

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

Date of decision: 3.5.2017

1. CRM-M No. 40459 of 2015(O&M)

InduPetitioner

VERSUS

State of Punjab and anotherRespondents

Present: Mr. K.S. Sidhu, Advocate for the petitioner.

Mr. Mikhail Kad, AAG, Punjab.

Mr. Sandeep Punchhi, Advocate for respondent No.2.

2. CRM-M No. 7617 of 2016(O&M)

RosyPetitioner

VERSUS

State of Punjab and othersRespondents

Present: Mr. Sandeep Punchhi, Advocate for the petitioner.

Mr. Mikhail Kad, AAG, Punjab.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of CRM-M No.40459 of 2015 and 7617 of 2016 as these have emerged out of the orders passed by the Courts below while disposing of prayer under Section 319 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') made in trial pertaining to FIR No.58 dated 09.04.2008 under Sections 420, 498-A, 406, 120-B of the Indian Penal Code, 1860 (in short 'IPC') registered at Police Station City

South Moga, District Moga. For the sake of convenience, facts are taken from CRM-M No.40459 of 2015.

A brief backdrop of the case is that marriage of Rosy – respondent No.2 was performed with Naresh Kumar on 12.08.2006. The complainant lodged the aforesaid FIR against Naresh Kumar, Indu, Sita Devi, Suraj Bhan, Vinod Kumar, Subhash Chander, Rakesh Kumar, Kulbhushan @ Bholu sons of Suraj Bhan and Krishan Kumar @ Bhagat Ji. On completion of investigation, challan was presented in the Court against Naresh Kumar and Krishan Kumar @ Bhagat. After framing of charge against Naresh Kumar and another, complainant was examined as a witness of the prosecution and on the basis of her statement recorded in the Court, application under Section 319 Cr.P.C. was filed by the Public Prosecutor for summoning of additional accused namely Suraj Bhan, Sita Devi, Kulbhushan Kumar, Subhash Chander, Vinod Kumar, Indu and Rakesh Kumar for facing trial under Sections 420, 406, 498-A and 120-B IPC. The trial Court allowed the application vide order dated 04.10.2012 and the accused namely Indu, Seeta, Suraj Bhan, Vinod Kumar, Subhash Chander, Rakesh Kumar and Kulbhushan were summoned for facing trial under Sections 420, 406, 498-A, 120-B IPC. The order passed by the trial Court became subject matter of challenge in revision filed by Vinod Kumar and others. The revisional Court partly allowed the revision, set aside the order qua Vinod Kumar, Subhash Chander, Rakesh Kumar and Kulbhushan but the order with regard to summoning of Indu wife of Vinod Kumar was affirmed.

Aggrieved by the order passed by the revisional Court, Indu has filed CRM-M No.40459 of 2015 whereas the other petition CRM-M

No.7617 of 2016 has been filed by complainant – Rosy to express her grievance with regard to allowing plea of Vinod Kumar and others by the revisional Court.

Counsel for the petitioner would submit that Indu is the wife of Vinod Kumar, elder brother of Naresh Kumar. The complainant/respondent has raised general and vague allegations against Vinod Kumar and others who filed the revision. It is argued with vehemence that as the complainant has raised similar allegations against the petitioner as have been raised against other persons whose revision petition has been allowed by the Additional Sessions Judge, Moga, order passed by the trial Court summoning the petitioner as an additional accused and affirmed in revision cannot be allowed to sustain and liable to be set aside.

Counsel for the State assisted by counsel for the complainant has supported the order passed by the revisional Court against Indu with the submission that the complainant has raised specific allegations against Indu as have been noticed by the revisional Court. Another submission made by counsel is that after Indu having caused appearance before the trial Court, charge was framed and the prosecution has already examined 6 out of 9 witnesses cited. Two witnesses have been given up and only one witness remains to be examined, therefore, intervention in exercise of jurisdiction under Section 482 Cr.P.C. is not warranted in the circumstances.

I have heard counsel for the parties and perused the paper-book.

In para 9 of the order passed by the revisional Court, it has been noticed that a specific allegation was made against Indu that complainant had been wearing golden (sic) ring which was forcibly got by Indu Bala. Indu Bala, Naresh Kumar and mother of Naresh Kumar pressed her neck three times. By taking into consideration the specific allegations against Indu Bala, the revisional Court drew a distinction between case of the petitioner vis-à-vis Vinod Kumar, Subhash Chander, Rakesh Kumar and Kulbhushan whose plea for setting aside summoning order was upheld. Counsel for the petitioner has not advanced any arguments to challenge correctness of these factual findings recorded by the Court in revision. He has also not disputed that out of nine witnesses cited by the prosecution, only one witness remains to be examined as six of them have been examined and two were given up. In view of the above, I do not find any reason to interfere in the orders passed by the Courts below, summoning the petitioner under Section 319 Cr.P.C., in exercise of extraordinary power under Section 482 Cr.P.C.

So far as the petition filed by complainant – Rosy with regard to setting aside the order dated 04.10.2012 passed against Vinod Kumar, Subhash Chander, Rakesh Kumar and Kulbhushan, counsel for the complainant/ petitioner has failed to point out if any specific role has been attributed to Vinod Kumar and others much less there being sufficient materials on record to satisfy the test of more than prima facie case, laid down by Hon'ble the Supreme Court of India in the Constitution Bench judgment **Hardeep Singh Vs. State of Punjab and others, 2014(1) RCR (Criminal) 623.** In this view of the matter, I do not find any merit in the petition filed by complainant – Rosy against dropping of proceedings

For the foregoing reasons, both the petitions fail and are accordingly dismissed. It is clarified that nothing stated hereinbefore will cause prejudice to either of the parties before the trial Court qua decision of the case on merits.

(REKHA MITTAL)
JUDGE

yes/no

yes/no