

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 2931 of 2016 (O&M)

Date of decision : 23.7.2018

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Nisha Thandi

.....Petitioner

vs.

State of Punjab and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Argued by: Mr. K.S. Dadwal, Advocate for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

Mr. Munish Gupta, Advocate for respondent No.2.

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H. S. Madaan, J.

This revision petition is directed against order dated 4.8.2016 passed by Additional Sessions Judge, Hoshiarpur, vide which she had summoned Nisha Thandi, as an additional accused.

Briefly stated, facts of the case are that complainant Jatinder Kaur had lodged a report with the police that accused – Tanjit Singh represented to her that he was unmarried and on the allurements of taking her abroad trapped her and he had been committing rape with her by playing fraud. As a matter of fact all the accused had ganged up and represented that Tanjit Singh was

unmarried and Nisha Thandi was wife of Baljit Singh, a brother of Tanjit Singh; that while getting marriage registered Tanjit Singh had represented himself to be a bachelor; Nisha Thandi had made a statement in a civil suit titled 'Nisha Thandi vs. Jatinder Kaur and another', admitting close relations with accused Tanjit Singh and Shamsher Singh, stating that she had married her brother-in-law after getting divorce from Tanjit Singh and applying visa for Holland but thereafter again got divorce from her brother-in-law after just few days of marriage and that Shamsher Singh father of Tanjit Singh had given money to her to buy a house and had witnessed the sale deed. It is contended that accused Tanjit Singh, Nisha Thandi and Shamsher Singh with an intention to settle her abroad, cheated the complainant by making criminal conspiracy by representing Tanjit Singh as unmarried and representing Nisha as wife of Baljit Singh, helping Tanjit Singh to have sexual intercourse by the accused by obtaining her consent by playing fraud and under mis-representation.

FIR was registered but only Tanjit Singh was challaned and not Nisha Thandi and Shamsher Singh. During the course of trial against Tanjit Singh, an application under Section 319 Cr.P.C. was filed to summon Nisha Thandi, as an additional accused, which was allowed. Feeling aggrieved, she has filed the present revision petition, notice of which was given to the State and complainant, who have put in appearance.

I have heard learned counsel for the petitioner, learned State counsel as well as learned counsel for the complainant, besides going through the record.

At the very outset, it may be mentioned that the revisional jurisdiction of this Court is quite limited, unlike that of appeal. This Court is to interfere only for correction of a manifest illegality or to prevent gross miscarriage of justice. Obviously, this Court can rectify a patent defect or an error of jurisdiction or law, while exercising the revisional jurisdiction. If we peruse the impugned order on touch stone of scope of revisional jurisdiction of this Court, then we find that there is no illegality or infirmity in the order, much less apparent on the face of it, which might have called for interference by this Court, while exercising the revisional jurisdiction. The order is detailed, well reasoned one. Paragraph No.3 and 4 of the order, which are relevant, are reproduced as under for ready reference:-

“3. A perusal of file reveals that in her statement before the police, the complainant has levelled specific allegations against Nisha Thandi. Copy of Affidavit and cross examination of Nisha Thandi made in civil suit titled as Nisha Thandi vs. Jatinder Kaur who is one of the accused sought to be summoned is on the file. In the said affidavit she has affirmed that in the year 2001 her marriage with accused Tanjit Singh was dissolved by decree of divorce under Section 13-B of the Hindu Marriage Act. Further that thereafter, accused solemnized second

marriage on 29.8.2008. In her cross examination, Nisha Thandi has stated that her parents are residing in Holland. She further stated that after her divorce with accused Tanjit Singh she married her brother in law Harbans Singh in Holland. Further that in 2002, she obtained divorce from her brother in law. She has further stated in her cross examination that she does not know that her sister is residing with her brother in law Harbans Singh or not. She further admitted that she had good relations with the family of Tanjit Singh. She further stated that she meets the parents of Tanjit Singh also. In her statement before the police and also in her statement before the learned Magistrate, the complainant had levelled allegations against the accused stating that he alongwith his wife Nisha Thandi and father in law Shamsher Singh had cheated her.

4. As far as Shamsher Singh is concerned, his involvement in the crime is not prima facie evident.”

The trial Court has noted that the complainant in the statement made by her to the police had levelled specific allegations against Nisha Thandi, though she was not challaned by the police.

Now the question arises, as to whether any finding given by the police during investigation of the case is binding upon the trial Court. The answer is to be in negative. Though the police giving a clean chit to a person accused of an offence as per allegations in the FIR, is a relevant fact, but then merely that reason does not come in the way of the trial Court summoning such person as additional accused, if satisfied that essential ingredients of Section 319 Cr.P.C. for doing so are there.

In the instant case, the trial Court has recorded subjective satisfaction that prima facie offence against Nisha Thandi is made out. It has been so done by discussing the facts of the case and incriminating facts and circumstances against her and while declining the request to summon Shamsheer Singh as additional accused, the application qua Nisha Thandi, has been allowed.

Learned counsel for the petitioner has referred to following authorities:-

1) Kavuluri Vivekananda Reddy and another vs. State of A.P. and another 2005 (12) SCC 432;

2) Kailash vs. State of Rajasthan and another 2008 (2) RCR (Criminal) 200;

3) Hardeep Singh vs. State of Punjab and others 2014 (3) SCC 92;

4) Vikas @ Sonu @ Ashok vs. State of U.P. and another 2013 (3) CCR 576;

5) Lakhbir Kaur @ Jyoti vs. State of Punjab and another 2016 (1) RCR (Criminal) 147

6) M/s Pepsi Foods Ltd. vs. Special Judicial Magistrate

1997 (4) RCR (Criminal) 761;

7) Lal Suraj @ Suraj Singh and another vs. State of

Jharkhand 2009 (1) RCR (Criminal) 504; and

8) Brindaban Dass and others vs. State of West Bengal

2009 (1) RCR (Criminal) 672

in support of his contention that the trial Court was not justified in summoning Nisha Thandi, but as already discussed, it is certainly not a case of exercising of jurisdiction not vested in the trial Court, rather it has been exercised in a proper manner and no fault can be found with the same.

This Court while exercising revisional jurisdiction is not supposed to re-appraise the evidence to go into detailed facts and circumstances, so as to touching the merits of the case. As already observed, the revisional jurisdiction of this Court is quite limited. The order in question does not seem to be suffering from any defect, which might have called for interference by this Court, while hearing the revision petition against the said order.

The revision petition being without any merit, stands dismissed.

23.7.2018
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(H.S. Madaan)
Judge

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