

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

**CRM-M No.18355 of 2014
Decided on: 31.10.2017**

Amandeep Khan

....Petitioner

Versus

Shanti Devi and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. H.P.S. Ishar, Advocate
for the petitioner.

Mr. Amandeep Singh, Advocate
for the respondents.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for quashing of the order dated 05.09.2012 passed by the trial Court whereby the complaint filed by the petitioner was dismissed and the order dated 24.01.2014 passed by the Additional Sessions Judge (Fast-track Court), Patiala vide which the revision filed by the petitioner/complainant was dismissed.

Brief facts of the case are that the petitioner got an FIR No.72 dated 30.07.2008 instituted against the respondents under Section 306 read with Section 34 of the Indian Penal Code (in short 'IPC') Police Station Gagga, District Patiala. Later on, on investigation, the police has submitted a cancellation report and the petitioner filed a protest petition which was treated as a criminal complaint. As per the version given in the complaint, deceased – Darshan Khan, father of the petitioner – Amandeep Khan was a resident of Ward No.11, Gagga, District Patiala and the accused persons are also residents of the same ward. The deceased was working as a Combine Harvester. After the

death of wife of the deceased – Darshan Khan, he developed illicit relation with accused No.1 – Shanti Devi. Accused No.2 was residing with accused No.1 for the last many years. It is further stated in the complaint that Shanti Devi has taken huge amount from Darshan Khan and when he had visited the house of accused No.1 – Shanti Devi for taking his money back, he was offered tea and thereafter, he became unconscious and was found lying on cot in the room. When the complainant and other persons reached there, the accused persons were standing nearby and the deceased suffer a statement that the accused persons have offered a cup of tea and thereafter, he has fallen ill. It is further alleged in the complaint that due to mixing some poisonous substance in the tea, Darshan Khan has died. The complainant has further stated that when the police after investigation has submitted a cancellation report, he filed the present complaint under Section 302 IPC.

In the preliminary evidence, the complainant examined himself as PW1 and examined Dr. Rakesh Tilak to prove the post-mortem report. According to the post-mortem report, the deceased died an unnatural death due to poison chloro compound group of insecticide which was found as per the viscera report. Thereafter, the trial Court vide its impugned judgment dated 05.09.2012 held that no sufficient evidence has come on record for proceedings against the accused persons and dismissed the complaint. The petitioner filed the revision before the Court of Additional Sessions Judge (Fast-track Court), Patiala and the same was also dismissed vide order dated 24.01.2014.

The present revision petition is filed challenging the above

impugned judgments and the same is pending since 2014.

It is submitted on behalf of the petitioner that Darshan Khan has died an unnatural death as it is proved from the post-mortem report that he died due to a poison chloro compound group of insecticide and as per statement of the complainant, accused No.1 – Shanti Devi was having illicit relation with Darshan Khan and she has obtained huge amount and while he has gone to the house of Shanti Devi – accused for taking the amount back, she in conspiracy with accused No.2 mixed some poisonous substance in the tea and after consuming the same, Darshan Khan has died and as such, sufficient evidence has come on record for proceeding with the complaint and both the trial Court as well as the Revisional Court have wrongly passed the impugned order acquitting the accused.

On the other hand, counsel for the respondent/accused has stated that the version given by the complainant before the police while recording the FIR No.72 is contrary to the allegations made in the present complaint. The complaint has been filed after a delay of about 10 months and there is no consistency in the statement made by the complainant before the police as well as in the complaint. As per the version given by the complainant, in the FIR, it is alleged by him that deceased – Darshan Khan had developed illicit relation with accused No.1 – Shanti Devi and she has obtained the huge amount from the deceased and later on, both of them insulted Darshan Khan and throw him out of her house and on that account his father has taken some poisonous substance and he died, whereas, in the instant complaint, the complainant has given a different version by stating that the deceased

has told him that on asking of accused Nos.1 and 2 i.e. Shanti Devi and Bhinda Singh, he has taken the tea and he further disclosed that there was some poisonous substance in the tea and thereafter, he collapsed. In para 12 of the complaint, it is stated that when the police recorded his statement, he did not know what was written in the same and the same was not read over to him and, therefore, the FIR No.72 was recorded on the basis of the said statement.

The Appellate Court while dismissing the revision petition has recorded the following findings:-

“8. The FIR has been registered on the statement of Amandeep Khan son of Darshan Khan, in which he has mentioned that his father Darshan Khan was working on a combine harvester. His mother Sukhmit Kaur had died around 5/6 years back and after her death, his father had developed illicit relations with Shanti Devi wife of Bawa Ram and he has started visiting her house. Whatever his father earned, he used to give to Shanti Devi and around two months earlier, he had given Rs.20,000/- to Shanti Devi to buy a buffalo. His father used to ask her to return the money but she was not returning the same. On that day in the morning, his father went from the house informing that he was going to get back the money from Shanti Devi. He came to know that Shanti Devi and Bhinda Singh who also resides with Shanti Devi, insulted Darshan Khan and threw him out of the house. Due to which, his father Darshan Khan had taken some poisonous substance and died outside the house of Shanti Devi. Against this version, in his complaint Amandeep Khan has given a totally different version. The statement given by Amandeep Khan to the police bears his signatures. In his revision petition, he has admitted that he had got registered a DDR with the

police. The complainant is not challenging his statement made before the police as being incorrect; rather, he has admitted his signatures, which means that he can read and write. The earlier statement made before the police was the initial version of the complainant and his witnesses. The complaint was filed 10 months thereafter and a completely different version has been given by the complainant and it is not explained how there are inconsistencies in the two statements. The cancellation file reveals that in the course of the investigation by the police, it transpired that deceased Darshan Khan and Shanti Devi, accused No.1 had illicit relations and accused No.1 had started avoiding the deceased, due to which Darshan Khan had consumed some poisonous substance which as per the report of the chemical examiner was a form of insecticide. It is the version of the complainant in his complaint that Darshan Khan was given poison mixed with tea; however the post-mortem report of Darshan Khan Ex.CW4/A and report of the chemical examiner Ex.CW4/B show the cause of death to be Chloro Compound Group of Insecticide, but it is not mentioned that the same was mixed with any food found in the stomach of the deceased. No doubt, the post-mortem report and the report of chemical examiner show the presence of poison in the body but it cannot be said that the poison was administered by some other person.

9. *After going through the evidence, it is found that there are two contrary versions of the complainant, the credibility of which was doubtful and the same read in consonance with the medical evidence does not seem probable. The complainant did not bring forth any substantive material which would be a ground to summon the accused to face trial and accordingly, the learned trial Court had declined to summon the accused. No doubt, if*

the evidence adduced and placed before the Court, satisfies the judicial conscience of the Court that there are sufficient grounds for proceeding with the complaint, he can summon the accused to face the trial but in the instant case, totality of the evidence placed before the learned trial Court showed contradictory version which were not in consonance with each other and no the learned trial Court. The evidence produced before the learned trial Court has been assessed and order was passed thereafter and accordingly, the revision petition is ordered to be dismissed being without any merit. The Ahlmad is directed to send the file of the trial Court along with the copy of this order. This file be consigned to the record room.”

After hearing counsel for the parties, I find no merit in the present petition. Both the Courts below has concurrently held that the complainant has given 02 different versions in the FIR as well as the criminal complaint. In the FIR, it is stated that his father has developed illicit relations with Shanti Devi and she has taken Rs.20,000/- and his father went to take back the said amount, both of them insulted Darshan Khan and throw him out of her house and on that account his father has taken some poisonous substance and he has died whereas in the present complaint, he has stated that the earlier version recorded by the police, though it bears his signatures but he do not know what was written on the same as it was not read over to him and now a different version has been given that on account of the illicit relation with Shanti Devi, she after obtaining the money started avoiding the deceased and due to this, she gave some poisonous substance in tea and Darshan Khan has died. There is no consistency in the version given by the complainant in the FIR as well as in the criminal complaint/protest petition filed before the

trial Court. It may be noticed here that the police has conducted the investigation in FIR and has submitted a cancellation report which was accepted by the trial Court. It has been held by the Hon'ble Supreme Court in *“Zahira Habibulla H. Sheikh and another vs State of Gujarat and others”*, 2004(4) SCC 158 that where two views are possible, the view which goes in favour of the accused persons, in deciding an appeal against acquittal, the view favouring the accused should be upheld. Accordingly, I find no illegality in the impugned judgments passed by the Courts below, dismissing the complaint filed by the petitioner.

For the foregoing reasons, the petition fails and is accordingly dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

31.10.2017
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No