

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

CRM-M-27618 of 2017.
Decided on:-31.08.2017.

Amit Bhardwaj.

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Atul Jain, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present petition under Section 482 Cr.P.C. impugning order dated 07.09.2013 (Annexure P-6) passed by learned Chief Judicial Magistrate, Mohali whereby the application filed by the petitioner-complainant through Assistant Public Prosecutor under Section 319 Cr.P.C., was dismissed.

Challenge has also been laid to order dated 14.07.2017 (Annexure P-8) passed by learned Additional Sessions Judge, Mohali vide which the revision filed by the petitioner-complainant against the aforesaid order dated 07.09.2013, was dismissed.

Briefly stated, FIR No.5 dated 20.07.2011 under Sections 66D, 67 and 67A of the Information Technology Act, 2000 and Sections 419, 500, 509, 506 and 120-B IPC was registered against the accused at Police Station

Punjab State Cyber Crime, District SAS Nagar, Mohali at the behest of the petitioner-complainant.

As per the FIR, accused No.1 Ruhi Sharma wife of Karanvir Mishra is sister-in-law of the complainant. Accused No.2 Mukesh Sharma alias Pinki Lalari and accused No.3 Chanchal Sharma wife of accused No.2 are the parents of accused No.1. Accused No.4 Shaffy Sharma and accused No.5 Rohit Sharma are the brothers of accused No.1.

Accused Ruhi Sharma got married with Karanvir Mishra on 13.09.2007 and after the marriage, accused Ruhi Sharma had gone to Canada to her husband and came back to India on 07.12.2010. She stayed for some time at her in-laws house at Kapurthala. Thereafter, she had gone to her parents' house. She filed a complaint in NRI Wing, Hoshiarpur against her mother-in-law, father-in-law and the wife of petitioner-complainant. The laptop of brother-in-law of the complainant was in possession of accused Ruhi Sharma in which many photographs of the family were saved.

On 15.04.2011, accused Ruhi Sharma had gone to Canada with her son, where she started living separately from her husband. However, she used to threaten the complainant that she will make the life of complainant and her in-laws miserable, but the complainant used to take it as said in a fit of anger. However, all the accused in conspiracy with each other have not let the complainant and his family to show their face in the society. All the accused created a false ID on Facebook of sister-in-law of the complainant, namely, Sital, who is settled in America in the house of her in-laws family, the name of which was kept as Sital Luchi. Some indecent fake

photographs were uploaded by the accused persons on the said ID. An e-mail was also sent to the in-laws family of Sital by accused Ruhi Sharma. However, when Sital came to know about it, she got the said ID blocked.

When the accused persons came to know that the aforesaid ID has been blocked, they created two more fake IDs in the names 'Sitalruchibanhu' and 'Sitalruchi'. Some nude photographs of the wife of petitioner-complainant and Sital were uploaded and it was written therein that they are prostitutes and indulge in the work of sex. The accused on their own created friends list on those IDs. Due to the above act done by the accused persons in conspiracy with each other, the complainant, his wife, sister-in-law, mother-in-law and other family members were defamed.

On the basis of aforesaid FIR, investigation was conducted and Challan against accused Shaffy Sharma son of Mukesh Sharma was presented in the Court under Sections 66D, 67 and 67A of the Information Technology Act, 2000 and Sections 419, 500, 509, 506, 120-B and 201 IPC. It was mentioned in the Challan that a separate Challan will be filed against accused Ruhi Sharma as and when she is arrested. However, the names of accused Mukesh Sharma, Chanchal Sharma and Rohit Sharma were placed in column No.2 and they were not challaned.

During trial, Ruchi Bhardwaj wife of petitioner-complainant Amit Bhardwaj was examined as PW1, whereas petitioner-complainant Amit Bhardwaj was examined as PW2. Thereafter, learned Assistant Public Prosecutor moved an application under Section 319 Cr.P.C. for summoning of accused Mukesh Sharma, Chanchal Sharma, Rohit Sharma and Ruhi Shama as additional accused. However, learned trial Court vide order dated

07.09.2013 allowed the said application only to the extent of summoning of accused Ruhi Sharma to face trial under Sections 419 IPC and Sections 66D, 67, and 67A of the Information Technology Act, 2000.

The order dated 07.09.2013 passed by learned trial Court was challenged by the petitioner-complainant by way of revision petition before the Court of Session. However, learned Additional Sessions Judge, SAS Nagar, Mohali vide judgment dated 14.07.2017 dismissed the said revision petition.

It is in the aforesaid circumstances, the petitioner-complainant has filed the instant petition.

Learned counsel for the petitioner has argued that perusal of the statements of Ruchi Bhardwaj (PW1) and petitioner-complainant Amit Bhardwaj (PW2) reveals that all the accused told these witnesses that they will teach them a lesson. Therefore, role of all the accused is clearly established. Accused Mukesh Sharma, Chanchal Sharma and Rohit Sharma (respondents No.2 to 4 herein) are equally liable to face trial along with other co-accused. The police has intentionally not submitted Challan against them though they were placed in Column No.2 in the Challan. Since there was enough material available on record to summon these accused as additional accused, but still they were not summoned by the Courts below.

I have heard learned counsel for the petitioner-complainant.

Perusal of the paper book reveals that learned Courts below have passed well-reasoned and speaking orders, of course, after perusing the record and considering the arguments of the parties. The Courts below have minutely assessed the culpability viz. a viz. the respondents-accused and found that so

far as accused Ruhi Sharma is concerned, Challan was presented against her mentioning therein that as and when she is arrested, a separate Challan will be presented against her. But from investigation of the police, it has been established that the respondents-accused, namely, Mukesh Sharma, Chanchal Sharma and Rohit Sharma are not very well educated and, therefore, they cannot manage or create forged and false Facebook IDs. Further more, they do not have a computer on which forged and false Facebook IDs can be created. So far as accused Ruhi Sharma is concerned, the application under Section 319 Cr.PC has already been allowed by learned trial Court.

The petitioner-complainant appeared before the trial Court as PW2 and deposed that the respondents-accused Mukesh Sharma, Chanchal Sharma, Rohit Sharma and Ruhi Sharma along with accused, namely, Shaffy Sharma, who is already facing trial, have threatened the complainant of dire consequences and all the accused have connived with each other. Ruchi Bhardwaj (PW1), in her examination-in-chief has stated that all the accused have told them that they will teach a lesson to the complainant side. Accordingly, the respondents-accused Mukesh Sharma, Chanchal Sharma and Rohit Sharma are being sought to be summoned in the case merely on the premises that they in connivance with accused Shaffy Sharma and Ruhi Sharma have created forged and false Facebook IDs.

From the statement of complainant Amit Bhardwaj (PW2), it has come in the evidence that the alleged Facebook IDs have been created from Canada and for this reason, statement of Inspector Charanjit Singh Lamba (PW6) was recorded, who has deposed that the Facebook authorities have been contacted so as to provide the details of alleged IDs, the Facebook

authorities have not supplied the record as the IDs were created outside the jurisdiction of Indian Sub-continent. Therefore, it is because of non-availability of the evidence and due to less education of these additional accused, who are sought to be summoned, the police submitted a report that they are not guilty.

Hon'ble Supreme Court in ***Pepsi Foods Limited and another Versus Special Judicial Magistrate and others-(1998) 5 Supreme Court Cases 749*** has held as under:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

In ***Hardeep Singh Versus State of Punjab (2014) 3 SCC 92***, it has been held by the Apex Court that the degree of satisfaction for invoking

Section 319 Cr.P.C. should be of more than a prima-facie case, as exercised at the time of framing of charge, but short of satisfaction to an extent that evidence, if not rebutted, may lead to conviction of the person sought to be added as accused.

Therefore, having applied the judgments of Hon'ble Supreme Court in *Pepsi Foods Limited and another's case (supra)* and *Hardeep Singh's case (supra)* and noticing the fact that the proposed accused are not very well educated and are neither possessing any computer or Facebook IDs coupled with the fact that the dispute is personal in nature being based on a matrimonial complaint, this Court finds that no interference is warranted.

Accordingly, the impugned orders passed by learned Courts below are affirmed and the present petition, being devoid of any merit, is dismissed.

August 31, 2017

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No