

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

**Criminal Misc. No. M-2837 of 2016
Date of Decision:-24.08.2016**

Soni @ Pooja and others

...Petitioners

Versus

Hari Krishan and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Inderjeet Singh Chawla, Advocate
for the petitioners.

HARI PAL VERMA J.

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of complaint No.11-1 dated 20.7.2009 (Annexure P-2) and the summoning order dated 13.2.2015 (Annexure P-3) passed by the Chief Judicial Magistrate, Fazilka.

Briefly stated a complaint under Sections 302, 138 and 149 IPC was filed by the respondent/complainant. As per complaint, the complaintant was having two sons and two daughters, who were already married. His son Rajinder Kumar @ Lucky Khera was having a mobile shop at Gandhi Chowk, Muktsar. He was married with Soni alias Pooja daughter of Varinder Kumar, resident of near Sanjeev Cinema, Fazilka, District Ferozepur. The in-laws of Rajinder Kumar used to interfere in the family affairs of Rajinder Kumar, due to which he was disturbed. The

parental side of Pooja used to provoke her that her husband should be separated from his parents. For this reason they used to disturb the family of Rajinder Kumar. On 16.5.2008, mother of Pooja came to the complainant's house and went back to Fazilka alongwith her daughter Pooja @ Soni and his son Rajinder Kumar. On 17.5.2008, the respondent-complainant contacted the father-in-law of his son namely Varinder Kumar on his mobile phone but the phone was not picked up by Varinder Kumar. However, said Varinder Kumar gave a call to the complainant at 11/12 O'clock enquiring from the complainant as to whether Rajinder Kumar has reached to home? Thereafter, the phone was disconnected by Varinder Singh. When after 45 minutes the son of the complainant not reached at home, the complainant got anxious and reached Fazilka by bus. He reached the house of in-laws of his son Rajinder Kumar at about 2.30 PM. Despite knocking the door they did not open the same. The complainant then pushed the door and entered inside the house and noticed that his son Rajinder Kumar was surrounded by his in-laws family members and his mother-in-law Asha was forcibly administering something in his mouth. Noticing the complainant, the in-laws family got infuriated and exhorted each other to catch hold of complainant also. However, the complainant managed to escape. Thereafter, the complainant went to the house of his uncle at Muktsar, where all of them got ready to come back to Fazilka. But at about 7.30 PM they received a phone call that his son has expired. The complainant reached Fazilka at 9/9.30 PM and saw the dead body of his son. With these allegations, the Magistrate has summoned the petitioners

for offence under Sections 302 read with 149 IPC.

The offence being triable by the Sessions Court, the matter was committed to the Sessions Court and accordingly, the Court of learned Additional Sessions Judge, Fazilka, vide order dated 28.8.2015 framed the charges against the petitioners.

Learned counsel for the petitioners has though not impugned the charge but has questioned the very complaint and the summoning order passed by the Magistrate dated 20.7.2009 and 13.2.2015 respectively. He has argued that at the time of alleged occurrence it has come during the investigation that at the time of incident, the complainant was present in his cloth shop at Mandi Bariwala and his son Varinder Bhateja was present in the mobile shop at Gaushala Road, Fazilka.

Initially, on the complaint made by the complainant, FIR No.55 dated 18.5.2008 under Sections 302, 148 and 149 IPC was registered at Police Station City, Fazilka but after detailed inquiry, the Senior Superintendent of Police, Fazilka ordered to cancel the said FIR on the basis of the report submitted by the Deputy Superintendent of Police, Fazilka dated 10.1.2009.

Learned counsel for the petitioner states that the deceased Rajinder Kumar had died because he was hard core drug addict and after suffering losses from his mobile shop he was depressed and mentally disturbed. Therefore, the petitioners have no role so far as the death of Rajinder is concerned and he had probably consumed some intoxicant poisonous substance which resulted into his death.

I have heard learned counsel for the petitioners.

The petitioners have not impugned the charge-sheet framed against them. The allegations made in the complaint are required to be established during the trial. At this stage, the Court cannot interfere into the contents of the complaint as well as the charge-sheet. No doubt the police has submitted the cancellation report in the said FIR but as the complainant has filed the complaint under Sections 302, 148 and 149 IPC, on the basis of which, charges have been framed against the petitioners, the trial Court will consider the allegations as to whether the averments made in the complaint are true or false, are required to be established during the trial.

Accordingly, the present petition is dismissed.

It is made clear that the observations made hereinabove shall not be construed as reflection of any opinion on the merits of the main case and the trial Court shall decide the case on the basis of available evidence.

August 24, 2016
Vijay Asija

(**HARI PAL VERMA**)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No