

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Revision No. 1139 of 2016 (O&M)
Date of Decision: November 26, 2018

Natasha Devgan

.....Petitioner

versus

Yash Paul and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Ms. Kulwant Kaur, Advocate
for the petitioner

Sudhir Mittal, J.

This petition has been filed by the grand daughter of one Prem Nath, who was allegedly a rich industrialist belonging to Ludhiana. His wife was Nirmala Devi, from whom he had two sons namely Yash Paul and Vikram Kumar and one daughter namely Kiran Bala. Said Prem Nath had also entered into a relationship in the nature of a matrimonial alliance with the mother of the petitioner namely Kulwant Kaur. Kulwant Kaur used to work in a factory owned by Prem Nath. Being good looking, Prem Nath's attention was drawn towards her. He sponsored her education, as a result of which she became a law graduate and entered the legal profession. Two children were born from her namely Ramandeep Singh and the petitioner Natasha. Kulwant Kaur raised a claim to part of the property owned by Prem Nath for her children resulting in strained relations with Prem Nath and ensuing litigation. In the beginning of 2005, Prem Nath patched up with Kulwant Kaur resulting in withdrawal of all litigations on the basis of compromise. Consequently, Prem Nath gifted a sum of Rs. 6 lacs to Kulwant Kaur vide cheques dated 28.04.2005, 30.04.2005 and 02.05.2005 of Rs. 2 lacs each and also gifted her

two cars. This allegedly drew the ire of Yash Paul and Vikram Kumar (sons from Nirmala Devi) and they become inimical to their father.

2. Aforementioned Prem Nath used to reside alone in a house built towards rear of a factory owned by him. A nurse was employed to look after his personal needs apart from a cook/servant and a chowkidar. The factory premises had its own security.

3. The petitioner went to Ludhiana on 26.11.2005 to attend the marriage of one of her friends. After the Doli ceremony at 5.00 a.m. on 27.11.2005, she went to the residence of her father and on reaching the main gate she saw the cook/servant standing near it. She went straight to the residence of her father situated at the rear of the factory and the cook/servant and Chowkidar also came there. She asked them why the lights of her father's room were still off, because her father was an early riser and used to wake up around 4.30 a.m. She was told that the cook/servant had gone to his room to serve morning tea and he found Prem Nath asleep on the bed and did not respond to his calls. Thereafter, the petitioner went inside her father's room and on switching on the lights she found him lying in a pool of blood in the far corner of his bedroom. Immediately thereafter, she informed her step brother Vikram Kumar, who reacted in a cold manner and took about 1 to 1 ½ hours to reach the spot. Thereafter, Vikram Kumar informed the police resulting in registration of an FIR. Postmortem was conducted at about 3.30 p.m. on 27.11.2005 and it revealed that eight injuries had been caused with wedge shaped weapon. The police arrested the chowkidar on the night shift namely Bhola Mandal and two workers of the factory namely Joginder Verma and Nikku Singh. Bhola Mandal was discharged as sufficient evidence against him was not available. The petitioner, her mother and brother suspected Yash Paul, Vikram Kumar and the night nurse on duty as well as the cook/servant and chowkidar but no action was

petitioner filed Criminal Complaint No. 23 of 31.01.2006 under Sections 302, 149 and 34 IPC.

4. Vide order dated 10.06.2011, the then Judicial Magistrate Ist Class Ludhiana dismissed the complaint. A revision petition was preferred against the said order and the same was allowed vide judgment dated 27.02.2015 passed by the then Additional Sessions Judge, Ludhiana. The matter was remanded to the trial Court for deciding the same afresh. After remand, the impugned order dated 17.09.2015 has been passed and the trial Court has dismissed the complaint once again. Aggrieved by this order, the petitioner has filed the present revision directly before this Court.

5. During the course of preliminary evidence, Ramandeep Singh was examined as CW-1, the petitioner-complainant was examined as CW-2. Inderjit Singh was examined as CW-3, Inspector Harjinder Singh was examined as CW-4, Kuldeep Singh was examined as CW-5, Ria was examined as CW-6, Kulwant Kaur was examined as CW-7 and Narinder Singh was examined as CW-8. The petitioner-complainant has *inter alia* deposed as CW-2 that Vikram Kumar reacted very rudely when she informed him about their father and reached the spot after 1 ½ hour. She further stated that on account of thaw in relations between Prem Nath and Kulwant Kaur, the sons of Nirmala Devi had become inimical as they feared that the deceased would give part of his property to Kulwant Kaur and her children. Inspector Harjinder Singh as CW-4 has proved report dated 27.12.2005 prepared by DSP/CID Santokh Singh in which it has been opined as follows:-

“On perusal of the above noted facts and circumstances I have concluded that the above noted case of murder is due to the division of money and property which has been investigated by the local police very casually and as a result the murder case has not been traced so far. As per my suggestion if the investigation of the said case is done

by some independent Agency independently the murder case can be solved. As the said murder of Prem Nath was committed during the intervening night of 26/27-11-05 on Saturday and the next date being Sunday and the factory remains closed being holiday. On the other hand Ravi Kant who is working in the factory as Sale/Purchase official and is very close to the elder son of the deceased for the last quiet some time and who could not satisfy about his whereabouts on 25-11-05 and 26-11-05 so as to his presence outside the factory on 26-11-05 his arrival at about 7-8 p.m. in the factory and the departure bring him under the shadow of doubt. It is amply clear from the wounds on the body of the deceased that at the time of murder some thing very precious has been snatched or some very important documents have been got signed forcibly from the deceased. If the members of the family of the deceased i.e. Yash Paul, Parminder Kaur and Ravi Kant and their phone numbers like 98147-76755, 98140-64639, 94174-20646, 98140-64621 and other land-line numbers – 2456593, 2453174, 2455720, 2452621 etc. and the call details pertaining to dated 25,26,27-11-05 can give some definite information/clues regarding the said murder.”

6. Kuldeep Singh has appeared as CW-5 and has proved the bank statement of the deceased which shows that monies were paid by him to Kulwant Kaur. One Ria has appeared as CW-6. She used to take care of the property owned by the deceased at Mohali and was given an allowance of Rs. 3000/- per month apart from boarding and lodging. She has corroborated the version of the complainant by stating that Yash Paul and Vikram Kumar were unhappy on account

also stated that Prem Nath deceased wanted to give a share in his property to Kulwant Kaur and her family members. Kulwant Kaur, while appearing as CW-7 has stated that there were two pet dogs kept by the deceased Prem Nath. He also employed a cook/servant and a chowkidar to look after his needs and that there was security available at the factory gate. Despite the presence of so many persons and two guard dogs, no body came to know about the murder of Prem Nath even though eight injuries were inflicted on his body with a sharp weapon. This points towards an insider being involved. Narinder Singh deposed as CW-8. Earlier, he used to work as a driver with Parminder Kaur wife of Yash Paul and some times used to drive the car of Prem Nath deceased. Before his death, Prem Nath deceased had been driven to Ludhiana by him and on the way he had told the said CW that his sons were unhappy with the patch up between himself and Kulwant Kaur and used to taunt him on this account.

7. In the light of the aforementioned evidence, the trial Court has concluded that suspicion does arise against the accused persons but has refused to summon them on the ground that suspicion can not take the place of proof. It has concluded that the evidence being circumstantial in nature, the allegations are not proved and, therefore, the accused persons can not be summoned. It appears that the trial Court wanted to be convinced of the guilt of the accused persons before summoning them. The approach of the trial Court is misdirected and in violation of settled principles of jurisprudence.

8. However, I can not loose sight of the fact that the petitioner has invoked the revisional jurisdiction of this Court directly. In the earlier round of litigation, the petitioner had approached the Additional Sessions Judge, Ludhiana, by filing a revision petition but she has not chosen to do so now. No reasons are forthcoming for adoption of such an approach and, therefore, the direct invocation of the revisional jurisdiction of this Court cannot be appreciated. Under the

circumstances, it is held that the present petition is not maintainable in law and the same deserves to be rejected.

9. The petition is dismissed.

10. The petitioner shall, however, be at liberty to approach the Court of Sessions at Ludhiana. She shall also be at liberty to seek condonation of delay and if an application is filed for the said purpose, the same shall be decided sympathetically by keeping in view Section 14 of the Limitation Act, 1963 and the principles contained therein.

November 26, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No