

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

**CRM No. M-22719 of 2016
Date of decision: 19.05.2017**

Rupali Goyal and another

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Amit Chaudhary, Advocate,
for the petitioners.

Mr. D.R. Singla, DAG, Haryana.

Mr. Y.P. Malik, Advocate,
for respondent No.2.

Ritu Bahri, J.

This petition has been filed for setting aside the order dated 27.05.2014 (Annexure P-4) passed by the Additional Sessions Judge, Ambala, allowing the revision against the order dated 24.05.2012 (Annexure P-3) passed by the Judicial Magistrate, Ist Class, Ambala, whereby accused-petitioners were discharged. Petitioners have further challenged the order dated 11.05.2016 (Annexure P-5) dismissing the application for discharge of accused and order 07.06.2016 (Annexure P-7).

Rupali Goyal-petitioner No.1 is sister-in-law and Dinesh Goyal-petitioner No.2 is brother-in-law of complainant-respondent No.2. They got married prior to the marriage of complainant with Navneet Singla (brother

of Rupali Goyal). After marriage, the petitioners have been residing separately at Zirakpur.

FIR No.73 dated 02.04.2010, under Sections 406/498-A/323/506 IPC, was registered at Police Station, Mahesh Nagar, Ambala, on a complaint made by Seema Singla against her in-laws and the present petitioners, who are close relatives of her husband-Navneet Singla. On completion of investigation, challan under Section 173 Cr.P.C. was presented before the Court. Thereafter, on the instructions of Deputy Commission of Police, Ambala Cantt., further investigation was conducted in this case. As per inquiry report dated 29.02.2012 (Annexure P-2), Rupali Goyal and Dinesh Goyal (petitioners) were found to be innocent. On the basis of this report, the prosecution moved an application for discharge of the present petitioners on 06.03.2012. Upon this application, accused-petitioners were discharged by the Judicial Magistrate Ist Class, Ambala, vide order dated 24.05.2012 (Annexure P-3). Feeling aggrieved by this order, complainant filed a revision. The revisional Court i.e. Additional Sessions Judge, Ambala vide judgment dated 27.05.2014 (Annexure P-4), directed the trial Court to decide the application for discharge afresh in accordance with law. One of the reasons given for passing of this order was that the complainant had not been given an opportunity of hearing. Thereafter, trial Court, vide order dated 11.05.2016 (Annexure P-5), dismissed the application filed by the prosecution for discharge of accused Rupali Goyal and Dinesh Goyal (petitioners). Further, vide order dated 07.06.2016 (Annexure P-7), application filed by Rupali Goyal seeking exemption from personal appearance was dismissed and she was ordered to be summoned through non bailable warrants of arrest.

Learned counsel for the petitioners, while referring to the orders 24.05.2012, 27.05.2014 and 11.05.2016 (Annexures P-3 to P-5 respectively), argued that the Judicial Magistrate, Ist Class, Ambala has committed illegality by dismissing the application for discharge of the petitioners. He has further argued that allegations in the FIR (Annexure P-1) against the present petitioners were general in nature. Marriage of the petitioners was solemnized way back in 2009 and they were residing separately from the matrimonial house of complainant. During investigation, it has been found that Dinesh Goyal son of Rajpal Goyal was residing in Zirakpur, District S.A.S. Nagar, Mohali and his father was serving in Agricultural Department, Haryana. After marriage, Dinesh Goyal along with his wife Rupali Goyal used to go Chandigarh only on special occasions. Navneet Singla (brother of Rupali Goyal) was earlier married, but due to some reasons, he got divorced from his first wife. Thereafter, he solemnized second marriage with Seema-complainant. This was the second marriage of Seema too. In this marriage, demand of dowry was not made by anybody. As per enquiry report (Annexure P-2), it has been found that Dinesh Goyal was having good business and he used to visit his in-laws in Chandigarh only on special occasions. No allegation of demand of dowry was found against Dinesh Goyal & Rupali Goyal and they were found to be innocent.

Heard, counsel for the parties.

Challan was presented against accused Navneet Singla, Rajpal Singla, Santosh Singla, Dinesh Goyal and Rupali Goyal on 24.09.2010.

Short question for consideration in this case would be “whether after presentation of challan, application filed by the prosecution for

discharge of the accused could be entertained or not.”

Relevant provisions of Section 239 Cr.P.C. are reproduced as under:-

“239. When accused shall be discharged. If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

In the present case, trial Court after receiving the case by transfer, considered the application dated 06.03.2012 made by the prosecution for discharge of Dinesh Goyal and Rupali Goyal (petitioners) along with enquiry report dated 29.02.2012 (Annexure P-2) and thereafter, discharged them vide order dated 24.05.2012 (Annexure P-3). In the enquiry report dated 29.02.2012 (Annexure P-2), it has been specifically observed that Dinesh Goyal was having good business and after his marriage with Rupali Goyal, he used to visit his in-laws in Chandigarh only on special occasions. There was no evidence of demand of dowry or maltreatment against the petitioners. Moreover, it was the second marriage of Seema and Navneet Singla. Hence, the trial Court after due application of mind, had discharged the petitioners vide order dated 24.05.2012 (Annexure P-3). While passing this order, presence of Shri Navneet Singh, counsel for complainant, was also marked. Thus, adequate opportunity of hearing, as per provisions of Section 239 Cr.P.C., was provided to the complainant. After discharge of accused-petitioners, the case was adjourned for consideration on framing of charges on 05.07.2012.

After going through the facts and circumstances of the case, this

Court is of the view that application for discharge had been rightly allowed by the trial Court vide order dated 24.05.2012 (Annexure P-3) while taking into consideration the enquiry report dated 29.02.2012 (Annexure P-2). Moreover, opportunity of hearing was also provided to the complainant. The object of discharging an accused after presentation of challan is that the person, against whom there was no evidence, should not be made to suffer by facing a criminal trial. While passing the order dated 24.05.2012 (Annexure P-3, provisions of Section 239 Cr.P.C. have been duly complied with by the trial Court.

Resultantly, impugned orders dated 27.05.2014, 11.05.2016 and 07.06.2016 (Annexures P-4, P-5 and P-7 respectively) are set aside and the order of discharge dated 24.05.2012 (Annexure P-3) is upheld.

Petition stands allowed accordingly.

19.05.2017
ajp

(RITU BAHRI)
JUDGE

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