

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

**CRR-3926-2017 (O&M)
Date of decision-26.10.2017**

Dr. Vijay Dahiya and others

...Petitioners

Vs.

Urmila Devi

...Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.N.C. Kinra, Advocate for the petitioners.

JITENDRA CHAUHAN, J. (Oral)

This revision is directed against the order dated 10.10.2017 passed by Additional Sessions Judge, Panchkula vide which the order dated 24.01.2014, passed by Chief Judicial Magistrate, Panchkula discharging the accused was set aside and the trial Court was directed to proceed further in accordance with law.

The brief facts of the case as noticed by learned Revisional Court in the impugned order dated 10.10.2017 are as under:-

“Briefly stated, this complaint was filed by the complainant against twelve accused for the commission of offences punishable under Sections 323, 354, 389, 452, 458, 500, 506, 120-B read with Section 34 of IPC with the fact that the complainant was a pharmacist and had been working in ESI Dispensary situated in the premises of HMT Pinjore for the last about 20 years. She had been residing along with her two daughters and a son in quarter no. B-4, ESI Dispensary HMT Pinjore, the official accommodation allotted to her by the ESI Dispensary Authority. She had been carrying a good reputation in the society. It is pleaded that Maya Rani accused no.9 had been residing in quarter No.B-3 situated on the ground floor of the quarter of the complainant. Maya Rani is a quarrelsome lady and had been carrying a bad reputation. It is further pleaded that Maya Rani had been having a tiff with one Ravi, husband of Smt Suman

Goel and as such, the matter was reported by Smt Suman Goel, to the police also. Police conducted an enquiry regarding the moral conduct of Maya Rani, wherein the statement of present complainant had been recorded and she supported the version of Smt Suman Goel and as such, the accused No.9 had a grudge against the present complainant. She used to insult everybody who happened to visit the house of the complainant. She also used to slap the children of the complainant time and again. She even tried to break open the lock of the house of the complainant and she also burnt the hedge raised by the complainant in the open area. The matter was referred to the police but of no avail and as such, the complainant filed a criminal complaint against Maya Rani and others which was pending before the Court of CJM Panchkula on the date of filing of this complaint. It is pleaded that the accused No.10 Rajesh Saini, son of accused Maya Rani, has been serving in the Service Branch of Civil Secretariat, Haryana, Chandigarh. Accused No.1 is involved in many departmental enquiries regarding his misconduct and as such the information regarding the movement of the enquiry files concerning to the accused No.1 was used to be supplied to him by accused Rajesh Saini, son of accused Maya Rani, in collusion with accused No.12 Swatantar Gupta who had been working as Superintendent in Civil Secretariat, Haryana, Service Branch and accused Rajesh was attached as Steno with accused No.12. It is further pleaded that accused no.10 (Rajesh Saini) and accused No. 12 (Swatantar Gupta) used to proclaim that so long as the proceedings were pending against accused No.1 in the Civil Secretariat, none could harm Smt Maya Rani. It is pleaded on 20.6.1997, Tehsildar Kalka, accused no.2 visit the residence of the complainant and entered inside her premises without prior information. He searched all the rooms of the complainant and made enquiries regarding the visitors to her house. He was not accompanied by any lady at that time. He directed the complainant to be present in his office on 23.6.1997. Shri A.P.S.Sodhi, the then SMO Kalka, also made enquiry about the visitors to the house of the complainant and their antecedents. Subsequently, it was gathered by the complainant that accused Maya Rani had made some complaint against the complainant to teach her a lesson to support the version of Smt Suman Goel regarding the involvement of husband of Smt Suman Goel with

accused Maya Rani. The aforesaid fact was revealed to the complainant when she reached the office Tehsildar Kalka on 23.6.1997 and found that RC Chopra, SSI Ambala was also present there and the accused No.9 and accused No.10 were also there along with one Jasmer Saini who was reading a letter with defamatory contents against the complainant and R.C. Chopra SSI in the presence of a number of persons who had been gathered by Maya Rani and Rajesh. It is pleaded that accused Maya Rani, Rajesh Saini and Jamser were well aware of the fact that the aforesaid contents of the letter were factually wrong and they made the same public just to defame the complainant and another. The complainant got a copy of letter dated 4.6.1997 from the office of SMO Kalka and on the basis thereof, she filed a complaint under Section 500 of Indian Penal Code against Maya Rani and others which was pending decision before the Court of learned Chief Judicial Magistrate, Panchkula as on the date of filing of this complaint. It is pleaded that in the meanwhile, one Smt Savitri Devi, the wife of R.C.Chopra SSI, was also approached by accused Maya Rani. The complainant was summoned by the Court of learned CJM Karnal in a case filed by R.C.Chopra against D.R.Gabha and others wherein the complainant clarified that she had no relation with R.C.Chopra and she was victimised on account of the similarity in the name of her husband and the name of Ramesh Chander (R.C.Chopra). Apart from it, the complainant also received summons from the court of learned District and Sessions Judge, Ambala wherein she had to attend the false and frivolous proceedings initiated at the instance of Savitri. It is averred that the aforesaid case filed by the complainant against Maya Rani and others was fixed for 27.9.1997 when the miseries of the complainant were multiplied due to her harassment by Maya Rani and accused No.1. That on the day of Rakhi, when the complainant was going up stairs, accused Rajesh Saini proclaimed that she would get a Rakhi gift. In the meantime, the postman delivered a unstamped envelope to the complainant and on reading the aforesaid letter, the complainant was shocked as the same was carrying a filthy language. The matter was reported to the police. The said letter had been written by accused No.10 Rajesh Saini at the instance of his mother, Maya Rani. It is pleaded that in the night of 26.9.1997, a day before the aforesaid defamation case titled as "Urmila Vs Maya

Rani & others” was fixed for the evidence of the complainant in the Court of learned Chief Judicial Magistrate, Panchkula that R.C. Chopra knocked the door of the complainant at about 10.00PM and conveyed to her that Dr Vijay Dahiya (accused No.6) had caused him to visit the house of the complainant to discuss the evidence to be recorded the next day in the aforesaid defamation case with her. Dr Vijay Dahiya had asked R.C.Chopra to help the complainant as R.C.Chopra was the main witness in the aforesaid complaint. It is pleaded when the conversation was going on between the R.C.Chopra and complainant, a telephonic call was received to R.C.Chopra from Dr.Vijay Dahiya to confirm it as to whether R.C.Chopra had filed the complaint against the Tehsildar Kalka or not and he asked R.C.Chopra to talk to Tehsildar Kalka. He also gave the telephone number of Tehsildar Kalka to R.C.Chopra. R.C.Chopra tried to contact Tehsildar Kalka but he was not available. Thereafter, when the evidence was being discussed between the complainant and R.C.Chopra, ASI Onkar Singh (accused No.4) along with HC Om Parkash (accused No.5), two Video Movie Cameraman (accused No.7 & 8) entered the house of the complainant in the civil dress who were followed by DSP Raj Shree (accused No.3) who was also in the Civil Dress. She said that the complainant and R.C.Chopra were under arrest. They got the children of the complainant woke up and inquired from them about R.C.Chopra. R.C.Chopra was forced by them to put off his clothes including the trousers and the aforesaid misconduct of the accused persons was intentional just to outrage the modesty of the complainant. It is pleaded that in the meanwhile, Tehsildar Kalka (accused No.2) along with SDM Kalka (accused No.1) also entered the house of the complainant and directed for the search of her house. They also directed the cameramen to make the movie. All the belongings of the complainant were searched, but no incriminating material was found from the house of the complainant. They threatened the complainant to withdraw her complaint filed by her against Maya Rani and others which was pending for the next day before the Court of learned Chief Judicial Magistrate, Panchkula. It is pleaded that Dr Vijay Dahiya was also a party to the aforesaid conspiracy to help Maya Rani and that is why, he caused R.C.Chopra to visit the house of the complainant and just to confirm the

presence of R.C.Chopra in the house of the complainant, he talked to him telephonically and subsequently he became a member of the alleged raid. It is pleaded that thereafter the aforesaid accused persons made a plan for further move in the house of the complainant itself and as such Dr Dhaiya is equally responsible for the misconduct along with his co accused. The aforesaid conspiracy had been hatched by the accused persons with an idea to protect Maya Rani and her son Rajesh Saini and to help the accused No.1 in collecting the information regarding the cases pending against him in the Service Branch from accused No.12 and as such, the complainant had been pressurised by them to withdraw her complaints filed against Maya Rani. Accused No.1 directed the accused No.3 to prepare a case against the complainant and R.C.Chopra under Section 109 Cr.PC and to produce the complainant and R.C Chopra in his Court the next day. He also threatened that he would not allow them to remain in service if they did not withdraw the complaint filed by Urmila Devi against Maya Rani. However, the accused no.3 refused to challan the complainant and R.C.Chopra under Section 109 Cr.PC as their identity was not disputed. The accused No.1 insisted the accused no.3 to register the case against them under Immoral Trafficking Act but she did not agree. Still thereafter, the complainant and R.C.Chopra were taken to Civil Hospital Kalka and they were got medico legally examined from Dr .S.K.Gupta and Dr Diwan and despite the objection raised by the complainant she could be medico legally examined by a lady doctor only, she was not heard and as such her medical examination by a male doctor resulted in outraging her modesty. The complainant tried to contact her knowns telephonically but she was not allowed by accused No.4 and he snatched the receiver from her hand. R.C.Chopra had also shown the order of anticipatory bail granted to him by the Court of learned Additional Sessions Judge Ambala but the accused No. 1 did not care for the same. It is pleaded that the aforesaid act of the accused persons in trespassing the house of the complainant at odd hours humiliated her in the presence of the large number of police officials and other residents of the locality. Apart from it, DSP Raj Shree Singh had instructed the doctor that the medical reports of complainant and R.C.Chopra be prepared only after consulting the accused No.1. It is pleaded that involvement of

accused No.12 Swatantar was further proved/ revealed to the complainant when R.C.Chopra SSI was summoned by Swatantar Gupta in his office at Civil Secretariat on 25.9.1997 to prevail upon the complainant to withdraw her complaints filed against Maya Rani which were pending in the Court of learned CJM Panchkula. He disclosed to R.C.Chopra that accused No.1 had been helping Maya Rani and her son Rajesh on the instruction of accused No.12 only. He advised R.C.Chopra to contact the accused No.1 on coming Saturday in the presence of accused No.12. The complainant moved the complaint regarding the aforesaid episode to DGP Haryana Chandigarh 27.9.1997 and the copies thereof were endorsed to various authorities. On 19.11.1997, under the garb of representation of Women Protection Cell, the complainant was summoned in the office of Deputy Commissioner Panchkula by Chairman of Women Protection Cell. R.C.Chopra had also been summoned there. Accused No.1 also happened to be present in that meeting, where he threatened the complainant and R.C. Chopra to withdraw the proceedings pending in the Court of Shri R.C.Bansal, learned Additional Sessions Judge Ambala, otherwise he will not allow them to enter the premises HMT Pinjore and shall get them implicated in false and frivolous cases. The aforesaid threat had been given by the accused No.1 to the complainant and R.C.Chopra just with an idea to pressurise the complainant to withdraw her complaints filed by her against Maya Rani. As such Maya Rani is instrumental in all the aforesaid proceedings initiated by the accused persons against the complainant and R.C.Chopra on 26.9.1997. On 19.11.1997, accused No.1 advised the complainant and R.C Chopra to be present in his office at Kalka at 5.30PM to get the matter settled /compromised between Maya Rani and complainant. When the complainant reached his office at 5.30Pm that day, she found that accused Yudhvir Singh, Bir Singh, Dr Dahiya, Maya Rani and Rajesh Saini were present there apart from SMO, Kalka Dr Chauhan and two lady members of the Women Protection Cell. The complainant and R.C.Chopra were threatened by accused No.1 to withdraw the complaints filed by the complainant against Maya Rani. The police did not take any action on the basis of the complaint filed by the complainant on 27.9.1997. Hence the present complaint was filed by

her before the Court on 16.1.1998.”

After preliminary evidence, the present petitioners along with three co-accused were summoned by the trial Court to face the trial under Sections 323, 354, 389, 452, 458, 500, 506 and 120-B read with Section 34 of the Indian Penal Code (in short 'IPC'). In the pre charge evidence, the complainant examined herself as CW-1, CW2- R.C.Chopra, CW3-Satish Kumar, DRK from O/o Ld. D&SJ, Ambala, CW4- Smt. Manesh Kumari, Deputy Superintendent from O/O Civil Surgeon, CW5- Dr. S.K.Gupta, Senior Medical Officer, CHC Kalka, CW6- Dr. Rajiv Kumar Diwan, Gynaecologist from CHC Kalka, CW7- Dr. Aradhna Medical Officer from ESI Dispensary, Jagadhari.

After pre-charge evidence, the trial Court came to the conclusion that even if evidence of the complainant remains un-rebutted on record, it does not warrant the conviction of either of the accused. Therefore, the trial Court vide order dated 24.01.2014, discharged the petitioners.

Feeling aggrieved against the order dated 24.01.2014, the complainant filed revision petition before learned Addl.Sessions Judge, Panchkula whereby the order dated 24.01.2014, passed by the trial Court was set aside and the trial Court was directed to proceed further in accordance with law. Thus, the present revision petition has been filed at the instance of accused Nos.6, 9 and 10.

It is contended that the Court below has not afforded an opportunity of hearing to the petitioners. There is no allegation of causing any hurt to respondent No.1/complainant. The charge cannot be framed in

the absence of any material against the petitioner. The Court below has not applied its mind to the facts of the present case. The Court of Chief Judicial Magistrate, Panchkula had passed a detailed and well reasoned order which has been wrongly set aside by the Court below. It is further contended that the Court below was swayed with the observations made by Hon'ble the Supreme Court in Criminal Appeal No.1822-2013 preferred by the complainant.

Heard.

The learned Revisional Court after examining the matter has observed that the criteria for framing charges under Sections 227, 239 and 245 Cr.P.C is identical. The Court below has placed reliance on **“R.S.Nayak Vs. A.R.Auntuulay” AIR 1986 SC 2045,** wherein Hon'ble the Supreme Court has held as under:-

“Sections 227, 239 and 245 contain somewhat different provisions in regard to discharge of the accused; that under Section 227, the trial judge is required to discharge the accused if he considers that there is no ground for proceedings against the accused; that the obligation to discharge the accused under Section 239 arises when the Magistrate considers the charge against the accused to be groundless; that the power of discharge is exercisable under section 245(1) when the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction. The Apex Court has held that (at page 2071) it is a fact that sections 227 and 239 provide for discharge being ordered before the recording of evidence and consideration as to whether a charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and prosecution or the police report, the documents sent along with i and examination of the accused and after affording an opportunity to the two parties to be heard, that the stage for discharge under

section 245; on the other hand, is reached only after the evidence referred to in section 244 has been taken; and that notwithstanding the difference in the position, there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under section 245(1) is a preliminary one and the test of “prima facie” case to be applied. It has been further observed, in the said decision, that in spite of the difference in the language of the three sections, the legal position is that if the trial court is satisfied that a prima facie case is made out, charge has to be framed.”

Firstly, this Court finds itself in agreement with the view taken by the trial court that at the stage of framing of charge in a case instituted on a complaint which is to be tried as a warrant case, only a prima facie satisfaction is to be reached and the parameters of likely chances of conviction cannot be gone into. Now the question arises as to whether prima facie case is made out against the accused or not. In this regard, it is to be noticed that CW-1 reiterated the version made in the complaint. R.C.Chopra CW-2, eye witness has supported the complainant on material points. Satish Kumar, Clerk from the office of Ld.D&SJ, Ambala appeared as CW-3 and produced the record in contempt petition titled as “R.C.Chopra Vs. Yudhvair Singh”. Manesh Kumari, Deputy Superintendent from the office of the Civil Surgeon as CW-4 produced record relating to a complaint filed by respondent No.9-Maya Rani against the present revisionist and R.C.Chopra (CW-2). Dr. S.K.Gupta, CW-5 had medico-legally examined the revisionist and R.C.Chopra on 27.09.1997. Dr. Rajiv Kumar Diwan CW-6 had also medico legally examined the revisionist. Dr. Aaradhna CW-6 had visited the place of occurrence at the house of the revisionist on the intervening night of

26/27.09.1997.

The evidence of the complainant, prima facie shows that the incident took place on 26.09.1997. In pursuance of the order of the then Sub Divisional Magistrate, Kalka and the then Deputy Superintendent of Police, Kalka, the Police Officials entered into her official accommodation during night with video cameras. They acted on the complaint of Maya Rani, a Pharmacist and colleague of the complainant. The complainant was taken to the hospital where she was medically examined by a male doctor. It has further come in the evidence of the complainant that the raid was conducted a day before her evidence in a defamation case against petitioner-Maya Rani was to be recorded. She has reiterated the entire version as recorded in the complaint. Her version stands corroborated by CW-2 Dr. Aradhana who has proved letter dated 16.10.1997 written by her to Civil Surgeon who expressed her view about the entire sequence of events. She has also proved that she was called by Dr. Vijay Dahiya/accused No.6/petitioner No.1. This being so, this Court feels that there is sufficient evidence on record to summon the accused/petitioners to face trial under Sections 323, 354, 389, 452, 458, 500, 506 and 120-B read with Section 34 of the IPC.

Consequently, this Court finds that the impugned order is perfectly valid. No interference is called for to exercise the revisional jurisdiction by this Court. The present revision petition stands dismissed.

26.10.2017

vanita

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No