

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34845-2013 (O&M)

Date of decision: 07.08.2018

Anita Kumari @ Anita Rani and others

... Petitioners

Vs.

Kishan Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Mohinder Kumar, Advocate
for the petitioners.

None for respondent No.1.

Mr. Sidakmeet Sandhu, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of criminal complaint No.281/1/12 dated 15.11.2010 (Annexure P-1) titled as Kishan Kumar Vs. Rajinder Kumar and others under Sections 323, 457, 427, 341, 504, 506, 34 of the Indian Penal Code (for short 'IPC'), which pending in the Court of JMIC, SBS Nagar and the summoning order dated 28.01.2013 (Annexure P-3) passed in the aforesaid complaint, vide which the petitioners have been summoned to face the trial as well as further proceedings arising therefrom.

This petition was filed in the year 2013 and the further proceedings before the trial Court were stayed on 22.04.2014.

Though reply has already been filed on behalf of complainant-

respondent No.1, however, for the last two dates, no one has appeared for respondent No.1 despite due intimation given by the registry.

Brief facts of the case are that respondent No.1 Kishan Kumar (hereinafter referred as complainant) filed the aforesaid criminal complaint with the allegations that on 12.11.2010, he was present in his house and someone knocked the door. When he opened the door, he saw four persons standing outside and they started abusing and pushed him and he fell down on the ground and the accused persons criminally trespassed in his house and broke open the lock of one room. When the complainant stopped them, accused persons wrongly restrained him and gave him fist blows. In the meantime, accused had broken the lock of the door and forcibly entered in the room and till the date of filing of the complaint, they are illegally and forcibly occupying one room of his house.

The complaint was instituted on 15.11.2010 and thereafter, the complainant in his preliminary evidence, examined himself as CW1 and deposed on the lines of the version given in the complaint. CW2 Manoj Kumar stated that the complainant is his parental uncle (Taya) and family stay together in the same house and he had seen the incident and saved the complainant from the clutches of the accused persons. CW3 Harmesh Lal stated that on the date of occurrence, he had gone to the house of complainant to fetch milk and he had also witnessed the occurrence. Thereafter, the complainant closed his evidence and the trial Court vide order dated 28.10.2013 summoned the petitioners to face the trial for the offences punishable under Sections 323, 457, 427, 341, 504, 506, 34 IPC. The petitioners thereafter appeared before the trial Court and they have filed the present petition.

Learned counsel for the petitioners submits that it is admitted in the complaint that petitioner No.1/accused No.3 Anita Rani is daughter-in-law of the complainant, as she is wife of Kundal Lal, son of the complainant and her marriage was performed in the year 2005. It is further stated in the complaint that there is matrimonial discord between petitioner No.1-accused No.3 and son of the complainant and number of litigations are pending, details of which is mentioned in para No.4 of the complaint itself. Counsel for the petitioners further submits that prior to filing of this complaint, petitioner No.1 had moved an application before the Judicial Magistrate 1st Class, SBS Nagar for providing protection and accommodation, on which, the following order was passed on 03.08.2010: -

“Report was called for the Protection Officer and same is received with the report that the domestic violence was meted out with the petitioner. Counsel for petitioners has submitted that already application under Section 125 of Cr.P.C. has been disposed off and respondent is trying to delay the disposal of the case by absenting himself from the proceedings and the petitioner is entitled to seek the order to provide the residence as well as monetary relief and further to seek attachment of property of respondent, that the same is not solid/disposed of in order to frustrate the claim of petitioner. Accordingly, residence order is passed which will be implemented by SHO, P.S. Rahon. Further property of respondent is ordered to be attached to secure the payment of Rs.60,000/- already fixed by the court in order passed under Section 125 Cr.P.C. Report be called from the concerned police station for implementation of order of residence and SHO will ensure the suitable accommodation be provided to the petitioner and he will be duty bound to ensure that no domestic violence is meted out to the petitioner during her stay in the

matrimonial house. To come upon 25.8.2010 for the said purpose.

*Sd/-
ACJSD/03.08.2010”*

Learned counsel for the petitioners has further submitted that petitioner No.1, being wife of son of the complainant Kundal Lal, is residing in the house in dispute, as per order passed by the Judicial Magistrate 1st Class, SBS Nagar, in which a direction was issued to the police authorities to provide the protection and to implement the order providing residence and therefore, the petitioners have not committed any offence, as much prior to filing of the complaint, she was in settled possession of the house. It is further submitted that as per the complaint, incident took place on 12.11.2010, whereas the Court had granted protection to petitioner No.1 on 03.08.2010 (Annexure P-6) and 24.08.2010 (Annexure P-7/T) and the SHO, Police Station Rahon had also submitted the report No.28 regarding visiting the house of the complainant, in compliance of the order dated 03.08.2010 passed by the Judicial Magistrate 1st Class, SBS Nagar. It is further argued that from this report No.28 (Annexure P-7/T), it is apparent that the complainant knew that there is an order passed by the competent Court of law in favour of petitioner No.1 granting her right of residence in the matrimonial home.

Learned counsel for the petitioners has relied upon certain orders showing that there is a matrimonial dispute between petitioner No.1 Anita Rani and her husband Kundal Lal, son of the complainant Kishan Kumar. It is also argued that vide order dated 17.04.2007, the Civil Court, in a petition under Section 9 of the Hindu Marriage Act, has recorded the statement of petitioner No.1/accused No.3 Anita Rani that she is ready to join the company of her

husband, if she is not harassed, however, later on, her husband failed to comply with the directions and the said petition was dismissed for non-prosecution vide order dated 08.05.2007 (Annexure P-9).

Learned counsel for the petitioners has further argued that since petitioner No.1 was maltreated by the complainant and her son, she filed an application for maintenance, in the divorce petition filed by Kundal Lal and the Court had granted maintenance *pendente-lite* of Rs.800/- per month and Rs.4,000/- as litigation expenses vide order dated 25.09.2008. Kundan Lal filed CR-6427-2008 challenging the said order, however, having failed to comply with the directions of this Court, said civil revision petition was also dismissed for non-prosecution vide order dated 17.08.2009 (Annexure P-10). Later on, even the divorce petition filed by Kundal Lal was dismissed by the Additional Sessions Judge, Nawanshahr vide order dated 04.11.2009 (Annexure P-11). It is further submitted that on one hand, the complainant and his son were harassing petitioner No.1 on one pretext or the other and on the other hand, when she, in exercise of her legal rights to have a residence in her matrimonial home, was granted the same relief by the competent Court of law, the impugned complaint has been filed by concealing the aforesaid order dated 03.08.2010 and till date, the said order is in operation and petitioner No.1 is continuously residing in the said premises.

Learned counsel for the petitioners has next contended that there is no MLR on record to show that the petitioners have caused any injury to the complainant and the prosecution witnesses are close relatives of the complainant and are interested witnesses. Counsel for the petitioners has relied upon a judgment of this Court in **Subhash and another Vs. Shivani, 2016 (3)**

RCR (Crl.) 959, wherein it has been held that as per Section 2 (s) of Protection of Women from Domestic Violence Act, 2005, a shared household is a place where the wife lives or at any stage has live in a domestic relationship either singly or along with her husband and would also include a household whether owned or tenanted either jointly by the parties and therefore, the stay of petitioner No.1 in house of the complainant is not illegal in any manner and summoning of the petitioners under Sections 457 and 443 IPC is not made out.

Learned counsel for the petitioners has further relied upon **Madhavrao Jiwajirao Sindia Vs. Shambhajirao Chandrojirao Angre and others, 1988 SCC 234**, wherein the Hon'ble Supreme Court has held that even at the initial stage, the High Court can quash the FIR/complaint, if from the perusal of the same, on the basis of uncontroversial allegations, prima facie no offence is made out.

Learned counsel for the petitioners has also relied upon a judgment of the Hon'ble Supreme Court in **M/s Pepsi Foods Ltd. Vs. Special Judicial Magistrate, 1997 (4) RCR (Crl.) 761**, in which it is held as under: -

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the

time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

Learned counsel for the petitioners has thus submitted that from the bare perusal of the complaint (Annexure P-1) and statements of CW1 to CW3 (Annexures P-2 to P-4), no offence is made out against the petitioners and their prosecution in pursuance to the said complaint and summoning order is nothing but misuse of process of law.

Reply by way of affidavit of Deputy Superintendent of Police, Nawanshahr Sub Division, District SBS Nagar has been filed, in which it is stated that there is no role of the police in the present case.

In the reply filed by respondent No.1, it is stated that the complainant is an old man and was physically assaulted by the accused by criminally trespassing in his house, which was in exclusive possession of the complainant. It is further stated that the complainant has no concern with the matrimonial dispute of his son and petitioner No.1, as he has disowned them. It is also stated that the summoning order has rightly been passed, as the complainant and two eyewitnesses have supported the prosecution version.

After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons: -

(a) Much prior to filing of the complaint, petitioner No.1, who is daughter-in-law of the complainant, had obtained an order from the competent Court of law providing her residence under the Protection of Women from

Domestic Violence Act, 2005 and a direction was also issued to the police to provide protection to the petitioners/accused. It is not disputed that in compliance of the order dated 03.08.2010, the police had visited the premises of the complainant and has recorded a DDR dated 24.08.2010 (Annexure P-7/T) and thus, petitioner No.1 was in possession of a room much prior to the alleged incident as per order of the Court.

(b) The allegations in the complaint, on the face of it, are false that the accused persons have forcibly entered into the house of the complainant on 12.11.2010, whereas petitioner No.1, being daughter-in-law of the complainant, in pursuance to the order passed under the Protection of Women from Domestic Violence Act, 2005, granting her protection of residence, was in legal possession of the same and therefore, it cannot be held that the accused persons have committed any criminal trespass.

(c) The complainant has failed to produce on record any MLR to show that the petitioners have caused any injury to him and therefore, in the absence of any MLR, the allegation of causing injury to the complainant, is not proved.

(d) It is not disputed by the complainant that all the accused persons are close relatives of his daughter-in-law/petitioner No.1 Anita Rani, who is wife of his son Kundal Lal. Accused No.1 Rajinder Kumar and accused No.2 Asha Rani are the parents of Anita Rani and accused No.4 Babli is real sister of Anita Rani and therefore, even if they had visited the house of the complainant, where Anita Rani is residing under the order of the Court, it cannot be termed as criminal trespass.

(e) The complainant himself has stated in the complainant that accused Anita Rani is occupying a room till date and even it is so reflected in the

summoning order, therefore, it is for the complainant to get the order vacated from the competent Court and seek possession of the room, in accordance with law, whereas he is trying to take possession by filing the impugned complaint and putting undue pressure on the accused persons especially in view of the fact that it is reflected from the various orders passed by different Courts in the matrimonial proceedings that son of the complainant Kundal Lal has failed to maintain his wife/petitioner No.1 Anita Rani, or provide her residence, or pay the maintenance, which shows that present complaint is nothing but a malafide action on the part of the complainant.

(f) From a bare perusal of the complaint and various undisputed documents, which are orders of the Court, I find that prima facie, no offence is made out against the petitioners/accused persons in view of judgment of the Hon'ble Supreme Court in **M/s Pepsi Foods Ltd.**'s case (supra).

In view of the above, present petition is allowed and the criminal complaint No.281/1/12 dated 15.11.2010 (Annexure P-1) titled as Kishan Kumar Vs. Rajinder Kumar and others under Sections 323, 457, 427, 341, 504, 506, 34 of the Indian Penal Code (for short 'IPC') and the summoning order dated 28.01.2013 (Annexure P-3) as well as all the subsequent proceedings arising therefrom, are hereby quashed.

[**ARVIND SINGH SANGWAN**]
JUDGE

07.08.2018
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No