

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

Crl. Revision No. 2497 of 2017 (O&M)
Date of decision: 21.7.2017

Akhtar Ali

...Petitioner

Versus

State of Haryana and others

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Aman Dhir, Advocate,
for the petitioner.

JAISHREE THAKUR, J.

1. The petitioner herein seeks to challenge impugned order dated 28.4.2017 passed by Additional Sessions Judge, Karnal, whereby application filed by the petitioner/complainant to take cognizance of offence under section 193 Code of Criminal Procedure (for short '**the Code**') against the private respondents has been dismissed.

2. In brief, the facts are that the petitioner got registered the F.I R. No. 179 dated 02.03.2016 under Sections 304-B, 120-B, 34 of IPC at Police Station Sadar Karnal, District Karnal, alleging that his sister had been killed due to demand of dowry. It was stated that the marriage of his sister Aasma had been solemnized with Gulzar son of Bhura Khan in October 2013 as per Muslim rites and ceremonies. Thereafter, her mother-in-law, father-in-law, sister-in-law and brothers-in-law had started misbehaving her and started demanding more dowry. Efforts were made to reconcile the matter, as a

result Aasma stayed in a parental home from January 2015 to August 2015. She was taken back to her matrimonial home with an assurance that she would be treated properly and not harassed for dowry. However, Aasma committed suicide on 01.03.2016 and this fact was not revealed by the accused. After investigation by the police, the husband of the deceased Aasma was arrested on 05.03.2016, whereas the other suspects were found innocent. On completion of the investigation, a joint final report was submitted against the husband and father-in-law before the Court and a supplementary report then came to be submitted against co-accused Jannat mother-in-law. The petitioner preferred an application under Section 193 of the Code asking the Court to take cognizance of offence under Sections 302, 304B, 120-B, 114 read with Section 34 IPC against all the persons mentioned therein but the same was dismissed. Aggrieved against the order of dismissal, this revision petition has been filed.

3. Mr Aman Dhir, learned counsel appearing on behalf of the petitioner/complainant, submits that there is enough evidence on the record to summon rest of the accused mentioned in the F.I.R. It is argued that the investigation was done in a shoddy manner only to help the accused and this fact would be substantiated by the fact that the mother-in-law was charged by way of filing a supplementary challan. The Investigating Officer has been awarded a punishment of permanently stopping 3 annual increments on account of not presenting the challan against accused mother-in-law at the first instance. It is argued that the Investigating Officer has deliberately helped the respondents and put their names in column No. 2 by showing them to be innocent.

Learned counsel for the petitioner placed reliance upon a judgment rendered in **Dharam Pal and others Versus State Of Haryana and another** reported in **2013 (3) RCR (Criminal) 787** to submit that a Magistrate has ample power to disagree with the police and summon the persons named in column No. 2 on the basis of the material in police report.

4. I have heard the counsel for the petitioner and have also gone through the impugned order passed by the Additional Sessions Judge, Karnal, who on perusal of the report under Section 173 of the Code came to the conclusion that until and unless there is some clinching evidence gathered against the suspects, it has no reason to summon a person as an accused to face trial merely on the basis of an application being filed. The argument raised that a shoddy investigation was done only to help the accused by placing reliance upon the punishment awarded to the Investigating Officer is not substantial enough to allow the application. A reading of the FIR would show that there is a reference in terms of 'Nanad Reena' and 'Nandoi Banti ' who allegedly dropped the deceased outside her parental home in a car, while giving her threat that there is no need for her to return to her matrimonial home. Other than this reference, there is little evidence available on the record. The investigation found the rest of the accused innocent and placed them in column No. 2.

5. It is true that a Magistrate has ample powers to disagree with the final report that may be filed by the police authorities under section 173 (3) of the Code and to proceed against the accused persons, but there has to be some basis for doing so. As held in the judgment rendered in **Dharam Pal's case (Supra)**, a Magistrate has a role to play while committing the

case to the Court of Sessions under Sections 173 (3) of the Code, while taking cognizance of the police report submitted to it. In case the Magistrate disagrees with the police report filed, he has two options, either he can act on the basis of a protest petition that may be filed or by giving reasons for disagreement with the police report issue process and summon the accused. But the same has to be exercised, if the complicity of the persons as offenders in the case is evident from the materials available on the record. If prima facie case is made out from the material contained in the case papers sent by the Magistrate, while committing the case to the Court of Sessions, then the Sessions Judge can issue summons under Section 193 of the Code on the basis of the records transmitted. However, at the moment there is nothing available on the record in this petition to hold that the court below was erred in dismissing the application for summoning the rest of the accused in the FIR. Needless to say that remedy under Section 319 of the Code is always available to the petitioner to summon the persons against whom cognizance of the offence is sought for, if during the course of trial evidence is produced against them.

6. Therefore, the above noted petition is dismissed being devoid of merit. However, any observations made herein would not be taken to be read as any decision on the merits of the case.

21.7.2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No