

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

Crl. Misc. M-27061 of 2015 (O&M)
Date of Decision: December 15, 2017

Karnail Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Surender Thakur, Advocate for
Mr. Bhupeshwar Jaswal, Advocate
for the petitioner.

Mr. Davinder Bir Singh, DAG Punjab.

Mr. Suvir Sehgal, Advocate
for respondent No.2.

JAISHREE THAKUR, J.

The petitioner herein seeks to challenge the order dated 17.07.2015 passed by the Additional Sessions Judge Hoshiapur, setting aside the order dated 2.5.2015 passed by the trial court, discharging the petitioner herein under Sections 498-A, 406 of Indian Penal Code.

2. In brief, the facts are that marriage of son of the petitioner Vishal Thakur was solemnized with respondent No. 2 on 11.05.2013. Vishal Thakur was doing the job and pursuing his studies in Lovely Professional University Jalandhar and respondent No. 2 was doing a job in JCT company situated at Hoshiapur. Respondent No. 2 got a quarter

allotted in her name and the married couple started residing there. Son of the petitioner would visit Hoshiapur on every Saturday-Sunday as it was not possible for him to visit Hoshiapur on a daily basis being employed as Lecturer in Physics in Lovely Professional University, Jalandhar. The petitioner and his wife were residing separately in a village in Himachal Pradesh. The marriage between Vishal Thakur and respondent No. 2 did not survive, which resulted in a complaint being filed at the behest of respondent No.2, which led to the registration of an FIR No.132 dated 11.09.2014 under Sections 498-A, 406 IPC at Police Station Sadar Hoshiarpur, District Hoshiarpur. On completion of investigation, a challan was presented in court against the petitioner as well as his son Vishal Thakur. The lower court, while considering the case of framing of charge from the report submitted under section 173 Cr.P.C., did not find any incriminating evidence against the petitioner and consequently discharged him by order dated 02.05.2015. Against the said order, respondent No. 2 filed a revision petition before Sessions Judge Hoshiapur, who allowed the revision petition and directed the lower court to frame charges against the petitioner under Sections 498-A, 406 IPC by the impugned order dated 17/07/2015. Aggrieved against this order, the instant criminal miscellaneous petition has been filed.

3. Mr. Surendra Thakur, learned counsel appearing on behalf of the petitioner contends that the impugned order has been passed in a mechanical manner as it has not considered the fact that there is no incriminating evidence against the petitioner. It is argued that as per the case of respondent No. 2 herself, the married couple started residing at JCT

colony in Hoshiapur and were residing separately from the petitioner, who was residing in Himachal Pradesh and therefore, the question of treating her with cruelty and demand of dowry would not arise. It is also argued that a reading of the FIR would show that there are no such allegations made against the petitioner for demand of dowry or that the petitioner had ever visited Hoshiapur and raised a demand therein. It is also argued that allegations levelled are general in nature without any specific details as to when and where the petitioner had ill treated respondent No. 2. It is submitted that the petitioner is being targeted on account of the fact that he is a government employee, while arguing that there is a growing tendency to inflate and exaggerate allegations regarding cruelty and demand of dowry roping in every relation of the husband just to cause undue harassment.

4. Per contra, Mr Suvir Sehgal, learned counsel appearing on behalf of respondent No. 2 argues that that the petitioner herein is not entitled to any relief since, he has not approached this court with bona fides as he has not disclosed that respondent No.2 has already filed an application under Sections 12, 14, 18, 19, 20, 22 and 23 of the Domestic Violence Act 2005 seeking maintenance and right of residence nor was it disclosed that the son of the petitioner namely Vishal Thakur had filed a petition under Section 9 of the Hindu Marriage Act, in which respondent No. 2 had asked for interim maintenance and litigation expenses, on which application Vishal Thakur sought to withdraw the petition under Section 9 of the Hindu Marriage Act itself. It is argued that a huge amount of Rs.15 lacs was spent by the father of respondent No.2 for performing the marriage and sufficient dowry items and gifts were given to the petitioner and relatives at the time

of marriage. It is also argued that order dated 17.07.2015 took into account statements made under Section 161 Cr.P.C. by both respondent No. 2 and her father and the enquiry of the Women Cell, Hoshiapur which found that both petitioner and his son had harassed the complainant both mentally and physically due to bringing of sufficient dowry and raising a demand of a luxury car.

5. I have heard the counsel for the parties and also perused the pleadings of the case.

6. After the registration of the FIR, the matter was investigated, statements recorded and a challan was presented, in which the petitioner along with his son Vishal Thakur, husband of the complainant, were challaned whereas, accused mother-in-law and younger brother Vikas Thakur were found to be innocent. The Chief Judicial Magistrate, Hoshiapur came to the conclusion that there were no allegations against the petitioner and nothing had been attributed to him regarding demand of dowry or the fact that she had been tortured mentally or physically by the petitioner herein. The petitioner was discharged and charges were framed against Vishal Thakur, husband of the complainant. This order was set aside in revision by the Additional Sessions Judge, while taking note of the allegations in the complaint and as well as the statement recorded under Section 161 Cr.P.C. of the complainant and her father and also took note of the specific allegations made against the complainant and came to hold that the trial court had failed to consider the above said material which were sufficient to frame charges against the petitioner.

7. The duty of the Magistrate at the time of framing charges is to

consider the report and documents sent with it under Section 173 Cr.P.C. and if it thinks it necessary, give an opportunity to the prosecution and the accused of being heard and thereafter conclude whether there are sufficient grounds for presuming that the accused has committed the offences triable by him or to frame charges. In a judgment rendered by the Supreme Court in ***Smt. Rumi Dhar versus State of Bengal and another, (2009) 6 SCC 364*** it was held; *while considering an application for discharge filed in terms of section 239 of the court, it was for the Ld. judge to go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall sub serve requirements of law... ”* .

8. The litmus test pertaining to discharge of an accused has been set out by the Supreme Court in **Union Of India Versus Prafulla Kumar Samal AIR 1979 Supreme Court 366 :**

“The words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of [section 227](#), the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

9. Similarly in **P Vijayyan vs. State of Kerela (2010)** it has been

held as ;

“10. If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere Post Office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts. At the stage of [Section 227](#), the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

10. In the instant case the JMIC discharged the petitioner by an order that has been passed in a cryptic fashion without any reference to the statement of the complainant or her father or any discussion on the evidence that has been produced before it. They are specific allegations against the father-in-law, the petitioner herein, as well as against the husband and whether or not these allegations are true is a matter of trial which cannot be

determined at this stage. The court has to proceed with an assumption that that the allegations and material brought on record are true. As held in ***P Vijyavan's case (supra)*** at the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true. The court must apply its judicial mind on the material placed on record and passed a speaking order to that effect which has not been done in the instant case.

11. Therefore, in the totality of the circumstances in the instant case, when they are specific allegations both in the complaint as well as in the statements recorded, the JMIC has erred in allowing discharge. There is no infirmity in the order passed by the learned Additional Sessions Judge Hoshiapur, which is a well reasoned and a speaking order.

12. Consequently, the petition in hand stands dismissed.

December 15 , 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No