

In the High Court of Punjab and Haryana at Chandigarh

**Criminal Revision No. 4037 of 2013
Date of Decision: 16.05.2016**

Sunita

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sandeep Thakan, Advocate
for the petitioner.

Ms. Vibha Dhiman, AAG, Haryana.

ANITA CHAUDHRY, J(ORAL)

1. This revision petition is directed against the order dated 22.11.2013 passed by Additional Sessions Judge, Bhiwani.
2. It would be necessary to refer to the factual matrix. Sushila, daughter-in-law of Naresh lodged a complaint on 21.9.2013. She was married to Deepak on 10.7.2013. Allegations were levelled that on 16.9.2013, at about 9.00 A.M., her mother-in-law and father-in-law were home, her mother-in-law Sunita (petitioner) called her inside the room. Her father-in-law Naresh was already inside. Both of them tied her hands and feet, they increased the volume of television at a high pitch. Her mother-in-law went outside and bolted the door from outside. Her father-in-law Naresh untied her feet and raped her. Her mother-in-law came inside and threatened her with dire consequences. Allegations were that she was not allowed to go out of the house for two days. She escaped from the matrimonial home and reached her parents

house and narrated the incident to her mother. The prosecutrix was got medically examined on 21.9.2013. On the same day, her father-in-law was arrested. The investigations were completed and challan was submitted only against accused Naresh.

3. The Additional Sessions Judge at the time of framing of charge referred to the judgment of the Apex Court reported in ***Dharampal and others versus State of Haryana, 2013(3) RCR (Criminal) 787*** and ordered that the Sessions Judge had the jurisdiction to summon a person whose name was mentioned in column No. 2 of the police report even without recording evidence and, therefore applying the ratio of the authority of the Constitution Bench directed the summoning of mother-in-law of the prosecutrix on 9.12.2013. The order passed by the Additional Sessions Judge dated 22.11.2013 reads as under:-

“Case was fixed for arguments on charge. Perusal of the file shows that FIR was registered on the statement of the prosecutrix on 21.9.2013. She has stated that her marriage was solemnized on 10.7.2013 with Deepak son of Naresh, resident of village Khara-Kalan. Her father-in-law was having evil eye upon her since the date of marriage. On 16.9.2013 at around 9.00 A.M., her mother-in-law Sunita and father-in-law Suresh were at house. Her mother-in-law called her in the inner room of the house. Her mother-in-law and father-in-law had tied her hands and switched on television and volume of the television was raised high. Her mother-in-law went out of the room. Her father-in-law freed her feet and committed rape upon her. After that her father-in-law came inside

*and both of them threatened her with dire consequences of life. She was also kept inside the house for two days. Challan against accused Naresh has been committed to the Court. Sunita, mother-in-law of the prosecutrix has been declared innocent. As per observations of Hon'ble Apex Court in **Dharampal and others versus State of Haryana, 2013(3) RCR (Criminal) 787**, Sessions Judge has jurisdiction to summon the persons named in Column No. 2 of Police Report without recording evidence. Applying the ratio of the said authority of the Constitutional Bench of Hon'ble Apex Court Sunita wife of Naresh, Luhar by caste, resident of village Kharak-Kalan, District Bhiwani, who is mother-in-law of prosecutrix is ordered to be summoned for 9.12.2013."*

4. Aggrieved by the order this revision was preferred. The proceedings before the Trial Court as against the petitioner were ordered to be stayed.

5. Notice was given to the respondents. The record was summoned.

6. I have heard both the sides.

7. Counsel for the petitioner has contended that the Trial Court had summoned the additional accused without giving any reasons and had only referred to the judgment of the Constitutional Bench and had failed to even give the sections under which she was summoned and it was a case of non-application of mind. It was urged that the case against Naresh was found to be false and the Trial Court had acquitted him. It was urged that the complainant did not get a divorce from the first husband and had

cheated them and had concealed her first marriage and had married her son. It was urged that the incident was not reported to the husband that evening and it was a matrimonial dispute which has been given a distorted account. It was urged that the medical was got done after a number of days. It was urged that the allegations by itself appear to be false and at the trial the main accused had led evidence to show that there was no electricity in the village that morning and there was a power cut from 7.00 A.M. to 11.00 A.M. and the FIR was an abuse of process of law. It was urged that the prosecutrix in her statement before the Court had stated that her husband used to look after her well and it is difficult to accept that she would not disclose the incident to her husband.

8. The Court could invoke the extra ordinary power under Section 193 Cr.P.C. only where it finds any complicity. The police did not find any truth in the allegations as against the mother-in-law. In the given facts the Court should have restrained from exercising the powers. The powers are not to be exercised mechanically. The Court was required to record its reason and was also required to state under which sections of the Code, she was being summoned. It had to assess the probability of the accusations. It had failed to record any reasons.

9. The revision is allowed and the order passed by the Additional Sessions Judge dated 22.11.2013 is set aside.

(ANITA CHAUDHRY)
JUDGE

May 16, 2016
Gurpreet