

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 1174 of 2018 (O&M)
Date of Decision: 16.10.2018

Anita

.....Petitioner

Versus

State of Haryana and others

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. N.S.Sidhu, Advocate
for the petitioner.

ANITA CHAUDHRY, J

CRM-36974-2018

The application is allowed and Annexures P-9 to P-18 are taken on record.

CRR-1174-2018 (O&M)

This revision is directed against the order dated 9.1.2018 passed by the Additional Sessions Judge, wherein an application filed under Section 193 Cr.P.C. for summoning additional accused had been dismissed.

The petitioner was directed to place on record complete copy of the challan. Copy of the challan as well as supplementary challan has been filed.

Counsel for the petitioner submits that the complainant was sweeping her house at 11.00 A.M. on 4.10.2016 when all the accused came and threatened to kill her husband and father-in-law and asked them to withdraw the cases and at that time two other persons namely Dharambir

and Bijender sons of Ramji Lal had accompanied the other accused. It was urged that the husband and the father-in-law of the complainant were not present at home at that time but later at about 2.00 P.M. all the accused returned to their house and started beating her father-in-law Bharat Singh and when the petitioner tried to intervene, Braham Singh and Sanjeev @ Sandeep caught hold of the petitioner while Braham Singh molested her, tore her clothes and inserted finger in her private parts and caused injuries on her leg with a knife. The petitioner alleges that on the same day she along with her father-in-law and the husband had gone to the police station and had narrated the entire incident but the police deliberately did not register the complaint as the accused were highly influential and forced the petitioner to write the complaint as was dictated by them. It was urged that the police did not get them medically examined and asked them to go to the hospital and thereafter the petitioner along with her father-in-law got themselves medically examined. The counsel further submits that the FIR was registered on 7.10.2016 and initially challan was presented only against Braham Singh and Dharabmir and Bijender were found to be innocent and it was further disclosed that Sandeep was still to be arrested and subsequently challan was presented against Sandeep and again Dharambir and Bijender were stated to be innocent. The counsel also submits that after the case was committed, an application was filed under Section 193 Cr.P.C. which has been dismissed. The counsel further contends that the petitioner had named two persons and before that father-in-law of the complainant had moved an application (Annexure P-3) and had assigned a role to them but the Court has ignored that fact and they should have been also summoned even without recording evidence at the pre trial stage as envisaged under Section

193 Cr.P.C.

It would be useful to reproduce para 6 of the judgment passed by the Additional Sessions Judge which reads as under:-

“No doubt in view of the aforesaid authority this court has the jurisdiction to summon any person as the accused in case his or/her complicity is found in the case but admittedly in her complaint dated 6.10.2016 on the basis of which present case has been registered against accused Braham Singh and Sanjiv @ Sandeep no role at all has been attributed to accused Dharambir and Bijender by the complainant in the both incidents dated 4.10.2016. Further from perusal of copy of MLR dated 4.10.2016 of complainant it is also revealed that the doctor who had medicolegally examined her in the history has mentioned that physical and sexual assault with fingering of vagina on 4.10.2016 at about 2.30 p.m. in her house while she was alone as told by the patient by two people of her village. In view of aforesaid facts recorded in MLR of complainant the complicity of accused Bijender and Dharambir in the occurrence dated 4.10.2016 is doubtful. As such the fact mentioned in the report under section 173 Cr.P.C. by the police/IO that during investigation accused Dharambir and Bijender were found innocent appear to be believable.”

According to the petitioner two incidents had taken place one in the morning around 11.00 A.M. and the other after 2.00 P.M. The petitioner got herself medically examined and she only named two persons of physical assault and molestation.

Counsel for the petitioner contends that a complaint had been given before the registration of the FIR by the father-in-law of the petitioner which has not been taken into account.

Counsel for the petitioner was asked to refer to the document and whether it was a part of the challan.

Counsel for the petitioner concedes that the complaint referred to by him i.e. Annexure P-3 is not part of the challan.

The petitioner is referring to a document which is not part of the challan. The prosecutrix in the first statement which was given to the police had stated that though Dharambir and Bijender had accompanied other accused but they did not do anything and were standing at a distance. Before the medical officer also she had accused only two persons. The medical was done after the second incident.

In the light of this, there is no infirmity in the finding recorded by the Court below.

The petition is dismissed in *limine*.

(ANITA CHAUDHRY)
JUDGE

October 16, 2018

Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No