

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

CRR-2305-2017

Date of decision: 09.08.2018

Mamta and another

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. V. D. Sharma, Advocate
for the petitioners.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 06.05.2017, passed by the Additional Sessions Judge, Jind, vide which, charges, under Sections 306/34 of the Indian Penal Code, have been framed against the petitioners.

Brief facts of the case are that petitioner No. 1 is the second wife of deceased Shyam Sunder and petitioner No. 2 is the son of petitioner No. 1 and deceased Shyam Sunder from the second marriage. Complainant Pardeep is the son of deceased Shyam Sunder from his first wife. The complainant got the FIR registered against the present petitioners with the allegations that on 04.05.2016, his father Shyam Sunder committed suicide by jumping before a train and during the investigation, conducted under Section 174 Cr.P.C., the police found it to be a case of suicide. Thereafter, the police got the post-mortem of the deceased conducted at Civil Hospital, Jind and as per the report of post-mortem, the cause of death was shock and Hemorrhage due to injuries described which are ante mortem in nature and

sufficient to cause death in normal course of life. All the cloths and injuries were stained with some blackish greasy material. Hence the possibility of injuries due to railway accident was not ruled out. The police, thereafter, recorded the statement of complainant Pardeep who has stated that his mother died 24/25 years ago and 2/3 years thereafter, his father Shyam Sunder performed second marriage with petitioner No. 1 Mamta and she is a lady of bad character having illicit relation with others. When his father objected to her conduct, she used to beat him and threaten to kill him and in routine, she used to humiliate him. It is also stated in his statement that petitioner No. 1 Mamta involved his father in many false cases and has also filed false complaint in the police station. Whenever the complainant visited his father in the village, his father used to tell him the aforesaid facts. When the complainant objected to the conduct of the petitioners, they scuffled with him on several occasions. Petitioner No. 1 Mamta is having illicit relation with one Gaurav and despite conducting a *Panchayat* of the relatives and brotherhood, which was attended by his maternal uncle and other respectables of the village, petitioner No. 1 did not mend her ways, due to which, his father became mentally weak. Petitioner No. 1 had even lodged a complaint against aforesaid Gaurav for committing rape as he has performed marriage with some other girl. Aggravated and humiliated from all these incidents and conduct of the petitioners, his father Shyam Sunder had committed suicide.

After registration of the FIR, the police conducted the investigation and thereafter submitted a challan against both the petitioners under Section 173 Cr.P.C., after arresting both the accused persons.

The trial Court, thereafter, framed the charges against the

petitioners under Section 306/34 of the IPC, vide impugned order dated 06.05.2017. The present petition has been filed challenging the said order.

Learned counsel for the petitioners has submitted that the relation between the petitioners and deceased Shyam Sunder were not cordial and she has filed a criminal complaint No. 162 dated 02.01.2015, under Sections 323, 406 and 506 of the IPC against deceased Shyam Sunder (husband of petitioner No. 1), Bhagirath, Hari Om, Pardeep and Parmila, in which, Shyam Sunder was summoned and remained in judicial custody. After he was granted bail, he jumped the bail and the trial Court issued warrants of arrest against him.

Learned counsel for the petitioners further argued that petitioner No. 1, thereafter, filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against deceased Shyam Sunder which was, however, dismissed for non-prosecution on 22.08.2016.

Learned counsel for the petitioners further submitted that petitioner No. 1 has also filed a petition under Section 125 Cr.P.C. against Shyam Sunder which was pending before the Court. It is also stated that even deceased Shyam Sunder had filed a petition under Section 13 of the Hindu Marriage Act before the Additional District Judge, Jind for obtaining decree of divorce on the ground of cruelty and desertion which was, however, dismissed as infructuous after his death. Learned counsel for the petitioners has thus argued that the relation between the parties were not cordial and the deceased has in fact met with an accident and have not committed suicide due to harassment given by the petitioners and aforesaid Gaurav.

Learned counsel for the petitioners has further submitted that at one point of time, the deceased has also given two affidavits dated 15.04.2015 stating that petitioner No. 2 is out of his control and he does not have any relation with him and another affidavit dated 03.09.2011 stating therein that his wife petitioner No. 1 Mamta is having illicit relation with Gaurav and they can even kill him as she has attempted to do so on one or two occasions.

Learned counsel for the petitioners has further placed reliance on Annexure P-8, submitted by deceased Shyam Sunder to Incharge, Police Post, Gatoli, wherein he has given the details of harassment given by his wife Mamta. A perusal of this documents shows that it is alleged that the deceased was subjected to harassment continuously in various manners. Some times while sleeping, his cot was tilted, sometimes by throwing utensils, sometimes making him to run in order to get him met with an accident and he even noticed illicit relation of his wife Mamta with other persons. It is also stated that he was harassed to such a great extent that he could not even sleep and he was forced to consume poison but luckily he escaped because of less poisonous contents and his sister-in-law Parmila had provided him medical aid. It is also stated in this complaint that at the instance of his wife, he was lodged in the jail. A perusal of the vernacular of this document shows that it is a handwritten document which was received by the Incharge, Police Post, Gatoli.

Learned counsel for the petitioners has further argued that from the perusal of the FIR and report, under Section 173 Cr.P.C., no prima facie offence punishable under Section 306 IPC is made out as there is no evidence showing that immediately before the deceased committed suicide,

the petitioners have acted in a manner that amounts to abetment as per the provisions of Section 107 IPC. Learned counsel for the petitioners has further argued that none of the ingredients of Section 107 IPC is made out from the bare perusal of the FIR as firstly; there is no instigation on the part of the petitioners, secondly; there is no allegation that the petitioners engaged one or more persons in conspiracy for doing such a thing and thirdly; there was no intention by such an act or illegal omission.

In reply, learned State counsel has opposed the prayer of the petitioners on the ground that the charges were framed on 06.05.2017 and thereafter, six prosecution witnesses have already been examined including the complainant who has supported the prosecution version. Learned State counsel has further argued that from the perusal of the FIR, report under Section 173 Cr.P.C. as well as the documents relied upon by the petitioners themselves including the complaint given by the deceased (Annexure P-8), it is apparent that the deceased was continuously subjected to harassment and even attempts were made to kill him.

Learned State counsel has further submitted that even in the affidavits, relied upon by the petitioners, the deceased has raised a finger towards the character of his wife by stating that she is having illicit relation with Gaurav and the deceased apprehends that he might be killed at her instance. Learned State counsel has further submitted that the deceased himself had given complaint (Annexure P-8) to the police depicting all the aforesaid facts which shows that he was under constant harassment and threats at the instance of the petitioners and consequently he had committed suicide by jumping before a train which is proved from the post-mortem report and at this stage when recording of the prosecution evidence is in half

way specially when the complainant has supported the prosecution version, the present petition is liable to be dismissed.

After hearing learned counsel for the parties, I find no force in the present petition.

After framing of the charge on 06.05.2017, admittedly the prosecution evidence is being recorded by the trial Court and as many as six prosecution witnesses have already been examined including complainant who has supported the prosecution version.

From the perusal of the FIR, report under Section 173 Cr.P.C. and documents (Annexures P-7 and P-8), placed on record by the petitioners themselves in which the deceased has lodged a complaint highlighting the grade of continuous harassment and humiliation caused by the petitioners, it cannot be held, at this stage, that prima facie evidence had not come on record to frame charge against the petitioners.

Therefore, finding no illegality in the impugned order dated 06.05.2017, framing charge against the petitioners under Section 306/34 of the IPC, the present petition is hereby dismissed.

Nothing observed herein will have any bearing on the merits of the case.

August 09, 2018

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No