

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Revision No. 3062 of 2013

Date of decision : 28.01.2016

Suman @ Rekha

..... Petitioner

versus

Amarjit Kaur @ Golo and others

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present: Mr. Ram Kumar Saini, Advocate
for the petitioner**

ANITA CHAUDHRY, J. (ORAL)

This revision petition is directed against the judgments of both the Courts below i.e. order dated 11.7.2012 passed by Additional Chief Judicial Magistrate, Bathinda and order passed in appeal by the Sessions Judge, Bathinda on 08.05.2013 in a complaint lodged by the petitioner.

Briefly the allegations made by the complainant were that she was married to Ram Kumar and had a son from that marriage. The complainant and her husband had shifted to Bathinda in search of work and they started residing in Amarpura Basti, Bathinda. The complainant's husband left her 3 years prior to the lodging of the complaint. Allegations were made that her husband left with another woman and never returned. The complainant was residing as a tenant in the house of Amarjit Kaur wife of Amritpal Singh. Amarjit Kaur had illicit relations with several persons. Accused No. 2 Gagan Jain had been visiting Amarjit Kaur. Accused No. 1 introduced the complainant to Gagan Jain and stated that he was a bachelor and accused

No. 1 forced her to live with accused No. 2 as his wife. Out of the said

relationship allegedly a child was born in August 2006. The allegations are that a year later Gagan Jain married another lady and it was accused No. 3 who was living with Amarjit Kaur. Accused No. 1 was forcing her to establish illicit relations with accused No. 3. The complainant had made allegations relating to an incident dated 09.07.2007. The allegations are that accused No. 1 and accused No. 3 came and accused No. 1 forced the complainant to have relations with accused No. 3 and she refused on which accused No. 3 molested her and gave beatings. The complainant alleged that accused No. 1 was engaged in flesh trade. She approached the police but no FIR was lodged. This complaint was filed in 2007.

Preliminary evidence was recorded and the trial Court considered the report of the SHO. It was noted that totally different version was given to the police and finding contradictions, her complaint was dismissed as there was no medical evidence .

An appeal was preferred and notice was given to respondents No. 1 and 2 who had appeared and were represented by a counsel. Service could not be effected on respondent No. 3 as complete address was not provided. The Appellate Court thoroughly examined the evidence and noted the following observations in para 11 and 12 :-

“11. From the perusal of the record, it transpires that the version given by complainant in the complaint is altogether different from the statement made by her before the police. In her statement, she got it recorded that Gagan Jain used to visit her husband Ram Kumar and got him the habit of taking intoxicants and he turned him out of the house after subjecting him to beatings and thereafter, he himself started residing with her. However, in the complaint, she has taken a different stand that Ram Kumar had left her and started residing with some

other woman and that she had been compelled by Amarjit Kaur to live with Gagan Jain. Complainant has also got it recorded in her statement, Ex.CW/1/B, before the police that she lived with Gagan Jain for about one and half year at Bhatti road and then they lived in the house of Didar Sigh, where she stayed with Gagan Jain for about 4-5 months of her own consent and a child, namely, Rahul was born. This version is again contradictory to her statement made in the Court, wherein she has stated that Gagan Jain started staying in the house of Amarjit Kaur and after the birth of child, Gagan Jain stopped visting her. Amarjit Kaur after retaining her article, threw her out of the house.

12. In this way, complainant has not levelled any allegation against accused Ajay Kumar in her statement made before the police. Similarly, there is no allegation against Amarjit Kaur that she forced her to establish illicit relations with Ajay Kumar. However, the allegations against Gagan Jain also stand falsified from the fact that she has stated before the police that she resided with Gagan Jain voluntarily with her free consent. Even the SHO, Police Station, Kotwali, Bathinda, who conducted the inquiry, found that Amarjit Kaur was living in the neighbourhood of the complainant and Gagan Jain, who was the member of Eknoor Society, used to visit her and since the complainant was pregnant and as such they helped her. Gagan Jain did not have any illicit relations with Suman. However, Suman in connivance with Didar Singh, in whose house she is now living, had falsely filed a complaint, as he has a dispute with Amarjit Kaur with regard to a Dharmshala. As per the

police inquiry, the complaint has been filed by complainant at the behest of said Didar Singh. Since there are material discrepancies/contradictions in the allegations levelled by the complainant in her complaint as well as statement made in the Court and the statement made by her before the police, as such it is found that no case is made out against the accused. The allegation levelled by the complainant in the Court appears to be afterthought and the complainant has been filed just to harass and humiliate the respondent when the police found the allegations of the complainant as incorrect. Even otherwise, no medical evidence has been brought on the record by the complainant to substantiate her version. Further, no DNA test has been got conducted to determine the paternity of the child. Consequently, it is found that the complainant has failed to prove her case beyond any shadow of reasonable doubt.”

The counsel has placed on record the statements and has referred to the statement made by Rani CW-4 and urges that Dai who was present at the time of birth of the child had stated that accused No. 2 himself said to her that he is husband of the complainant. The counsel urges that the statement of the complainant had gone unrebutted and gets support from statement of Didar Singh and CW-4 and accused should have been summoned.

The trial Court as well as the Appellate Court had thoroughly examined the allegations and the evidence. They had found contradictions. Certain admissions made by the complainant throw a doubt on her case. The Appellate Court had noted that there was no evidence nor any DNA test was done to prove the paternity of the child.

No civil proceedings were filed. Paternity of the child had not been determined. No complaint was made by the prosecutrix on the date of incident. It appears to be a case of consent. There is no medical evidence. The trial Court had noted contradictions in the statement made to the Court and the police and had rightly rejected the same. There is no reason to take a different view. There is no illegality in the orders passed by the Court below which calls for interference.

The petition is dismissed.

January 28, 2016

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**(ANITA CHAUDHRY)
JUDGE**