

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 33991 of 2016 (O&M)

Date of decision : 27.8.2018

...

Muharbi

.....Petitioner

vs.

State of Haryana

.....Respondent

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

Present: Mr. Rajesh Lamba, Advocate
for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

Mr. Abhilaksh Grover, Advocate
for the complainant.

...

H. S. Madaan, J.

Complainant (name withheld), daughter of Sher Mohammad, r/o Village Gundwas, Police Station Hassanpur, District Palwal, had submitted a written complaint addressed to the Protection Officer, District Palwal, seeking taking of legal action against her husband Tahir Hussain, father-in-law Khurshid, mother-in-law Muhari, sisters-in-law Tahira and Saira, brothers-in-law Jubair and Abbas, contending that she was married with Tahir Hussain s/o Khurshid, according to Muslim rites and rituals on 21.5.2009. At that

time, her father had given dowry as per his capacity, including a Wagon-R car and Rs.5 lacs in cash, 4 kgs silver, 15 tolas of gold articles etc. spending Rs. 26 lacs on the marriage. However, husband and in-laws family of the complainant being greedy persons, were not happy with the dowry and they used to taunt the complainant regarding the same, raising demand of more dowry. The complainant could not get those demands conceded, as such she was forced to work for the entire day and was not given sufficient food to eat. All the costly articles were mis-appropriated by the accused. She used to be given beatings even. The accused did not return the dowry articles to the complainant and rather committed criminal breach of trust in that regard. She has levelled allegations of her father-in-law committing wrong acts with her and his doing so on 15.3.2014. According to the complainant, her husband used to say that if the complainant wanted to stay in the matrimonial home, then she would have to maintain physical relations with his father. The details of maltreatment and harassment have been given in that complaint.

Formal FIR was registered. The accused were arrested in this case. After completion of investigation, challan against the accused was prepared and filed in the Court on 30.10.2014. Section 376 IPC was deleted during the investigation for the reason that the Police Station did not have any jurisdiction. The remaining offences for which the challan had been filed, were under Sections 498-A, 406, 506, 323, 494, 316, 120-B IPC. After complying with the provisions under Section 207 Cr.P.C., learned JMFC, Hodal, committed the case to the Court of Sessions. However, as is evident from the interim

order passed, cognizance of offence under Section 376 IPC had not been taken. Learned Additional Sessions Judge, Palwal, also did not take cognizance under Section 193 Cr.P.C. for offence under Section 376 IPC. The petitioner was granted bail vide order dated 20.11.2014 passed by Additional Sessions Judge, Palwal. When arguments on the point of framing of charge were addressed, learned Additional Sessions Judge, did not take cognizance of offence under Section 376 IPC and an order dated 13.1.2015 in that regard was passed, remanding the case to Judicial Magistrate Ist Class, holding that offence under Section 316 IPC was not made out, whereas remaining offences under Sections 498-A, 406, 506, 323, 494, 120 IPC were triable by the Magistrate. Charge against the accused was framed on 12.3.2015 for offences under Sections 498-A, 406, 494, 120-B, 506, 323 IPC. The case was fixed for PWs on 4.5.2015. On 17.3.2016 supplementary challan against co-accused Khurshid and Muhari was filed under Sections 498-A, 406, 494, 120-B, 323 IPC. However, an application was moved by the complainant on 28.9.2015 for issuance of direction to SHO, Police Station, Hussanpur, to submit status report with regard to the challan of remaining accused, status of the FIR and alteration of charge. Learned Judicial Magistrate Ist Class, Hodal, again took cognizance of the offence and vide order dated 10.5.2016 a finding was returned that offence under Section 376 IPC had been committed by accused Khurshid, which is exclusively triable by the Court of Sessions and the case was committed to the Court of Sessions on that very date. Vide order dated 20.5.2016, Additional Sessions Judge, Palwal, recalled the impugned

commitment order, setting aside the same on the ground that one of the accused who is stated to have committed offence under Section 376 IPC was not on bail under that provision and it was duty of the Magistrate to pass an order under Section 209(a) and (b) Cr.P.C. That order has been challenged by the accused, by way of filing the present petition under Section 482 Cr.P.C.

Notice of the petition was given to the respondents, who had put in appearance.

I have heard, learned counsel for the petitioner, learned State counsel, assisted by learned counsel for the complainant and I find that there is no merit in the petition.

In the FIR recorded on the basis of written complaint submitted by the complainant, there are allegations of father-in-law of the complainant committing wrong acts with her, particularly, a date in that regard has been given as 15.3.2014, which are, as a matter of fact, with regard to the rape of complainant at the hands of her father-in-law. After recording of the FIR the matter was investigated. The challan against accused was not filed for offence under Section 376 IPC, for the reason of the Police Station concerned, not having the jurisdiction over the area where such offence was committed. That was obviously done wrongly by the Investigating Agency, since no jurisdictional issue would be there when a part of offence had been committed within the jurisdiction of the Police Station concerned. While saying so, I find support from the observations made by a Co-ordinate Bench of this Court in that regard in authority **Kimiti Lal Jain vs. State 2000 (3) R.C.R. (Criminal) 232**, wherein while dealing

with aspect of territorial jurisdiction, it was observed that when a offence consists of several acts done in different local areas, it can be enquired into and tried by a Court having jurisdiction over any of such local areas. Furthermore, in authority *Kumari Chandrakar and others vs. State of Chhattisgarh 2006 CriLJ 3822*, it was observed by Single Bench of Chhattisgarh High Court that in case of offence under Section 498-A IPC relating to cruelty by husband or his relative, when the offence alleged was completed partly in one local area or partly in another local area, then any Court having jurisdiction to try offences alleged against applicant can exercise jurisdiction in the matter under Section 498-A and 406 IPC.

Admittedly, on filing of challan in the Court of Magistrate having jurisdiction, after complying with the provisions under Section 207 Cr.P.C., the case had been committed to the Court of Sessions. Merely because Additional Sessions Judge, Palwal did not take cognizance of offence under Section 376 IPC, does not mean that the Courts gets debarred from doing it, at later stage. Any omission or lapse which took place during the trial, can certainly be remedied at later stage and even charge can be altered and amended at any stage of trial, keeping in view the material which is available before the Court.

Now here Additional Sessions Judge, remanded the case to the Court of Judicial Magistrate Ist Class, Hodal, who finding that offence under Section 376 IPC had been committed, which is exclusively triable by the Court of Sessions, had committed the case to the Court of Sessions. Section 209 Cr.P.C., which deals with

commitment of case to the Court of Sessions, when offence is triable exclusively by it provides that when in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit to the Court of Sessions. The crucial word is the Magistrate finding that offence is triable exclusively by the Court of Sessions. Once the case was remanded to Judicial Magistrate Ist Class, for the reason that offence under Section 316 IPC was not made out, he during the course of trial found that offence under Section 376 IPC appear to have been committed, was justified in committing the case to the Court of Sessions. Things would have been different if the Court of Sessions had observing that no offence under Section 376 IPC was made out, had remanded the case to Judicial Magistrate Ist Class and the Judicial Magistrate Ist Class, after trying it for some time had again committed the case to the Court of Sessions, for the reason that offence under Section 376 IPC appeared to have been committed. The Additional Sessions Judge is now sending the case to the Judicial Magistrate Ist Class, not for the reason that no offence under Section 376 IPC is disclosed, but for the reason that necessary conditions with regard to bail etc. under Section 209 Cr.P.C. had not been complied with, asking it to do the needful and thereafter send the case again.

Learned counsel for the respondent has referred to following authorities in support of his contention that orders passed by the Courts below are legal and valid and do not call for any interference:-

- 1) *Bal Kishan vs. Local Health Authority, Department of PRA, Government of NCT of Delhi and another* ILR (2002) II Delhi 76;
- 2) *Dharam Pal and others vs. State of Haryana and another* (2014) 3 Supreme Court Cases 306;
- 3) *Sudhir and other vs. State of M.P.* (2001) 2 Supreme Court Cases 688;
- 4) *State of Maharashtra vs. Salman Salim Khan and another* (2004) 1 Supreme Court Cases 525;
- 5) *P. Kartikalakshmi vs. Sri Ganesh and another* (2017) 3 Supreme Court Cases 347; and
- 6) *Subhan Khan vs. State of Rajasthan* 2002 (2) RajCriC 821

In view of the above discussion, there is no merit in the present petition and the same stands dismissed.

27.8.2018
chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No