

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M No. 2251 of 2016

Date of decision : 9th March 2017

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Akash and another

.....Petitioner

Versus

State of Haryana and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. N.S Shekhawat, Advocate for the petitioner.

Mr. D.S Singla, DAG, Haryana.

Mr. Sunil Sheoran, Advocate for respondent no.2.

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RITU BAHRI, J.

The petitioners are seeking quashing of the orders dated 5.10.2015 (Annexure P-1) passed by the Sub-Divisional Judicial Magistrate, Charkhi Dadri, Bhiwani and the judgment dated 7.1.2016 (Annexure P-3) passed by the Additional Sessions Judge, Bhiwani, whereby the revision petition against the order dated 5.10.2015 (Annexure P-1) was dismissed. Vide the order dated 5.10.2015 (Annexure P-1), an application moved by the respondent no.2/complainant Sarita Gautam under Section 319 Cr.P.C for summoning of the petitioners as additional accused was allowed and the petitioners were summoned as additional accused under Sections 498-A,

406 and 506/34 IPC.

Briefly stated, the facts of the case, are that the matrimonial alliance of the complainant Sarita Gautam with Amit was fixed on 9.8.2009 and their marriage was solemnized on 20.11.2011. Father of respondent no.2/complainant was a teacher in Government school and spent money beyond his capacity in the marriage ceremony. As per the allegations, accused were not satisfied with the dowry articles and started torturing respondent no.2/complaint on account of bringing insufficient dowry. Her brothers-in-law namely Aakash and Ankit also maltreated her and her in-laws indulged in her character assassination and also obtained her signatures on certain blank papers. Amit husband of respondent no.2/complainant did not bother about the maltreatment caused to her. Even a panchayat was convened to resolve the matrimonial dispute but in vain. The accused/father-in-law even threatened respondent no.2/complainant with life and it was told to her that her husband Amit was sexually impotent and hence refused to rehabilitate her. Respondent no.2/complainant Sarita got registered FIR No. 445 dated 13.12.2012 under Sections 498-A, 406 and 506/34 IPC at Police Station Sadar Charkhi Dadri against accused Amit, Lal Chand (father-in-law), Kusum Lata (mother-in-law), Aakash (brother-in-law) and Ankit (brother-in-law). After the investigation, Aakash and Ankit were found innocent by the police. Co-accused were arrested and after completion of investigation, police presented the report under Section 173 Cr.P.C against the co-accused. In order to substantiate its allegations against the accused Amit, Lal Chand and Kusum Lata, the prosecution examined the complainant Sarita as PW-1, her father Gopal Singh as PW-2 and mother Kamlesh as PW-3.

Vide order dated 19.12.2014, application under Section 319 Cr.P.C was dismissed. However, the said order dated 19.12.2014 was set aside by Ms. Gurvinder Kaur, Additional Sessions Judge, Bhiwani vide order dated 10.7.2015 with the directions to trial Court to reconsider the testimonies of PW-1, PW-2 and PW-3 and decide the application afresh. It was mentioned in the said order dated 10.7.2015 that the evidence in the present case was sufficient to summon the additional accused. Vide order dated 5.10.2015, Sub-Divisional Judicial magistrate, Charkhi Dadri summoned Aakash and Ankit as additional accused to face trial for alleged commission of offences punishable under Sections 498-A, 406 and 506/34 IPC. Revision against this order filed by the petitioners was also dismissed by Additional Sessions Judge, Bhiwani vide its order dated 7.1.2016.

Counsel for the petitioners has vehemently argued that allegations against both the petitioners were that they used to misbehave with the respondent no.2/complainant on account of bringing insufficient dowry in connivance with the accused. Apart from the general allegations of misbehaviour, there is no other allegation to show that they would have benefitted in any manner from the demand of dowry from respondent no.2/complainant. Though their names have been specifically given by the father and mother of the complainant, but this, in itself, would not be sufficient to summon these accused to face a criminal trial.

I have heard counsel for the parties and perused the case file thoroughly. Reference can be made to a judgment of Hon'ble the Supreme Court in the case of **Preeti Gupta and another vs. State of Jharkhand and another, 2010 (4) RCR (Criminal) 45**, wherein it has been observed that majority of complaints are filed either on the advice of members of Bar or

with their concurrence with exaggerated versions. Large number of complaints are not bona fide. Large number of these complaints have not only flooded the Courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. Members of the Bar were asked to maintain its noble traditions and should treat complaint under Section 498-A Indian Penal Code as a basic human problem and endeavour to help the parties in arriving at a amicable resolution of that human problem. Legislature was asked to amend Section 498-A Indian Penal Code taking into consideration pragmatic realities. It has further been observed in paragraphs 30 and 31 as under:

30. It is a matter of common experience that most of these complaints under [section 498-A IPC](#) are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

31. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of

small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under [section 498-A](#) as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

In the case of **Geeta Mehrotra and another vs. State of U.P and another, 2012 (4) RCR (Criminal) 812**, FIR under Sections 498-A and Dowry Prohibition Act was lodged by wife alleging that her husband, his parents, brother and sister tortured and harassed her by making demand of dowry. Hon'ble the Supreme Court quashed the proceedings against brother and sister. It was held there was just casual reference of their names in FIR. There was allegation that both were involved in physical and mental torture of complainant, but not a single incident was mentioned against them. In paragraphs 19 and 24, it has further been observed as under:

19. Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

24. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the

co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.

In the present case, the accused sought to be summoned were rightly kept in column no.2. The allegations in the FIR (Annexure P-4) were that Akash and Ankit had humiliated the complainant in front of her husband Amit. Apart from the above allegations, there is no other allegation against these persons.

In view of all that has been discussed above and in view of the above referred judgments, present petition is allowed. Order dated 5.10.2015 (Annexure P-1) summoning the petitioners as additional accused and the judgment dated 7.1.2016 (Annexure P-3) dismissing the revision petition against the order dated 5.10.2015 (Annexure P-1) are hereby quashed.

09.03.2017
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No