.10.2014. Learned senior counsel also submits that complainant-respondent No.2 made a supplementary complaint against the petitioners and their son levelling allegations of demand of dowry and harassment, upon which, Sections 406,498-A and 324 IPC were added in the aforesaid FIR. The dispute between the son of the petitioners and complainant-respondent No.2 was of non-consummation of the marriage as son of the petitioners was medically unfit. It is also the contention of learned senior counsel that the Revisional Court has remanded the case for consideration on reframing of the charges with a positive finding that no offence was made out under Sections 323,324 and 506 IPC against the petitioners. It is also the submission of learned senior counsel that no case is made out against the petitioners and they are liable to be discharged.

Heard the arguments advanced by learned senior counsel for the petitioners and have also gone through the allegations levelled in the FIR, order of framing of charge as well as the remand order.

Admittedly, a complaint was made by respondent No.2 initially on 4.8.2014 but the same was compromised on the very same day. On

25.9.2014, respondent No.2 was given merciless beatings by her husband. Complainant also talked to her father-in-law regarding behaviour of her husband but she was not heard. She also remained admitted in the hospital. On the basis of complaint made by respondent No.2, FIR No. 263 was registered under Sections 323,506 IPC on 29.9.2014 against the petitioners and their son. The accused were arrested and were released on bail. Thereafter another complaint was made by respondent No.2 on 30.10.2014 by alleging certain allegations of demand of dowry and harassment against the petitioners and their son, on which, Sections 498-A,406,324 IPC were added. Thereafter charges were also framed by the trial Court under Sections 498-A,406,323,324 and 506 IPC against the petitioners and their son. Order framing charge was challenged by way of filing revision petition and impugned order of charge was set aside vide order dated 2.7.2015 remanding fresh consideration on charges. A finding was also recorded by the Revisional Court that prima facie no offence was made out under Sections 323,324,506 IPC against the petitioners as they were not present at the time of giving beatings. Similarly charge under Sections 406, 498-A were also framed without mentioning any date and time. The relevant portion of order passed by learned Sessions Judge, Panchkula remanding the case is reproduced as under:-

“During the course of arguments, it is conceded case of counsel for the complainant-wife that when the charges were framed, issue raised herein were not raised before trial Court and it was left to the Court to frame charges as made out. In these facts and circumstances, issue comes whether the impugned order of framing of charge is against the facts. Accordingly, after going

through the charge-sheet and documents, it comes out that admittedly, this case was registered on the complaint lodged by the complainant-wife on 29.9.2014 in which main occurrence of assault was dated 26.09.2014 with the allegations that on that day, when she lodged a complaint to the petitioners for the harassment by her husband, her husband assaulted her and beat her mercilessly. If it is so, it is a fact that on 26.9.2014, both the petitioners were not present when the complainant-wife was allegedly assaulted by her husband but despite this, charge under Sections 323,324,506 IPC were framed against the petitioners that too without mentioning any date of incident. Similarly, other charges have been framed without any date and proper facts. No doubt, even if trial Court was called upon to frame charges as made out, it was the duty of the trial Court to see that proper charges are framed as per the allegations made out. In these facts and circumstances, it has been prima-facie shown that the order passed by the trial Court while framing charges is not a well founded order and if it is so, once it is found that the order of the learned trial Court is against the facts and not sustainable in the eyes of law, this Court as a revisional Court can set-aside the order even in a suo-motu jurisdiction, even if the revision is otherwise time barred.

In view of the aforesaid facts and circumstances and applying the legal position as reiterated above, it comes out that the impugned order of framing of charges is not sustainable in the eyes of law for the reasons as observed above and even learned

counsel for the complainant has indirectly conceded that the charges have not been framed as per requirement of law with proper dates of alleged crime and specific particulars. Thus, in the given facts and circumstances and as per the law laid down in **Municipal Corporation of Delhi's case (supra)**, the application for condonation of delay is allowed and since charges have been framed without hearing both the parties, it will be in the interest of justice that the trial Court should heard the parties afresh and pass a fresh order on the question of framing of charges, which will not cause any prejudice to any of the two parties as both the parties will have a right to put forward their stand before the trial Court. Resultantly, the revision in hand is allowed and the impugned Order dated 02.07.2015 is hereby set-aside and the matter is remitted back to the learned trial Court with the directions to hear both the parties afresh on the question of framing of charges and then to pass a appropriate orders in view of the observations made above. Let a copy of this order along with trial Court records be remitted back with the directions to both the parties to appear there on the date fixed and revision file to be consigned to record room after due compliance.”

The case was remanded on the ground that the allegations of harassment were against the husband as complainant-respondent No.2 was assaulted by him and beatings were also given by him. Both the petitioners were not present at the time of giving beatings but still charges were framed under Sections 323,324,506 IPC against them that too without mentioning

any date of incident. It was also mentioned that it was the duty of the trial Court to see that charges are framed properly as per the allegations levelled. It was further mentioned that order of framing of charge was not well founded and as such the same was not sustainable in the eyes of law. By relying upon the judgment in the case of **Municipal Corporation of Delhi Vs. Girdhari Lal Sapuru and others** 1981 (2) SCC 758, the case was remanded to the trial Court for hearing the parties afresh and to pass fresh order on the question of framing of charge so that no prejudice is caused to any of the parties.

After hearing learned counsel for the parties and on perusal of order of framing of charge as well as order passed in the revision petition, I am of the view that the observations made in the remand order by learned Sessions Judge, Panchkula itself appears to be contradictory. A finding has been recorded that prima facie no case is made out under Sections 323, 324 and 506 IPC against the petitioners as they were not present at the time of alleged assault and the charges were framed without mentioning any date and time and as such order framing charge is bad. No doubt various complaints have been made by complainant-respondent No.2 levelling different allegations. In the initial complaint, the allegations were levelled against the husband and thereafter the allegations were levelled against the petitioners, who are parents-in-law. The grievance of complainant-respondent No.2 was initially regarding non-consummation of marriage but subsequently the allegations were levelled for demand of dowry and harassment. Even after release of the petitioners on regular bail, again complaint was also made levelling certain allegations of harassment against the petitioners as well as their son. The trial Court while framing charge

has not considered the allegations of the complainant as well as the improvements made in the allegations properly. The charges should have been framed after taking into consideration allegations levelled in all the complaints and improvements made therein as well as the consistency/inconsistency in the statements of the complainant. As far as order of remand is concerned, no interference is required but the trial Court is directed not to be influenced by the observations made by the Revisional Court as well as earlier order of framing of charge and is directed to frame charges afresh by considering all the complaints made by the complainant and allegations levelled therein in accordance with law so that no prejudice is caused to either of the party.

With the aforesaid direction, the present petition is disposed of.

May 31, 2016
pooja

(DAYA CHAUDHARY)
JUDGE