

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M No. 22468 of 2016

Date of decision : 17-03-2017

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Manveen Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Abhinav Gupta, Advocate for the petitioner.

Ms. Anmol Grewal, AAG, Punjab.

Mr. Sumeet Goel, Advocate for respondent no.4-CBI.

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RITU BAHRI, J.

By way of this petition, the petitioner is seeking directions to any independent investigating agency preferably Central Bureau of Investigation for conducting reinvestigation in FIR No. 355 dated 31.8.2009 under Sections 406/498-A IPC registered at Police Station Sadar, Amritsar.

As alleged in the FIR, marriage of the petitioner Manveen Kaur was solemnized with Navpreet Singh Kaler on 26.11.2006 at Hotel Randhawa International with huge pomp and show. The petitioner came in contact with him through internet and phone on the reference of one close relative Harjit Singh who hails from Chandigarh but resides in Canada.

During a meeting among the families, Navpreet Singh Kaler told the petitioner and her family that he is unmarried and wants to solemnize his marriage and settle down in Canada. Accordingly, marriage ceremony was performed on 26.11.2006 and after the marriage, petitioner was taken to the matrimonial house at Village Kaler Khurd, Tehsil Batala, District Gurdaspur, where she stayed with Navpreet Singh Kaler till 5.12.2006. Thereafter, Navpreet Singh Kaler went back to Canada and the petitioner stayed with her in laws. Navpreet Singh Kaler came back to India on 11.1.2007 and both stayed together in the matrimonial house until he went back to Canada on 31.1.2007. While leaving he promised the petitioner that upon reaching Canada, he will file application for permanent residency in Canada and will send the visa of the petitioner but the same was never sent. After some time the mother-in-law of the petitioner also adopted a hostile attitude towards her and demanded a share in the property of her parents. Navpreet Singh Kaler stopped attending the phone calls of the petitioner. After some time, the petitioner came to know that Navpreet Singh Kaler was earlier married to one Sarab Kaur and had been granted divorce on 16.7.2001 by the Court of Additional District Judge, Gurdaspur.

After the registration of the FIR, the accused persons were declared proclaimed offenders and proceedings under Section 299 Cr.P.C were conducted against them. The challan was presented on 30.7.2010 (Annexure P-2).

Navpreet Singh Kaler moved a representation dated 28.5.2011 (Annexure P-3) through his power of attorney Jagraj Singh for conducting reinvestigation in the aforesaid FIR. Within a period of less than one and a half month, Superintendent of Police (Detective), Ludhiana conducted

reinvestigation and presented the enquiry report dated 07.07.2011 (Annexure P-4). Thereafter a supplementary challan dated 25.11.2011 (Annexure P-5) was presented in which all the accused persons were declared innocent.

On notice, a reply has been filed by Assistant Commissioner of Police, West, Amritsar dated 24.10.2016. In the reply it is stated that after completing the investigation in this case, PO proceedings were initiated against the accused and as such they were declared proclaimed offenders on 4.6.2010. Thereafter, on completion of investigation, challan of the instant case against the proclaimed offenders/accused was presented in the Court of competent jurisdiction. The challan presented against the proclaimed offenders was consigned to record on 5.2.2011 after conducting trial under Section 299 Cr.P.C by the Court of Ms. Harpreet Kaur, JMIC, Amritsar. Thereafter, Jagraj Singh, Special Power of Attorney moved an application to the Director General of Police, Punjab Chandigarh with a request of reinvestigation of the instant case. The same was marked to the Senior Superintendent of Police, Ludhiana (Rural) for examination on merits by the DGP, Punjab, Chandigarh. The SSP, Ludhiana (Rural) further marked this application to Superintendent of Police Detective, Ludhiana (Rural) for inquiry. The SP Detective, Ludhiana (Rural) conducted inquiry and submitted his inquiry report on 7.7.2011 to SSP, Ludhiana (Rural) while recommending cancellation of the instant case who further submitted his inquiry report to the Director General of Police, Punjab, Chandigarh which was duly approved by the DGP, Punjab, Chandigarh and was sent to the Commissioner of Police, Amritsar for taking further action thereupon accordingly. Therefore, pursuant to the recommendations made by the SP

Detective, Ludhiana (Rural) cancellation report under Section 173 (8) Cr.P.C was presented in the Court of competent jurisdiction on 24.7.2012. Thereafter the complainant was summoned by the trial Court and her statement with respect to the cancellation report under Section 173(8) Cr.P.C was recorded by the trial Court on 27.1.2015.

In a separate reply filed by the Superintendent of Police (Inv.), Ludhiana (Rural) dated 6.10.2016, it is stated that enquiry was conducted by the SP Detective, Ludhiana in compliance with the orders passed by DGP/SSP, Ludhiana (Rural) on an application made by the accused. The accused could not be arrested and after adopting proper procedure, they were declared proclaimed offenders.

Counsel for the petitioner has referred to judgment passed by this Court in case of **Gurtej Singh vs. State of Punjab 2007 (1) RCR (Criminal) 767** to contend that once the proceedings had been initiated and the respondents-accused had been declared proclaimed offenders, then on an application for reinvestigation into the FIR moved by the Special power of attorney of the accused, the accused could not be declared innocent. In this case it was held by this Court as under:

“14. In the present case there is no material available on the file from which it could be shown that the police sought the permission of the Court to conduct further investigation. The cognizance had already been taken and charge under Section 302 IPC besides other offences already stood framed against the accused. During the subsequent investigation, the police came to the conclusion that offence was not made out u/s 302

IPC but instead it was u/s 304 IPC, as there was no previous enmity between the parties and that it was a sudden occurrence. These conclusions arrived at by the police were not sufficient to hold that no offence under Section 302 IPC was made out. It was for the trial Court to consider all the aspects of the case as a whole and conclude on the basis of the evidence available on the file as to whether the offence made out was under Section 302 IPC or only u/s 304 IPC. Moreover, the further investigation was not conducted after taking formal permission from the concerned Court. As such the police was not competent to present the supplementary challan so as to proceed against the accused as if they were to be charged only u/s 304 IPC instead of Section 302 IPC. The trial Court was, thus, justified in rejecting the prayer of the prosecution to charge the accused u/s 304 IPC.”

In the case of Jatinder Mohan @Kukoo Pardhan and others vs. State of Punjab (CRM-M-7739 of 2014) decided on 07.8.2014, FIR was got registered under Section 307/34 IPC and Sections 25/27/54 of the Arms Act against the accused with the allegation that they abused and manhandled the complainant. After the complainant succumbed to the injuries suffered by him, offence under Section 307 IPC was converted to Section 302 IPC. As the accused could not be apprehended by the Investigating Officer, proceedings under Section 82 Cr.P.C was initiated and they were declared proclaimed offenders. The investigation was

superseded by various enquiries conducted by the various officers of the police without any authority of law. Police officer gave a clean chit to all the accused on the basis of statements made by certain persons and labelled the deceased as the culprit and the petitioners along with other accused were declared innocent. The prayer was made by the petitioners that the orders declaring them as proclaimed offenders be set aside in view of the cancellation report. The petition was dismissed by this Court by observing that the petitioners were declared innocent by the Superintendent of Police (Detective) without joining them into investigation and no serious efforts were made to arrest them. Moreover, the investigation of the case was handed over to Central Bureau of Investigation.

In the facts of the present case, the petitioner has not been associated in the enquiry which was conducted by the Superintendent of Police Detective, Ludhiana. Even though the enquiry was marked to the SP Detective, Ludhiana by the DGP, Punjab, Chandigarh but in the enquiry, the petitioner was never associated. The SP Detective, Ludhiana (Rural) conducted enquiry and submitted his inquiry report on 7.7.2011 to SSP, Ludhiana (Rural) which was subsequently approved by the Director General of Police, Punjab, Chandigarh and in view thereof cancellation report under Section 173 (8) Cr.P.C was presented before the trial Court. This procedure without associating the complainant and specially keeping in view that her husband had already been declared a proclaimed offender was not in accordance with the ratio of the above said judgment. The present petition is being allowed and the supplementary challan declaring the respondents innocent is being set aside and the trial Court will proceed with the challan presented on 30.7.2010 (Annexure P-2) . The petitioner can take

appropriate remedies in accordance with law, if so advised.

17-03-2017
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(RITU BAHRI)
JUDGE

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