

CRM -M-42306 of 2016 (O&M)

In the High Court of Punjab and Haryana at Chandigarh

CRM -M-42306 of 2016(O&M)

Date of Decision: 25.4.2017

Sukhchain Goyal and another

---Petitioners

versus

State of Punjab and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. G.S.Benipal, Advocate
for the petitioners**

Rekha Mittal, J.

The present petition has been filed under Section 482 of the Code of Criminal Procedure (in short "Cr.P.C.") for quashing orders dated 10.8.2015(Annexure P-3), dated 4.9.2015 (Annexure P-4) passed by the Judicial Magistrate Ist Class, Ludhiana and dated 16.9.2016 (Annexure P-5) by the Additional Sessions Judge, Ludhiana in FIR No.27 dated 23.12.2011 under Sections 406, 498-A of the Indian Penal Code (in short "IPC") registered at Police Station, Women Cell, Ludhiana.

A brief backdrop of the case is that Parveen Kariwal mother of the alleged victim Aahuti lodged the aforesaid FIR against Sunny Goel, husband of Aahuti, parents-in law (petitioners herein), Meenakshi Goel and Rajesh Goel, sister and brother in law of Sunny Goel. The allegations raised in the FIR were thoroughly investigated and all the accused including the petitioners except Sunny Goel were found innocent and challan has been presented against Sunny Goel who was already declared as a proclaimed

offender. The prosecution examined two witnesses namely Parveen Kariwal PW1 and Aahuti PW2 under Section 299 Cr.P.C. An application under Section 319 Cr.P.C. was filed for summoning the petitioners as well as Rajesh Goel and Meenakshi Goel as additional accused. Vide order dated 3.4.2013 (Annexure P-1), the Judicial Magistrate Ist Class, Ludhiana summoned the petitioners as additional accused but the application qua Rajesh Goel and Meenakshi Goel was dismissed. The petitioners preferred revision against order dated 3.4.2013 and the same was allowed in their favour by the Additional Sessions Judge, Ludhiana vide order dated 19.8.2014 (Annexure P-2). Later, respondent No. 2 filed a private complaint under Sections 406, 498-A and 120-B IPC. In the preliminary enquiry, respondent No. 2 examined herself, Aahuti Garg CW2, Dr. Vijay Kariwal CW3 and all the persons arrayed as accused in the complaint were ordered to be summoned by the trial court vide order dated 4.9.2015 (Annexure P-4). The petitioners alongwith Meenakshi Goel and Rajesh Goel filed a revision against orders dated 10.8.2015 and 4.9.2015 before the Court of Sessions. The Additional Sessions Judge, Ludhiana allowed the revision partly by setting aside the order summoning Meenakshi Goel and Rajesh Goel but dismissed the revision petition qua the petitioners.

Counsel for the petitioners has assailed the orders passed by the courts below primarily on two counts. The first submission made by counsel is that order dated 10.8.2015 (Annexure P-3) passed by the Judicial Magistrate whereby the complaint was ordered to be attached with the State case titled "State vs. Sunny Goel" even prior to conducting of preliminary enquiry or ordering summoning of the accused is illegal and liable to be set aside. The second submission made by counsel is that as the petitioners

were declared innocent by the investigating agency during detailed investigation conducted in regard to the allegations raised in FIR No. 27 dated 23.12.2011 registered at Police Station, Women Cell, Ludhiana, statements of the witnesses namely the complainant, Aahuti Garg and Vijay Kariwal, members of family of Aahuti can not form the basis for issuing process for summoning the petitioners to face proceedings in the Court at Ludhiana when admittedly the petitioners are residing in Abohar outside the local limits of jurisdiction of the Court.

I have heard counsel for the petitioners and perused the paper book.

Before adverting to the submissions made by counsel for the petitioners, it is pertinent to note that the order passed by the trial court summoning the petitioners as an additional accused under Section 319 Cr.P.C. in police case “State vs. Sunny Goel” was not set aside on merits but the same was set aside on the sole premise that statements of the witnesses recorded under Section 299 Cr.P.C. cannot be said to be evidence adduced during enquiry or trial, therefore, those statements cannot be used for the purpose of exercise of jurisdiction under Section 319 Cr.P.C. Under the circumstances, setting aside the order passed by the Judicial Magistrate summoning the petitioners as additional accused in the FIR case by the Additional Sessions Judge, Ludhiana would not enure to benefit of the petitioners in any manner.

This brings the Court to the order dated 10.8.2015 whereby the trial court directed to attach the complaint case with the State case.

Section 210 (2) Cr.P.C. provides as follows:-

“210. Procedure to be followed when there is a complaint case

and police investigation in respect of the same offence.

(1) XXXX XXXX XXXX

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) XXXX XXXX XXXX.”

Concededly, after conducting preliminary enquiry in compliance with the procedure laid down under Section 202 Cr.P.C., all the persons arraigned as accused in the complaint case were ordered to be summoned to face trial for offence punishable under Sections 406, 498-A and 120-B IPC. No prejudice has been caused to the petitioners by the order dated 10.8.2015 in the circumstances that they were ordered to be summoned to face trial after following the procedure laid down in law. The matter would have been different had the trial court directed the petitioners to face trial in the complaint case merely on the basis of order directing attachment of the complaint case with the police case without passing the summoning order.

No doubt, the petitioners were not challaned by the police and they were declared innocent. This fact alone is not sufficient to set aside the summoning order passed by the Magistrate. The trial court examined the witnesses during preliminary enquiry and on a detailed consideration passed the order summoning the petitioners to face trial for the aforesaid offences.

Perusal of the allegations raised in the complaint would make it evident that after marriage of Aahuti with Sunny Goel on 22.11.2010, the

marriage was registered on 30.11.2010. Sunny Goel returned to UK just after 10 days of the marriage and the girl (Aahuti) purportedly stayed in her matrimonial home with her parents-in law. The procedure followed by the trial court for summoning the petitioners as additional accused is in complete consonance with what has been envisaged under Section 202 Cr.P.C. In this context, reference can be made to judgment of this Court **Pardeep vs. State of Haryana and another** CRM-M- 15252 of 2010 decided on 18.5.2010. A relevant extract therefrom reads as follows:-

“The inquiry, however, as contemplated by Section 202 Cr.P.C. is not to be full dressed trial and is not to be characterized as a trial. The inquiry contemplated would cover recording of evidence, admitting documents which are admissible in evidence and generally completing the record on the basis of which a finding can be reached as to whether there is sufficient material which would warrant the summoning of an accused or the respondent. The Magistrate, however, in the inquiry to be conducted is not to confine himself to what is produced before him but can also look into the Police record by summoning the same and other necessary material and till such inquiry is completed the issuance of process of summoning is to be postponed.

The trial court has taken into consideration the initial application dated 7.10.2011 submitted by the complainant levelling specific allegations against the accused and further there being no improvement in her version given to the police viz-a-viz her statement in the Court during

preliminary inquiry. Counsel for the petitioners has failed to point out that the police assigned any reason for declaring the petitioners innocent, required to be considered by the summoning court. In view of the above, the summoning order cannot be faulted with only on the premise that the petitioners were declared innocent by the police in FIR case.

In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly dismissed. However, nothing stated hereinbefore shall cause prejudice to the petitioners in the proceedings pending before the trial court.

(Rekha Mittal)
Judge

25.4.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No