

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

**CRM-M No.7535 of 2015
Decided on: 09.02.2018**

Jagan Nath (since deceased) represented through his LRs

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. R.S. Mamli, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing the order dated 10.12.2013 passed by the trial Court (Annexure P2) dismissing the criminal complaint No.87-I of 2011 filed by the petitioner under Sections 420, 379, 392, 365 and 511 of the Indian Penal Code (in short 'IPC') as well as the order dated 20.11.2014 (Annexure P4) passed by the Additional Sessions Judge, Fatehabad, dismissing the revision.

Brief facts of the case are that the petitioner/complainant – Jagan Nath has filed a criminal complaint before the trial Court against respondents No.2 to 4 with the allegation that marriage of the son of the petitioner namely Naresh Kumar was solemnized with respondent No.4 – Savita Rani. On the very next date of the marriage, he found his son to be in a depressed state and on enquiry, it was disclosed that respondent No.4 – Savita Rani is not a normal female and her secondary sexual genital is not developed and, therefore, the marriage between them was never consummated. The respondent No.4 was

medically examined and her ultrasonography was done at Medical College, Agroha on 26.02.2012 and it was found that uterus and ovaries of respondent No.4 is very small and there is absence of menstrual cycle. It is further stated in the complaint that respondent No.4 – Savita Rani left for her parental home and then served a legal notice on 18.03.2010 to the son of the petitioner. Thereafter, the son of the petitioner filed a petition under Section 12(1) of the Hindu Marriage Act for declaring the marriage as nullity which is pending before the District Courts at Fatehabad. The respondent No.4 got an FIR No.89 dated 25.03.2012 registered against the petitioner and his family at Police Station Tilak Nagar (West) Delhi on account of demand of dowry. It is further alleged that in pursuance to the FIR, on 03.11.2011 Delhi Police arrived at the house of the complainant and took away the complainant, his son and his two daughters-in-law namely Meenakshi and Kanchan. The accused persons have snatched some money and gold jewellery and thus, have committed the offence punishable under Sections 420, 379, 392, 365 and 511 IPC.

The complainant in his preliminary evidence examined himself as CW1 and deposed on the line of the allegations made in the complaint. He also tendered legal notice dated 18.03.2010 as Ex.P1, copy of reply dated 21.04.2010 as Ex.P2 and the notice issued by the Delhi Police under Section 160 Cr.P.C. as Ex.P3. The complainant further examined Amrik Singh as CW2 who stated that the complainant has purchased gold ornaments from him as per bill Ex.CW2/A. CW3 – Dr. R.K. Bishnoi, Professor, Department of Radiology, Medical College Agroha proved the ultrasonography report of Sita Devi wife of Naresh

as Ex.CW3/A.

Thereafter, the trial Court called for a report under Section 202 Cr.P.C. from the police and the report was submitted on 29.10.2013. The trial Court, thereafter, vide order dated 10.12.2013 refused to issue process against the accused persons for the following reasons:-

“5. After hearing the contentions advanced by learned counsel for the complainant, perusing the complete evidence of preliminary stage, in juxtaposition of the report filed by the local police under section 202 of Cr.P.C., I reach a conclusion that it is not a fit case to issue process against the accused. The reasons for my opinion are as under:-

(i) The main grievance of the complainant appears to be abnormality of the accused no.3, allegedly connected with sexual capability as a female. The complainant alleges that she was found to be an eunuch instead of a female, as a result of which his son Naresh failed to enjoy the matrimonial life. In this regard, the complainant has got examined Dr. R.K.Bishnoi, Professor, Medical College, Agroha as CW3, who has proved the ultrasonography report as Ex.CW3/A. But this report does not reflect anything to conclude that the said person examined by her on dt. 26.02.2010 was an eunuch. Though, there was observation recorded regarding smaller size of the uterus and both ovaries, but it is not sufficient to conclude the person examined was an eunuch, nor such opinion has been given by CW3 Dr. R.K.Bishnoi. As such, without the opinion of an expert, the complainant has failed to prove that the accused no.3 was a female so abnormal as incapable of performing sexual act. Besides that, CW3 has stated that the said person was Sita Devi wife of Naresh,

whereas the allegations have been advanced against Savita Rani daughter of Rajender and a connectivity between the two identities has not been established by the complainant and as such, the preliminary evidence is fatally discrepant on a major issue involved in the present lis.

(ii) The complainant has then alleged that on dt. 03.04.2011, the accused tried to abduct his son Naresh Kumar and two daughters-in-law, namely Meenakshi and Kanchan, whereby they were successful to abduct Naresh Kumar, with the help of police of Police Station Tilak Nagar (West), Delhi. But it is admitted on the part of the complainant that an FIR no. 89 dt. 25.03.2011 was lying registered with the said police station. In pursuance of the same, any illegal act on the part of police, cannot be made an issue to be challenged vide the present proceedings. Besides that, none of the two daughters-in-law, namely Meenakshi and Kanchan has entered the witness-box to support the allegations of the complainant, what to talk of getting examined an independent witness to that effect. In this scenario, the allegations of the complainant appear false and frivolous.

(iii) Last, but not the least, the conclusion derived by the local police vide its report under section 202 of Cr.P.C. has also negated the allegations of complainant. No evidence was led by the complainant after filing of the said report, to allege anything against the proceedings conducted by the police under section 202 of Cr.P.C. As such, this Court has nothing to deviate from the conclusion derived by the local police. At the cost of repetition, the evidence of the complainant has been so inherently deficient and materially discrepant, as not to make a case for issuance of process against the accused.

5. In view of whole of my above discussion, the

complaint in hand is found devoid of merits. The same is dismissed.”

Thereafter, the petitioner filed a revision before the Additional Sessions Judge and the Additional Sessions Judge, vide its order dated 20.11.2014 after issuing notice to the respondents dismissed the revision petition. Hence, the present petition has been filed challenging the aforesaid orders passed by the Courts below.

Counsel for the petitioner has submitted that from the preliminary evidence led by the petitioner, it has come on record that the respondents have committed the offence punishable under Sections 420, 379, 392, 365 and 511 IPC, as it is proved that respondent No.3 has not developed the secondary sexual characters of being a female and she is incapable of performing sexual intercourse. It is further stated that in fact the respondent No.3 is not a female and is rather an Eunuch and, therefore, by concealing the status of respondent No.3, the accused persons have cheated the complainant and his son.

Counsel for the petitioner has further submitted that as per the ultrasonography report Ex.CW3/A proved by CW3 – Dr. R.K. Bishnoi, it is observed in the report that the uterus and both ovaries were of smaller size. It is also stated that while the Delhi Police took the petitioner, his son and his family members in custody, the accused persons have taken away some cash and gold articles.

After hearing counsel for the petitioner, I find no merit in the present petition for the following reasons:-

1. Firstly, the perusal of the report Ex.CW3/A nowhere suggest that by mere reporting of the smaller size of the uterus and both ovaries, it can be concluded that the

lady who was examined was incapable of performing sexual intercourse. In fact, no specific opinion has been given by CW3 – Dr. R.K. Bishnoi and rather this witness has not examined Savita Rani himself on 26.02.2010. No expert opinion from any Gynecologist was obtained in this regard and, therefore, both the Courts below have rightly concluded that there is no evidence on record to prove that in fact respondent No.3 is not a female and is an Eunuch as stated by the complainant.

2. It may also be noticed that as per the statement of CW3, the report Ex.CW3/A, relates to a lady named Sita Devi wife of Naresh whereas as per the array of respondents in the complaint and as per the statement of CW1, wife of Naresh Kumar is Savita Rani daughter of Rajinder and, therefore, the Courts below have rightly held that even the identity of the lady who was examined for ultrasonography as per the report Ex.CW3/A is not proved and the evidence of the prosecution in this regard is shaky.

3. Admittedly, an FIR No.89 dated 25.05.2011 was registered in Police Station Tilak Nagar (West) Delhi at the instance of Savita Rani and police had arrested the petitioner, his son and his family members and, therefore, the allegation that while arresting them the police or the complainant party have taken the cash and gold articles is not at all proved from the statement of the complainant.

4. Even, as per the version of the complainant, when Delhi Police came to arrest him, the police has taken her two other daughters-in-law namely Meenakshi and Kanchan along with the complainant and his son. However, none of these two ladies entered into the witness-box to support the allegation of the complainant and no other independent witness was examined.

5. Even the police report under Section 202

Cr.P.C. based, on verification, found the allegation of the complainant to be false. The complainant has failed to prove that he has taken any action subsequent to the report submitted by the police under Section 202 Cr.P.C. and therefore, the said report has attained finality.

In view of the above, I find that both the Courts below have rightly held that the complainant has failed to lead any cogent and reliable evidence against the accused persons to make out a case for issuance of process against them. Therefore, finding no illegality or irregularity in the orders passed by the Courts below, the present petition is dismissed.

09.02.2018

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**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No