

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

Crl. Misc. M-47438 of 2017 (O&M)

Date of Decision: January 10, 2018

Surinder Kaur

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. S.S. Swaitch, Advocate
for the petitioner.

Mr. A.S. Sandhu, Addl. AG Punjab.

JAISHREE THAKUR, J. (Oral)

This is a petition that has been filed under Section 482 Cr.P.C. for quashing of the impugned order dated 22.11.2017 (Annexure P-5) passed by learned Judicial Magistrate Ist Class, Fatehgarh Sahib (trial court) in case titled as “**State vs. Surinder Kaur etc.**” arising from FIR No.18 dated 24.04.2015, under Sections 406, 498-A of Indian Penal Code, registered at Police Station Mulepur, District Fatehgarh Sahib, pending before the learned trial court, whereby the learned trial court has dismissed the application filed by the petitioner/accused under Section 311 Cr.P.C. for recalling PW1-Nachhattar Singh, PW2-Amanpreet Kaur, PW3-Harbaksh Kaur and PW6-Sukhwinder Singh, for further cross-examination.

In brief, the facts of the case are that the aforesaid FIR came to

be registered on the application of complainant-Amanpreet Kaur, in which it was alleged that marriage of complainant was solemnized with Ravinder Singh, son of the present petitioner on 31.03.2013 at Village Gill, District Ludhiana. However, this wedlock could not survive the test of time, which resulted in registration of the instant FIR at the hands of Amanpreet Kaur i.e. daughter-in-law of the present petitioner, on the ground of cruelty in pursuance of the demand of dowry and criminal breach of trust. After registration of the FIR, challan was presented in court and charges framed on 21.11.2016 and thereafter, trial had commenced and statements of the prosecution witnesses were recorded. When the case was at the stage of defence evidence of the accused/petitioner, an application came to be filed before the trial court under Section 311 Cr.P.C. for recalling PW1-Nachhattar Singh, PW2-Amanpreet Kaur, PW3-Harbaksh Kaur and PW6-Sukhwinder Singh, for further cross-examination, which application came to be dismissed by an order dated 22.11.2017. Being not satisfied, the said order has been impugned through the instant petition.

Learned counsel for the petitioner argues that the marriage between son of the petitioner and the complainant was a simple marriage, without giving and taking of any dowry and the petitioner-accused herein never harassed the complainant for dowry or otherwise. It is submitted that some material points regarding social relations, financial matters, relating to alleged demand of dowry and the allegations of the alleged harassment to the complainant are required to be clarified, for which further cross-examination of aforesaid witnesses is required. It is argued that false, forged and fabricated bills of gold smith have been produced by the

complainant, regarding which clarifications are to be sought from the said witnesses. It is also contended that further cross-examination of the said witnesses would reveal that the petitioner-accused is innocent and has been falsely implicated in the instant case, which prosecution has been launched without jurisdiction. It is argued that the trial court while passing the impugned order, has not taken into consideration all these facts, therefore, the impugned order is liable to be set aside.

I have heard learned counsel for the petitioner, apart from perusing the record of the case.

The trial court, while dismissing the application preferred by the petitioner-accused has observed as under:-

“..... Firstly, perusal of the record revealed, as was also stated by the prosecution in its reply, that evidence of PW2 Nachattar Singh i.e. both his examination-in-chief and cross-examination in part was recorded on 16.01.2017 whereafter further cross-examination was deferred, which was concluded on 15.03.2017. Next, PW2 Amanpreet Kaur was also examined in chief and cross examined in totality on 06.07.2017. Similarly, evidence of PW3 Harbaksh Kaur was also recorded in entirety on a single day i.e. 23.08.2017, as well as evidence of PW6 Sukhwinder Singh on 21.09.2017. Thus, it appears from the record and the manner of recording of evidence of these witnesses, including and especially their cross-examination, that it was not a case where certain facts propounded by the applicant/accused in the present application had come to light and her knowledge at a later stage. Her conduct in being ready with cross-

examination for the witnesses and cross-examining them on the same day they were examined in chief reflected nothing but her complete awareness about all the aspects of the case and that she was all set and prepared for her case with all the facts which were to assist her firmly in her knowledge, a reflection of which was also visible in lengthy cross-examination of the witnesses, who were not at all let off lightly. Furthermore, given the fact that the witnesses were cross-examined by her counsel on the very day they were examined in chief rather meant that he too was fully aware about them i.e. the applicant/accused had disclosed them to him. Their detailed and exhaustive cross-examination conducted by counsel for the applicant/accused made it abundantly clear that he too had full knowledge of all the aspects of the case and as such armed with it had cross-examined the witnesses. Once the applicant/accused and her counsel both were prepared to the fullest and armed to their teeth with all the facts which were to form the vanguard of her defence and in spirit thereof had concluded cross-examination of the witnesses, it was quite improbable to believe at this stage that certain facts were not known to either of them. As such, plea of the applicant/accused about acquiring knowledge of these facts at a later stage was untenable and thus could not be made a ground to allow the present application.

.....Summarizing, merely because a new counsel was engaged at a later stage was no ground to allow the application. As noted above, the witnesses were cross examined at length by previous counsel for the applicant/accused and no stone was left unturned. Also, both the applicant/accused and her counsel were in full knowledge of questions sought to be posed to the

witnesses now but had not disclosed even a single one to the court. They had every opportunity to put them to the witnesses and they could have and should have done so at that stage for nothing prevented them from doing so while they were under oath. In such circumstances, merely stating, without any corroborating material, that this was previously omitted but now warranted on account of change of counsel failed to find favour with me.

On an ancillary note, the application was filed at a somewhat belated stage. Cross-examination of PW1 Nachattar Singh was concluded on 15.03.2017, of PW2 Amanpreet Kaur on 06.07.2017, of PW3 Harbaksh Kaur on 23.08.2017 and of PW6 Sukhwinder Singh on 21.09.2017 whereafter prosecution evidence was closed on 21.09.2017 itself. The present application was preferred only on 30.10.2017 i.e. after a gap of about 1 month from the date of closure of prosecution evidence and about 2 to 7 months from conclusion of cross-examination of various witnesses. In the interregnum, no remedy akin to the present one was availed of by the applicant/accused. Law comes to aid the vigilant. Filing of the present applications showed dissatisfaction of the applicant/accused towards cross-examination of the witnesses. Had the applicant/accused been vigilant enough, she would have filed the present application at the earliest possible juncture rather than waiting for sand in the hourglass to run out. Having omitted to do so for about 7 months now, and that too inexplicably, this inordinate delay was another factor operating against her.”

A bare perusal of the impugned order dated 22.11.2017 passed

by the trial court goes on to show that all the arguments, which are being raised before this court, have been duly dealt with by the trial court. Further, it is made out that the instant FIR has arisen out of the matrimonial dispute, on account of harassing the complainant for bringing inadequate dowry and the petitioner herein is the mother-in-law of the complainant and that the petitioner-accused being well aware of the nature of the dispute had sufficient time to put relevant question to the witnesses. No reasonable explanation is forthcoming as to why proper question were not put forth in cross-examination. The trial court in the impugned order has observed that the witnesses, which are sought to be recalled for further cross-examination, had been cross-examined at length by the counsel for the petitioner/accused and the said application under Section 311 Cr.P.C. has been preferred at a belated stage, after the conclusion of evidence of the prosecution. Moreover, a perusal of the impugned order goes on to show that the case has now been fixed before the trial court for defence evidence, if any and for arguments.

In view of the foregoing discussion, this court does not find any reason to interfere with the impugned order. Accordingly, the petition in hand stands dismissed, being devoid of any merit.

January 10, 2018
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No