

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

CRM-M No.4018 of 2018 (O&M)
Date of decision: 5th December, 2018

Bhoomika Saroha

... Petitioner

Versus

Ramesh Malik & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. KDS Hooda, Advocate for the petitioner.

Mr. Arun Khatri, Advocate for respondents No.1 to 4.

Mr. Gaurav Bansal, Asstt. Advocate General, Haryana
for respondent No.5/State.

FATEH DEEP SINGH, J.

The petitioner wife Bhoomika Saroha has come up with this petition under Section 482 Cr.P.C. seeking quashment of judgment and order dated 15.01.2018 (Annexure P4) passed by the Court of learned Additional Sessions Judge, Sonipat whereby the Court below had set aside an order dated 01.07.2017 (Annexure P3) of the Court of learned Judicial Magistrate 1st Class, Sonipat chargesheeting the accused and thereby partly allowing the revision had directed the trial Court to pass fresh order regarding framing of charges against the accused namely Ramesh Malik, Mamta Malik, Rohit Malik and Rahul Malik.

The brief grounds that form part of the this assailment are that an FIR No.84 dated 14.10.2015 under Sections 323, 498A, 406, 506,

34 IPC was registered at Police Station Women Cell, Sonapat (Annexure P1) by the wife. Upon completion of investigations, report under Section 173 Cr.P.C. was filed against all the four accused (Annexure P2). The allegations that fall within the factual compass are demand of dowry, cash and physical and mental abuse at the hands of the accused, of the complainant, and which need not be reiterated here. Learned trial Court vide orders dated 01.07.2017 (Annexure P3) framed charges under Sections 498-A, 406, 34 IPC against all the accused and against accused No.2, 3 and 4 under Sections 323/34 IPC besides charging accused No.2 and 4 for offence under Sections 506/34 IPC. The same was challenged by the accused in revision and accordingly the impugned orders were passed and that is how the parties are before this Court with the aid of Section 482 Cr.P.C.

Upon hearing Mr. KDS Hooda, Advocate for the petitioner; Mr. Arun Khatri, Advocate for respondents No.1 to 4; Mr.Gaurav Bansal, Asstt. Advocate General, Haryana for respondent No.5/State and on perusal of the records.

The petitioner wife Bhoomika Saroha has come up before this Court by invoking the provisions of Section 482 Cr.P.C. which are reproduced below to lay emphasis:-

“482. Saying of inherent powers of High Court:-

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.”

It needs to be put up as a mark of caution in the light of lengthy arguments that have sought to be put forth by learned counsel for the petitioner whereby the evidence is sought to be highlighted and is sought to be questioned by learned counsel for the respondents/accused and is even otherwise a well settled proposition of law that the High Court in exercise of its powers under Section 482 Cr.P.C. would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not, or there is reasonable appreciation of accusation which cannot be sustained. Appreciation of evidence at this juncture would certainly be not the correct approach of this Court in the exercise of its powers under Section 482 Cr.P.C. It needs to be reiterated here that inherent jurisdiction of powers under Section 482 Cr.P.C. has to be exercised sparingly, carefully and with caution where the same is justified.

Reverting back to the present case, it needs to be kept in mind as has been sought to be put forth before this Court in the submissions of the two sides, that the parties entered into this wedlock on 12.02.2012 and that the husband had filed divorce petition on 18.05.2015 and as is

there before this Court, undisputedly the present case has been got registered by the wife on 14.10.2015, almost after five months of the petition, are matters of much relevance. However, the same is subject matter of evidence to be appreciated at the time of trial. Scanning the records of the case, the premise that is sought to be raised on behalf of the petitioner before this Court by resorting to statement under Section 161 Cr.P.C. regarding demand of car is not a matter to be gone into at this juncture and the very legal value of statement under Section 161 Cr.P.C. is not to be considered at this stage and is purely for the purpose of confrontation and contradiction of a witness during the course of cross-examination. The claim that learned revisional Court also ignored the evidence that has come on the record regarding demand of flat at Delhi that it should be transferred from the name of the wife to that of the husband, do not hold much water at this stage and one has to appreciate the impugned judgment on the touchstone of legality and validity. The learned Magistrate while passing order (Annexure P3) in para No.10 has observed as under:-

“10. The present FIR was lodged at the complaint of the complainant. In her complaint, she has levelled allegations against all the accused persons regarding demand of dowry and consequent cruelty upon her. However, from the perusal of the complaint, it is revealed that there is no specific allegation levelled against the accused No.1 with regard to the beatings

allegedly given and hence he cannot be chargesheeted under Section 323 IPC. Further there is no allegation against the accused No.1 and 3 with regard to the allegations of criminal intimidation and no prima-facie charge under Section 506 IPC is made out against them.”

Learned Magistrate in para No.11 further observed as follows:-

“11. Accordingly, all the accused persons charge sheeted for the commission of offences punishable under Sections 498-A and 406 r/w 34 IPC. Accused No.2, 3, and 4 are also charge sheeted for the commission of offences punishable under Sections 323 r/w 34 IPC. Accused No.2 and 4 are charge sheeted for the commission of offences punishable under Sections 506 r/w 34 IPC. The charge was read over and explained to the accused persons who pleaded not guilty and claimed trial.”

Following are the observations of learned Additional Sessions Judge, Sonipat in the impugned order:

“10. However, with regard to other accused, who are mother, father and brother of the accused Rahul a deeper consideration is required. Perusal of the complaint shows that there are general allegations against Ramesh Malik, father-in-law of the complainant. His name has nowhere been specified.

11. So far as accused Rohit, brother-in-law of the complainant is concerned two instances have been quoted against him. One in November, 2012 when he gave beatings to complainant and asked Rahul to kill her and another dated 12.02.2013 when they had gone to village Jati on the death of their relative Ankur, where Rohit, Guddi and Nirmala alias Kalo misbehaved with her.

12. Regarding accused Mamta, mother-in-law of complainant, there are allegations of misbehaviour and beatings in Jammu and Kashmir and at Khera, Delhi, misbehaviour at Jati and taunting for not giving anything and her position to get her son (Rahul) married five times as he is IPS officer.”

XXXX

XXXX

XXXX

XXXX

XXXX

XXXX

16. The record reveals that there is no allegation of the complainant in her complaint regarding specific entrustment of any dowry articles to the accused and then her demand for return of her dowry articles and refusal by the accused to return. Therefore, no offence under Section 406 of IPC is made out. Regarding Section 506 IPC it is relevant to note that there is no direct threat to the complainant either by Rohit or by Ramesh Malik. Allegations of beatings by accused Mamta and Rohit are in routine, vague and general in nature.”

Discussing the various case laws, it has been concluded as follows:-

“20. Taking into consideration the facts and circumstances discussed above, I am of the view that the learned trial Court has not properly considered the law, which resulted into illegality and infirmity in the impugned order. Therefore, the present appeal is hereby partly allowed. Trial Court is directed to pass fresh order with regard to the charge against the accused persons namely Ramesh Malik, Mamta Malik and Rohit Malik and make consequent amendments in charge against Rahul Malik, if any keeping in view the observations made by this Court... ..”

The arguments and counter-arguments that have been made before this Court over the legality and validity, have been the rallying point in the lengthy arguments of the two sides. However, the Hon’ble Supreme Court in **‘R.S. Nayak vs. A.R. Antulay and another’ 1986 AIR (SC) 2045** considered the very ambit of power of the Court in framing a charge/discharging a person and have observed as follows:-

“43. As pointed out by the Constitution Bench in the judgment to which reference has been made, the relevant sections of the Code of Criminal Procedure ('Code' for short) for the trial of a case of this type are sections 244, 245 and 246. Section 245(1) provides:

"If upon taking of the evidence referred to in Section 244, the Magistrate considers, for reasons to be recovered, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him."

While Section 246(1), on the other hand, requires:

"If when such evidence has been taken or at any previous stage of the case the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter which such Magistrate is competent to try and which in his opinion should be adequately punished by him, he shall frame in writing a charge against the accused."

The Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on police report are dealt with in Section 245. The three sections contain some what different provisions in regard to discharge of the accused. Under Section 227, the trial Judge is required to discharge the accused if he 'considers that there is not sufficient ground for proceeding against the accused.' Obligation to discharge the accused under Section 239 arises when "the Magistrate considers the charge against the accused to be groundless." The power to

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..." It is a fact that Sections 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether 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 the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. 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. Notwithstanding this 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 has to be applied. 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."

Furthermore, in '**Niranjan Singh Karam Singh Punjabi, Advocate vs. Jitendra Bhimraj Bijja and others**' 1991(1) RCR(Criminal) 89 Hon'ble the Supreme Court placed reliance on '**Supdt. & Remembrancer of Legal Affairs, West Bengal vs. Anil**

Kumar Bhunja & others’ 1979(4) SCC 274, wherein it was observed as under:

“The standard of test, proof and judgment which is to be applied finally before finding, the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion rounded upon materials before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence.”

Thus, it was held by their Lordships that the Court is required to evaluate the material and documents on record to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence.

In another view of the Hon’ble Apex Court in **‘State of Bihar vs. Ramesh Singh’ 1977 AIR (SC) 2018** it was held that if a Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so, as enjoined by Section 227 Cr.P.C. If on the other hand, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence which is exclusively triable by a

Court, he shall frame in writing charge against the accused and therefore all these ratios enunciate “test of prima facie case”.

Going a step further, the ambit of revisional jurisdiction of a Court is well settled and the provisions of Section 397 Cr.P.C. empower Sessions Judge to call for and examine the record of any proceeding before any subordinate criminal Court situated within its jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order and as to the regularity of any proceedings of any such subordinate Court; and the most important observation by their Lordships of Hon’ble the Supreme Court has come about in **‘Rajendra Rajoriya vs. Jagat Narain Thapak and another’ 2018(5) RCR(Criminal) 103**, which is reproduced below to lay emphasis:-

“On bare perusal of this provision, it is clear that the impugned order cannot be passed under Section 398 of the Code. The word ‘may direct’ has been used by the legislation in this provision. It gives wide discretion to the Court to order further enquiry. Sessions Court has no power to take cognizance of the offence, assess the offence and reach its own conclusion whether there is ground for proceeding with complaint or not and further to direct a Magistrate with regard to registration of a complaint on finding a prima facie case.”

Reverting back to the instant case, precisely in the impugned order, the learned revisional Court has simply holding that the learned trial Court has not properly considered the law which resulted in illegality and infirmity of the order, has partially allowed the revision (appeal-sic.) and directed the trial Court to pass a fresh order with regard to the charge against the accused persons and therefore, has rightly did not exercise any power to take cognizance of the offence and did not observe anything which has its implication on the case of the parties on merits before it.

The learned counsel for the petitioner could in no manner convince this Court how there has been wrong assumption of jurisdiction by the revisional Court or there has been any illegality or impropriety in the order or the findings so recorded by it which could necessitate intervention by this Court. By the impugned order, no prejudice is likely to be caused to either of the parties nor it has in any manner resulted in miscarriage of justice. Thus, the same does not necessitates exercise of inherent jurisdiction by this Court. The petition being hopelessly without any merit, stands dismissed.

(FATEH DEEP SINGH)
JUDGE

December 5, 2018

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No