

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

Criminal Revision No. 1274 of 2015 (O&M)

Date of decision: 19.03.2018

Vijay Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vaibhav Sharma, Advocate,
for the petitioner.

Mr. P.P. Chahar, DAG, Haryana.

Mr. S.K. Tripathi, Advocate,
for the complainant.

JAISHREE THAKUR, J.

1. The present revision petition has been preferred against the order dated 12.03.2015 passed by learned Sessions Judge, Rewari whereby the petitioner has been summoned under Sections 166, 306 & 119 IPC on an application moved under Section 319 Cr.P.C.

2. In brief, the facts as alleged are that on 08.05.2014 Panna Lal son of Karan Singh, complainant visited the petitioner. At that time, he told the petitioner that there was a person harassing his daughter Sonu by making phone calls on her mobile No. 9729081439. It was stated that threatening phone calls were being made from Mobile No. 9810564436. The petitioner thereafter, made a phone call on the said number and was informed that he had never made calls nor had he threatened anyone. On 12.05.2014, the petitioner was again informed by Panna Lal complainant, that his daughter was being harassed by the said person again and again, on which the

petitioner advised the complainant that he should make a formal written complaint in this regard and told the petitioner, he was in Chandigarh and would return later on. The complainant moved a formal complaint to the Duty Officer, HC Rajesh Kumar by getting FIR No. 175 dated 12.05.2014 registered under Section 506 IPC, at Police Station Model Town Rewari, District Rewari against the person, who was threatening the daughter of the complainant. On 13.05.2014, daughter of the complainant committed suicide by taking some poisonous substance, on which FIR No. 179 dated 13.05.2014 under Section 306 IPC at Police Station Model Town Rewari, was registered. In the said FIR, it was stated that phone calls were being made from mobile phones on the mobile phone of his daughter, due to which she has committed suicide. After investigation of the matter, it was found that alleged calls were being made by one Parmanand son of Sham Lal, who was resident of village Kota Khandewala, Police Station Tauru, District Mewat. He was arrested and challaned in the said FIR under Section 306 IPC. The post mortem report showed that the deceased had consumed the Aluminium Phosphide. During trial, several witnesses were examined and an application was moved under Section 319 Cr.P.C. to summon the present petitioner as an additional accused, which application was allowed by order dated 12.03.2015 and the petitioner was ordered to be summoned under Sections 166 and 306 read with Section 119 IPC. Aggrieved against the said order, the instant criminal revision has been filed.

3. Mr. Vaibhav Sharma, learned counsel appearing on behalf of the petitioner contends that the learned Court below has failed to appreciate the fact that no offence is made out against the petitioner herein and summoning under Section 319 Cr.P.C. is wholly unsustainable. It is argued that

Parmanand, the main accused stands acquitted by Addl. Sessions Judge, Rewari on 03.05.2016. It is further submitted that the petitioner was not the Officer Incharge of the Police Station as on that date and neither is he the person who would have recorded FIR and, therefore, it could not be said that there is dereliction of duty and delay in recording of the FIR as alleged, the delay which resulted in the complainant's daughter taking her own life. It is also argued that without taking sanction under Section 197 Cr.P.C. proceedings against the petitioner are not sustainable. In this regard, reliance has been placed upon catena of judgments reported as *ASI Balbir Singh vs. State of Punjab, 1993(1) R.C.R. (Criminal) 315*, *Balwinder Singh vs. State of Punjab, 2002(3) R.C.R. (Criminal) 30*, and *Sita Ram Khoja vs. State of Rajasthan 2015(8) R.C.R. (Criminal) 768*. Learned counsel for the petitioner also raised several other pleas to argue that the impugned order is not sustainable.

4. Per contra, Mr. S.K. Tripathi, learned counsel appearing on behalf of the complainant submits that there is no infirmity in the orders so passed. In fact, the petitioner has rightly been summoned under Section 319 Cr.P.C. in FIR No. 179 dated under Section 306 IPC. It is submitted that the petitioner had been contacted by the complainant informing him about the harassment being caused to his daughter and in case the petitioner herein had registered the FIR at an appropriate time and investigated the matter, his daughter would not have been facing harassment by unwanted phone calls that compelled to take her own life. It is also argued that the petitioner knew the person harassing his daughter and had in fact contacted him.

5. Mr. P.P. Chahar, learned DAG, Haryana informs this Court that there is non-compliance of Section 197 Cr.P.C. insofar as no sanction has been

obtained to prosecute the petitioner.

6. I have heard the learned counsel for the parties and with their assistance perused the pleadings as well.

7. The petitioner has raised several arguable points. Foremost the question whether the petitioner can be summoned to face trial without seeking sanction under Section 197 Cr.P.C. is to be dealt with.

8. By the impugned order, the Additional Session Judge had allowed the application for summoning the petitioner as an additional accused under an application filed under section 319 Cr.P.C. while holding that sanction under Section 197 Cr.P.C. would not be required as his appointing authority had given the needful.

9. The Haryana Government notification dated 25.7.1980 No. 41/20/79-HGI, reads as under :-

“In the exercise of the power conferred by sub-section (3) of section 197 of the Code of Criminal Procedure 1973 (Central Act 2 of 1974) the Governor of Haryana hereby directs that the provisions of sub-section (2) of the said section shall apply to serving police officials of all ranks of the Haryana Police force charged with the maintenance of public order.”

Section 197 Cr.P.C. reads as under :-

“197. Prosecution of Judges and public servants –

(1) *When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-*

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub- section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub- section will apply as if for the expression" Central Government" occurring therein, the expression" State Government" were substituted.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

10. Thus, on a plain reading of the aforesaid notification, it is abundantly clear that the State Government in exercise of powers conferred by sub-section (3) of Section 197 of the Code of Criminal Procedure 1973 has issued a notification directing that provisions of sub-section (2) of the said

section shall apply to serving police officials. In another words, before launching any prosecution against any person who is a public servant and discharging his duties, sanction has to be given by the State Government and not by his appointing authority. In **ASI Balbir Singh's** case (supra) it has been held as under :-

“10. It is thus apparent that the State Government in exercise of powers under sub-section (3) of the Code of Section 197 of the Code of Criminal Procedure has issued this notification directing that the provisions of sub-section (2) ibid shall apply to serving police officials. In other words, before launching prosecution under Section 197 of the Code of Criminal Procedure against serving police officials, the sanction of the State Government (and not merely of the Superintendent of Police as in the instant case) was required with effect from 5.5.1983, viz., the date of this notification. The learned counsel for the petitioners, therefore argued that the prosecution against the petitioners is liable to be quashed for want of a valid sanction to be accorded by the respondent No. 1, in accordance with the above referred Notification. The learned Assistant Advocate General was unable to show that any valid sanction had been accorded by the State Government for the prosecution of the petitioners under Section 197(2) of the Code of Criminal Procedure having regard to the Notification of the Punjab Government dated 5.5.1983 referred to above. The contention of the learned Counsel for the petitioners appears to be well founded that the sanction for the prosecution of the petitioners in this case should have been accorded by the State Government and not by respondent No.2, even though the latter is their appointing authority. The final report under Section 173 of the Code of Criminal Procedure

filed against the petitioners is, therefore, also liable to be quashed because of the non-compliance of the provisions of Section 197 (2) of the Code of Criminal Procedure. However, the State Government is not precluded from launching prosecution against the petitioners afresh after valid sanction has been accorded for the prosecution of the petitioners under Section 197 (2) of the Code of Criminal Procedure keeping in view the Notification issued by the State Government on 5.5.1983.”

11. In ***K. Kalimuthu Vs. State (2005) 4 SCC 512*** the Supreme Court in no uncertain terms has held that *“the protection given under section 197 Cr.P.C. is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause and if sanction is granted to confer on the government if they choose to exercise it complete control of the prosecution”*.

12. Admittedly, no sanction was obtained to prosecute the petitioner. In the impugned order, the objection raised by the petitioner to proceedings initiated against him on the ground that no sanction had been obtained was dismissed by holding that an ASI can be removed by the IG of police and, therefore, the protection of Section 197 Cr.P.C. is not available to him. This reasoning is not sustainable and contrary to the notification dated 25.7.1980 No. 41/20/79-HGI, noticed above. Therefore, it is held that the summoning order without prior sanction under section 197 Cr.P.C is unsustainable.

13. Even otherwise the main accused Parmanand stands acquitted by the trial court by coming to the conclusion, which reads as under :-

“Even believing the said call details to be genuine by accepting the alternative argument of learned defence counsel, even then, the said call details will smash the prosecution case. Upon the careful scrutiny of call details Ex. PG/2 of the mobile phone of the deceased from 01.04.2014 to 30.04.2014, it is evident that on 28.04.2014, as many as six phone calls were exchanged between the deceased and the accused, out of which five calls were given by the accused, whereas one call was given by the deceased to accused. The said calls were after 8.30 p.m. Onwards and one of the calls lasted for 443 seconds. Not only this, on 29.04.2014, as many as 13 phone calls were exchanged between the accused and the deceased and one of such calls took place at 8.16 p.m., which lasted for 503 seconds (eight minutes and twenty three seconds) and it was an incoming call on the mobile of the deceased from the mobile of accused. Not only this, on 30.04.2014, as many as four times, the deceased and the accused talked to each other. From the said call details, it is not a case whereby the deceased was the recipient of the entire calls, rather at times, she also rang up the accused. Had the accused being a jilted caller, having one sided affair, having crush for the deceased, then under the normal course of events, the chain reaction from the deceased would have been not to receive calls or to snub the caller. It is highly unacceptable that she was being harassed by the accused from his mobile in as much as some talks have been initiated at her behest. The longevity of the calls point out towards the friendly relationship between them, which negatives the story of the prosecution that some caller was threatening the deceased with dire

consequences. There is absolutely no evidence of anyone seeing the deceased in the company of accused or for that matter the accused at any point of time teasing or nagging the deceased publically. The police investigating agency did not make any serious effort to record the statements of relevant witnesses like teachers, security persons etc. of the college of the deceased to know her mental state. Not only this no amount of effort was spared to record the statements of the owners of those mobile numbers with the help of which, as per the prosecution case the accused was harassing the deceased.”

14. While acquitting Paramanand the Additional Sessions, Judge further held that there was falsity in the statement of the complainant since there were number of phone calls made to the mobile number of Parmanand from the mobile number of the complainant. The Additional Sessions, Judge further held that the sequence of events established that the accused and the deceased were on the friendly terms which relationship was probably not liking of the complainant that had an adverse effect on the mental health of the deceased and led to her taking her own life. In this eventuality allowing prosecution would be an abuse of the process of law.

15. Therefore, without going into all the issues as raised by the counsel for the petitioner, this court is of the opinion that since sanction under section 197 Cr.P.C was not obtained, which is a *sine qua non* to prosecuting a public servant, the summoning order is not as sustainable.

Petition is allowed.

19.03.2018

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.