

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

CRM-M-25090-2014

Date of decision:-25.9.2018

Nisha

...Petitioner

Versus

Mahavir Parshad and others

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Ashwani Bhardwaj, Advocate
for the petitioner.

Mr.Ashok K. Sharma, Advocate
for respondents No.1 to 4.

Mr.Brijesh Sharma, AAG, Haryana.

H.S. MADAAN, J.

This petition under Section 482 Cr.P.C. has been filed by petitioner Nisha seeking setting aside of order dated 11.3.2014 passed by Sessions Judge, Fatehabad accepting the revision petition filed by respondents/accused against the order of framing of charge dated 31.10.2013 and order dated 28.3.2014 passed by Sub Divisional Judicial Magistrate, Tohana dismissing the complaint in view of order dated 11.3.2014.

Briefly stated, the facts of the case are that complainant

Nisha widow of Sanjay Kumar daughter of Krishan Kumar Singla, resident of Prem Nagar, Tohana, Tehsil Tohana, District Fatehabad had filed a criminal complaint for the offences under Sections 498-A, 406, 420, 467, 468, 471, 506, 323, 120-B IPC against accused Mahavir Parshad, Bhagwanti, Narender and Laxmi on the allegations that she was married with Sanjay Kumar son of Mahavir Parshad on 2.7.2001; that at that time, her parents had given sufficient dowry articles including valuable jewellery items etc., however, the in-laws family of the complainant was not happy with such dowry articles given and they started harassing and maltreating the complainant in connection with demand of more dowry; the complainant had given birth to a son on 22.5.2002 and later on a daughter but that failed to bring about a change in the attitude of in-laws family with her; unfortunately her husband died on 19.9.2006; thereafter, her parents-in-law and elder brother of her husband Narender got her signatures on blank papers on the pretext that those were required for release of the insurance amount, subsequently, those papers were misused and articles lying in the Singla Medical Hall, which was sole proprietorship of late husband of complainant were got transferred by Narender in his name; that as a matter of fact, accused committed criminal breach of trust with regard to the *ISTRIDHAN* articles of the complainant and got the property of her deceased husband transferred in their names; she was given beatings and then turned out of the matrimonial home; the parents of the complainant tried for her rehabilitation in the matrimonial home but to no effect. The complainant had submitted a written complaint to the police, on the basis of which formal FIR No.213 dated 23.6.2007 was recorded but no action was

taken, as such the complainant filed a private complaint.

After recording of preliminary evidence, Sub Divisional Judicial Magistrate, Tohana vide order dated 7.10.2009 directed summoning of all the four accused for the offences under Sections 323, 406, 498-A and 506 read with Section 120-B IPC. The accused put in appearance and were admitted to bail. After recording of pre-charge evidence, prima facie a case, charge for the offences under Sections 406, 498-A 323 and 506 read with Section 120-B IPC was framed against the accused, to which, they pleaded not guilty and claimed trial.

Feeling aggrieved by such order of framing of charge against them, the accused have preferred a revision petition to the Court of Sessions and learned Sessions Judge, Fatehabad vide order dated 11.3.2014 accepted the revision petition and directed dismissal of the complaint being devoid of merit. The reasoning given by learned Sessions Judge, Fatehabad is contained in paras No.6 to 8, which for ready reference are being reproduced as under:

6. *It is an admitted fact that marriage of the respondent-complainant with the deceased son of Mahavir Parshad took place on 2.7.2001 and two issues were born out of their wed lock. Unfortunately, her husband expired on 19.9.2006 and after that she remarried. It is also a fact that after the death of her husband, she filed a complaint against the revisionists and others for the commission of above mentioned offence and which led to registration of formal FIR bearing No.213 dated 23.6.2007 but the case registered in this regard is stated to have been cancelled. It*

*is her case that when the police failed to take any action against the revisionists, then the same led to filing of a complaint against them on 3.01.2009. though there is testimony of respondent-complainant besides that of Krishan Kumar PW2, Tarsem Chand PW3, Tara Chand PW4, Satpal PW5 and Ramesh Kumar PW6 and some documents mentioned above but it has come on the record that during the life time of her husband, she did not file any complaint against them for the commission of offence mentioned above. It was only after the death of her husband on 19.9.2006 that she started complaining against the revisionists for misappropriation of dowry articles, maltreating her and physically assaulting her. There is nothing on the record to show that after registration of the criminal case against the revisionists on 23.6.2007 what was the fate of that case. Neither the complainant summoned that record from the concerned police station nor the trial Magistrate called report of cancellation of that case. So, without considering either of the same, the order of summoning and then charging the revisionists for the commission of offence mentioned above was passed and which is not sustainable in the eyes of law. In case **Kuldip Raj Mahajan Versus Hukam Chand, 2008(1) RCR(Criminal)370,** a similar situation arose as in the present case and wherein the Hon'ble High Court quashed the order of summoning against the petitioner. So, on this*

short ground, the orders of summoning as well as charge against the revisionists are not sustainable in the eyes of law.

7. *The matter may be looked up from another angle. While filing the complaint against the revisionists, it was alleged by the complainant that they being her parents-in-law, brother-in-law (Jeth) and sister-in-law (Jethani) respectively used to harass her for insufficiency of dowry, maltreated her and misappropriated the dowry articles given to her at the time of marriage. Though in this regard, besides her testimony as PW1, a reference was made to the testimonies of Krishan Kumar PW2, Tarsem Chand PW3, Tara Chand PW4, Satpal PW5 and Ramesh Kumar PW6 but except the case in hand, there is nothing on the record that during life time of her husband, she complained against anyone to the civil or police authorities at Jind or Tohana. Secondly, she failed to produce any proof to prove list of dowry or their entrustment to the revisionists. Thirdly, it is alleged that her husband was having policies of insurance and was a partner in firm M/s Singla Medical Hall, Jind. Though some documents in this regard have been placed on the file but it is not evident as to who after the death of her husband withdrew the amount of policies after their maturity and on what basis, the share of her deceased husband was transferred in the name of other partners. So, keeping in view all these facts and legal*

position detailed above, the trial Magistrate was not right in ordering framing of charge against the revisionists for the commission of an offence punishable under Section 323, 406, 498-A read with Section 120-B and 506 of Indian Penal Code.

8. *Thus, in view of the discussion above, the revision filed against the order dated 31.10.2013 is hereby ordered to be accepted. Consequently, the complaint filed against the revisionists by the respondent-complainant for the commission of an offence mentioned above being devoid of merit is ordered to be dismissed.*

Being dissatisfied by the said order, the complainant has preferred the present revision petition, notice of which was issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Section 482 Cr.P.C. deals with inherent powers of the High Court providing that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

The order passed by learned Sessions Judge, Fatehabad is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. I do not find any illegality or

infirmity in such order, which might have called for interference by this Court while exercising jurisdiction under Section 482 Cr.P.C.

The petition being without merit stands dismissed accordingly.

25.9.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No