

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

CRM-M No.46484 of 2016

Date of decision: 4th December, 2018

Jugal Kishore Gupta & another

... Petitioners

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Preetinder S. Ahluwalia, Advocate for the petitioners.

Mr. Dhruv Dayal, Sr. Dy. Advocate General, Punjab
for the respondent/State.

Mr. G.S. Verma, Advocate for the complainant.

FATEH DEEP SINGH, J.

The short point that has cropped up in this petition filed under Section 482 Cr.P.C. by petitioners Jugal Kishore Gupta and his wife Saroj Rani falls within the narrow compass whether, where a death occurs after more than seven years of marriage, at the own parental home of the wife and there is no substantial evidence of the death being otherwise than under normal circumstances; would it be proper to allow prosecution of the petitioners?

Heard Mr. Preetinder Singh Ahluwalia, Advocate for the petitioners; Mr. Dhruv Dayal, Sr. Deputy Advocate General, Punjab representing the respondent/State; Mr. G.S. Verma, Advocate on behalf of the complainant and perused the records of the case.

As is there and not displaced, a marriage had taken place between Yogita Kapila (now deceased), daughter of the present complainant Rajinder Pal Kapila, and Nirposh Mittal more than eight years prior to the date of registration of the present case on 31.07.2016. The petitioners are the aged parents of the husband and the entire family is living in Siliguri (West Bengal). After the marriage, the couple was bestowed with a male child who at the time of this FIR was aged around seven years and the wife along with the kid had been residing at the house of her parents in Ludhiana (Punjab), as a matrimonial case including the case regarding custody of the child was pending between them since 07.07.2015.

The complainant claims that neither the husband nor his parents ever bothered to look after his daughter and their grand-child, on account of which the deceased used to remain upset. It was on 23.07.2016 as per the allegations of the complainant, his daughter fed-up with this harassment of the husband and his parents, consumed poison and died and that is how the petitioners were being prosecuted.

Appreciating the arguments of the two sides, what is reflected from the records of the case, to the specific query of the Court, it could not be displaced that death of the wife has occurred after seven years of the marriage while she was residing at the house of her parents while the

petitioners along with the husband were living in Siliguri (West Bengal), hundreds of miles away. No doubt, the couple was at loggerheads and a matrimonial dispute had ensued, but neither the learned State counsel nor learned counsel for the complainant could bring to the notice of the Court any semblance of evidence that it was an unnatural death. The report of the Forensic Science Laboratory does not detect any poisonous substance, nor as is claimed by the learned counsel for the complainant in his submissions, there is any mark of external or internal injury on the dead-body which could raise a suspicion over the death being unnatural. How or by what means one could gather that it was an unnatural death for which the accused can be hauled up. It is nobody's case as to any attribution to the petitioners in this death. Merely because the deceased was perturbed over her relationship with the husband, can by no means be stretched to the imagination for throwing the burden on the accused being responsible for this untimely passing away of the deceased. The feeble attempt of the respondent side that prior to this death, the husband had called upon the wife, but nothing substantial to this effect is forthcoming on the records.

In spite of the specific queries having been posed by this Court to the two sides, nothing tangible could be pointed out which could instill even a spec of suspicion against the petitioners of being

responsible for this death. Thus, by this all, prosecution of the petitioners would be clearly and clearly abuse of the process of the Court and would certainly tantamount to travesty of justice. This Court seeks support from **‘State of Haryana and others v. Ch.Bhajan Lal and others’ 1992 AIR SC 604**, whereby Hon’ble the Supreme Court has laid down the following eventualities:-

- (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
- (2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable

offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Thus, from it all, one can clearly and clearly conclude that the allegations are manifest with mala fide and vengeance on account of matrimonial litigation between the husband and the wife to achieve a

sinister design for a motivated cause and therefore, there is urgent necessity to put an end to this prosecution, as it is clear and clear misuse of the process of the Court. In the light of what has been detailed and discussed above, it is just and fair for this Court to exercise its inherent jurisdiction under Section 482 Cr.P.C. and therefore, FIR No.106 dated 31.07.2016 registered under Sections 306/34 IPC pertaining to Police Station Doraba, District Ludhiana as well as all consequential proceedings arising out of the said FIR in respect of the present petitioners are hereby quashed.

The petition stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

December 4, 2018

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No