

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

**CRM No.M-37529 of 2015
Decided on: 21.03.2017**

Joginder Kaur

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Rohan Mittal, Advocate
for the petitioner.

Mr. Mikhail Kad, AAG, Punjab.

Mr. Ajay Kalra, Advocate
for respondent No.2.

REKHA MITTAL, J.

The present petition filed under Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') directs challenge against order dated 30.09.2014 (Annexure P3) passed by the Judicial Magistrate Ist Class, Fazilka whereby complaint case titled Joginder Kaur vs Amarjit Singh etc. under Sections 406, 498-A, 323, 148, 149 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC') has been dismissed for want of prosecution. Further prayer has been made that the aforesaid complaint may be restored to its original status after setting-aside the impugned order.

Counsel for the petitioner has submitted that the petitioner filed the aforesaid complaint in December, 2008 against her father-in-law, mother-in-law, brother of father-in-law and sisters-in-law, accusing them of having committed offence under Sections 406, 498-A, 323, 148, 149 read with Section 34 IPC. After recording preliminary evidence

consisting of testimony of the complainant, Harbans Singh – CW2 and Resham Singh – CW3, accused No.1 to 3 namely Amarjit Singh son of Sucha Singh, Sucha Singh son of Bhagwan Singh and Prito Bai wife of Sucha Singh were ordered to be summoned to face trial under Sections 406 and 498-A IPC whereas the complaint against the remaining accused No.4 to 6 was ordered to be dismissed. The petitioner filed an application dated 12.04.2013 under Section 210 Cr.P.C. to stay proceedings of the complaint in view of registration of FIR at the instance of the complainant, bearing No.35 dated 16.03.2013 in Police Station Sadar, Fazilka on 15.09.2014. She made a statement that the complaint may be stayed till the filing of final report by the police but the case was adjourned for consideration. It is vehemently argued that as the complainant has already made a statement before the Court below for stay of the proceedings, personal appearance of the complainant was not required for progress in the proceedings, therefore, absence of the complainant on 30.09.2014 should not have resulted in dismissal of the complainant more particularly in the circumstances that the petitioner had been vigorously pursuing her remedy for the past about 06 years. It is further submitted that in case the impugned order is not set-aside, the entire effort of the petitioner to bring the criminal proceedings to its logical end would be rendered nugatory.

Counsel for the contesting respondents has supported the impugned order with the submission that the criminal proceedings initiated by the petitioner are nothing short of abuse and misuse of process of Court with an intent to cause harassment to Amarjit Singh and his family members. It is further submitted that despite a

summoning order having been passed in the complaint on 14.05.2011, the petitioner lodged FIR No.35 dated 16.03.2013 in Police Station Sadar, Fazilka so that she is able to prolong agony of the accused. Another submission made by counsel is that the petitioner absented from the proceedings not only on 30.09.2014, she was not even present before the Court on 26.09.2014 but the Court still adjourned the case by taking a lenient view in the matter.

I have heard counsel for the petitioner and perused the records.

The criminal complaint was filed in the year 2008. The complainant examined herself and the witnesses in preliminary evidence and accused Nos.1 to 3 in the complaint were ordered to be summoned to face trial for offence under Sections 406 and 498-A IPC vide order dated 14.05.2011. Later the petitioner filed an application dated 12.04.2013 (Annexure P2) for stay of the proceedings during pendency of investigation in FIR No.35 dated 16.03.2013. The petitioner made a statement before the Court on 15.09.2014 for stay of the proceedings till filing of final report by the police. On 15.09.2014, the case was adjourned to 24.09.2014 but it is not clear as to how the case was taken up by the Court on 26.09.2014, the date on which absence of the complainant was recorded whereas personal appearance of accused – Amarjit Singh was exempted. On 26.09.2014, the case was adjourned to 30.09.2014 for awaiting appearance of the complainant and on that day, the proceedings culminated in dismissal of the complaint for want of prosecution and the accused being discharged.

There is nothing on record to suggest that the complainant earlier also

absented from the proceedings much less her conduct lacked *bona fide*. In case the order passed by the trial Magistrate is not set-aside, the entire effort of the complainant to bring the criminal proceedings to its logical end for the past 06 years would result in futility and she would be condemned unheard without getting effective opportunity of being heard on the merits of the controversy. On the other hand, a single default on the part of the complainant would enure to benefit of the accused in escaping their liability. In this view of the matter, I am of the considered opinion that it is a fit case where this Court should exercise its jurisdiction under Section 482 Cr.P.C. and order revival of the proceedings after setting-aside the order dated 30.09.2014.

For the foregoing reasons, the petition is allowed. Consequently, the order dated 30.09.2014 passed by the Judicial Magistrate Ist Class, Fazilka is set-aside and the complaint filed by the petitioner is restored to the stage from where it was dismissed by the trial Court.

21.03.2017
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(REKHA MITTAL)
JUDGE

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