

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CRM-M No. 26681 of 2015 (O&M)
Date of decision : 27.9.2018

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R.P. Bhardwaj and others

.....Petitioners

vs.

State of Haryana and another

.....Respondents

2) CRR No. 884 of 2015 (O&M)

...

Jyotsna Bhardwaj

.....Petitioner

vs.

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. V.K. Jindal, Senior Advocate with
Mr. Gopal Soni, Advocate for the petitioners
in CRM-M-26681-2015 and
for the respondents No. 2 to 7 in CRR 884-2015

Mr. Neeraj Poswal, Assistant Advocate General,
Haryana.

Mr. S.S. Narula, Advocate for respondent No.2-complainant
in CRM-M-26681-2015
for the petitioner in CRR 884-2015

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H. S. Madaan, J.

Vide this judgment, I intend to dispose of CRM-M-
26681-2015 titled as R.P. Bhardwaj and others vs. State of Haryana

and another and CRR-884-2015 titled as Jyotsna Bhardwaj vs. State of Haryana and others, as both these petitions have arisen out of the same FIR.

Petition bearing CRM-M-26681-2015 under Section 482 Cr.P.C. has been filed by petitioners R.P. Bhardwaj, Pamela Bhardwaj and Chanchal Bhardwaj, all of them being accused in the supplementary challan presented against them with regard to FIR No. 341 dated 26.7.2014, for offences under Sections 376, 506 IPC, registered at Police Station Sushant Lok, Gurgaon (offence under Section 120-B IPC added later on), alongwith ancillary proceedings. In this petition they have arrayed State of Haryana as respondent No.1 and Jyotsna – complainant as respondent No.2.

Whereas CRR-884-2015 has been filed by complainant Jyotsna against the order dated 3.3.2015, passed by Additional Sessions Judge, Gurgaon, whereby application filed by complainant under Section 319 Cr.P.C. for summoning of R.P. Bhardwaj, Pamela Bhardwaj, Chanchal Bhardwaj, Aditi Bhardwaj, Sandeep Bhardwaj and Pardeep Bhardwaj, as additional accused, has been dismissed.

Briefly stated, facts of the case are that complainant Jyotsna d/o Naresh Kumar Bhuchar, r/o C-73, GF, Ardee City, Sector 52, Gurgaon, had submitted a written complaint at Police Station Gurgaon, against Ajay Bhardwaj, contending therein that in the year 2007 she had met Ajay Bhardwaj, through a colleague, since she needed help in her divorce case against her ex-husband. She had a son named Aryamann from her first marriage; that in the year 2008, when her divorce case was about to be finalized, then Ajay Bhardwaj

proposed marriage to her, representing that he was a divorcee and developed physical relations with her on the promise of marriage. Resultantly, she conceived several times, however, Ajay Bhardwaj forced her to get the fetus aborted on every occasion; that in the year 2010 when she got pregnant, she refused to get the pregnancy terminated and to continue relations with Ajay Bhardwaj; that in September 2010, Ajay Bhardwaj told her that after her divorce, she would get heavy amount in alimony and using that money they would buy a house and he would contract marriage with her, suggesting that in the meantime they could exchange garlands in front of some of the friends and family members, so that they would believe that they were married. According to the complainant, she agreed to do so; that in March 2011, she gave birth to twins i.e. a baby boy named Prithvi and a baby girl named Pari; that after she got divorce from her first husband, she requested Ajay Bhardwaj to marry her, but he did not pay any heed and rather he utilized her money and pawned her jewellery also, representing that he would return the amount to the complainant when his business flourished. In the FIR it is mentioned that in the year 2013, the complainant came to know that first marriage of Ajay Bhardwaj subsisted. The complainant confronted Ajay Bhardwaj, but he could not give any satisfactory reply, rather the complainant caught him with other girls. She stated that Ajay Bhardwaj and his parents had cheated her; that whenever Ajay Bhardwaj came home, he made sexual relations with her against her wishes and on her refusal, he threatened to kill her; even his family was involved in the plan; that she asked family of Ajay Bhardwaj to

persuade Ajay Bhardwaj to marry her, but they gave beatings to her and refused to listen. The father and brother of Ajay Bhardwaj tried to use her in their liaison activity forcing her to make sexual relations with other persons, which she always refused. It is further contended that on 19th March Aditi Bhardwaj, sister of Ajay Bhardwaj with his mother Pamela Bhardwaj, tried to strangle her. Making various other allegations, in the end she sought taking of legal action against Ajay Bhardwaj and his family members.

On the basis of the said complaint, formal FIR under Sections 376, 506 IPC was recorded. The case was investigated and on conclusion of the investigation, only Ajay Bhardwaj was challaned. During the course of trial against Ajay Bhardwaj, an application under Section 319 Cr.P.C. for summoning of R.P. Bhardwaj, father, Pamela Bhardwaj mother, Chanchal Bhardwaj and Aditi Bhardwaj sisters and Sandeep Bhardwaj and Pardeep Bhardwaj, brothers of Ajay Bhardwaj, as additional accused was moved by the complainant, which was however, dismissed by the trial Court vide order dated 3.3.2015. The trial Court observed that the allegations levelled by the complainant against the proposed accused in the FIR were very vague and general and the police after due investigation did not find them involved in the crime. It was further observed that while getting her statement recorded in the Court as PW-1, the complainant had levelled only general and vague allegations against the proposed accused and rather it came out that it was accused Ajay Bhardwaj, who had been maintaining relations with her and no active role was played by any of his family members, who were sought to be

summoned as additional accused and further there was no overt act on their part, which could prima facie show their involvement in the crime. In the concluding paragraph, the trial Court has observed that in its considered opinion, it did not appear that R.P. Bhardwaj, Pamela Bhardwaj, Chanchal Bhardwaj, Aditi Bhardwaj, Sandeep Bhardwaj and Pardeep Bhardwaj, were involved in the crime, for which they could be tried together with the accused facing trial in this case. As such the application was dismissed.

However, the police filed supplementary challan under Section 173 (8) Cr.P.C. against them, but that was done without permission of the Court.

Petitioners are seeking quashing of that supplementary challan and the ancillary proceedings, by way of filing the present petition (CRM-M-26681-2015), whereas the request is being opposed by the State, as well as, the complainant.

I have heard, learned counsel for the petitioners, learned State counsel assisted by learned counsel for the complainant, besides going through the record.

The first and foremost factor to be considered is that there has not been any valid marriage between Ajay Bhardwaj and the complainant. The main thrust of allegations levelled by the complainant is against Ajay Bhardwaj, who has since been booked by the police and is facing trial in the Court of law. Parents and family members of Ajay Bhardwaj have no direct concern with the complainant. The complainant appears to be having live-in relationship with Ajay Bhardwaj. Though such type of relationship is

gaining acceptability in our society, but that does not mean that female live-in partner of the boy is being treated as his legally wedded wife by his relatives. According to the complainant, she had pleaded with parents and family members of Ajay Bhardwaj to persuade him to marry her. Even if it is taken as such, simply because they could not persuade Ajay Bhardwaj to contract marriage with the complainant, does not mean that they have committed any offence. Further more, though there are allegations that she was beaten up by family members of Ajay Bhardwaj, but then precise details like date, month, year, timing, of such alleged beatings are not given, nor did she get herself medico legally examined at that time. The allegations that father and brother of Ajay Bhardwaj tried to use her in liaison activity, forcing her to make sexual relations with other persons and on her refusal to do so, she was given beatings also do not appeal to reason, so are the allegations with regard to Aditi Bhardwaj and Pamela Bhardwaj trying to strangulate her. If it was so, complainant would have informed the law enforcement agency at the earliest but that was not to be. Thus allegations being vague and general, the investigating agency did not find any merit in the same and had only challaned Ajay Bhardwaj.

Subsequent action of the Investigating Agency in conducting further investigation without any direction from the Court or permission granted by it, and then filing supplementary challan, does not make any sense. There is nothing on record to show that the Investigating Agency had later on come across substantial evidence against the petitioners on which it could not lay its hands earlier, thus

justifying filing of supplementary challan. As a matter of fact, the observations made by the trial Court while dismissing application under Section 319 Cr.P.C. refusing to summon petitioners etc. as additional accused, points out towards hollowness of the allegations levelled by the complainant against them. Thus filing of supplementary challan against the petitioners alongwith subsequent proceedings is nothing but an abuse of the process of law and it shall be in the fitness of things, if the petition is accepted.

Accordingly, the CRM-M-26681-2015 is allowed, as such the FIR No. 341 dated 26.7.2014, for offences under Sections 376, 506 IPC, registered at Police Station Sushant Lok, Gurgaon (offence under Section 120-B IPC added later on), alongwith consequential proceedings arising there from including supplementary challan and ancillary proceedings with respect to the petitioners are ordered to be quashed.

The revision petition has been filed by the complainant – Jyotsna, being aggrieved with the order dated 3.3.2015, passed by Additional Sessions Judge, Gurgaon, dismissing application under Section 319 Cr.P.C. for summoning of respondents No. 2 to 7, namely, R.P. Bhardwaj, Pamela Bhardwaj, Chanchal Bhardwaj, Aditi Bhardwaj, Sandeep Bhardwaj and Pardeep Bhardwaj, as additional accused. A perusal of such order goes to show that it is well reasoned based upon proper appraisal and appreciation of evidence and correct interpretation of law. The latest law on the subject has been taken into consideration. Paragraph No. 8 and 9 of the order are very relevant, which for ready reference are being reproduced as under :-

“8. From perusal of the facts in hand, it is evident that this First information Report was lodged on the basis of written complaint of the complainant. In her complaint, she has leveled allegations that she was befooled by accused Ajay and proposed accused by telling her that accused Ajay is divorcee. They all have cheated her as under the deceit, accused Ajay performed a drama of marriage with her and started co-habiting with her. However from the contents of the complaint itself, it is evident that she has leveled very vague and general allegations against the proposed accused who all her family members of accused Ajay being parents, brothers and sisters. It is pertinent to mention here that police after due investigation of the matter has in fact not found them involved in the crime and has only challaned accused Ajay in this case.

Moreover testimony of the complainant as PW-1 also clearly revealed that she has levelled only general and vague allegations against the proposed accused. The facts clearly revealed that it was accused Ajay who had been maintaining relations with her and there is no active role playing by any of his family members which are sought to be summoned as an accused by moving this application. In fact, such like vague and general

allegations against these proposed accused without any overtact on their part cannot take the place of prima facie showing their involvement in the crime.

9. Therefore, from the evidence produced on record, in the considered opinion of this court, it does not appear that R.P. Bhardwaaj, Pamela Bhardwaaj, Chanchal Bhardwaaj, Aditi Bhardwaj, Sndeeep Bhardwaaj and Pardeep Bhardwaaj were also involved in the crime for which they could have been tried together with the accused face trial in this case.

The application is consequently dismissed.”

This I do not see any reason to interfere with such order and to set it aside by way of acceptance of revision petition.

Therefore, revision petition bearing CRR-884-2015 stands dismissed.

27.9.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No