

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

CRM-M-31456 of 2018 (O&M)
Decided on:- August 13, 2019.

Sonali Ahlawat.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Argued by:- Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Pratham Sethi, Advocate
for the petitioner.

Mr. Manish Bansal, D.A.G., Haryana.

Mr. Sanjay Vashisth, Advocate
for respondent No.6.

HARI PAL VERMA, J.

The petitioner has filed this petition under Section 482 Cr.P.C.
for quashing the Calendra under Section 182 IPC dated 15.03.2018
(Annexure P-1) filed against the petitioner by the police before the trial Court.

Challenge has also been laid to the summoning and notice of
accusation orders dated 17.03.2018 and 13.06.2018 (Annexure P-2) (colly)
passed by the trial Court.

As per the Calendra (Annexure P-1) presented by the police, the
petitioner had submitted a complaint against her husband Sandeep Ahlawat-
respondent No.6 and his brother Sanjeev Ahlawat alleging therein that they
have dropped some goods in her house and have threatened her. The

complaint (Annexure P-5) made by the petitioner addressed to the Chowki

Incharge reads as under:

“To

The Chowki Incharge,

Police Chowki, Sector 14,

Faridabad.

Subject:-Complaint against Col. Sandeep Ahlawat son late Col. Sh. Shamsher Singh, residents H. No.250, Sector 5, Gurugram, Mob. No.8826777333 and Sanjeev Ahlawat son late Col. Sh. Shamsher Singh, residents of Super Delux, Flat No.11, HEWO Apartment, Sector 16-A, Faridabad, Haryana Mob. No.9899880377.

Sir,

My name Sonali Ahlawat wife of Sh. Sandeep Ahlawat son late Col. Sh. Shamsher Singh, and I am residing with my parents at 1032, Sector 14, Faridabad. My husband has filed a case of divorce against me. On 21 December, 2017 was the date in Faridabad court and I, my father, my husband and my brother-in-law Sanjeev Ahlawat were present in court about 5 P.M. till the evening. My husband had misbehaved with me on 21 December, 2017 very badly and threatened me outside the court that they will be kill me and my family any time as they want and they will kill them if required.

That on 21st December 2017 about 6 P.M. in the evening we found a plastic bag containing five old saari, and one musical gift that I have gifted to my husband on my first marriage anniversary inside my house gate. I think that these things have been done by my husband and his brother.

I and my family member are afraid and there is a threat to our life and property.

You are requested that take appropriate legal action against the above said accused and save the life and property of me and my

family. I will be very thankful to you. Four photographs of the goods are enclosed herewith.

*Sd/
Applicant, 22/12/2017*

*Sonali Ahlawat W/o Col. Sandeep
Ahlawat, R/o 1032, Sector-14,
Faridabad.”*

The aforesaid complaint was investigated by ASI Bansi Lal and Chowki Incharge SI Sumer Singh. During investigation, the statements of petitioner-complainant, her husband Sandeep Ahlawat (respondent No.6 herein), Sanjeev Ahlawat, who is elder brother of respondent No.6, Shivam aged about 18 years and Shivraj, who are sons of the complainant were recorded and during investigation no truth was found into the allegation so made in the complaint. Thus, the allegations made in the complaint were found false. The complainant could not adduce substantive proof of her truthfulness. Therefore, proceedings under Section 182 IPC were initiated against her for making false complaint against the respondent-husband.

Vide impugned order dated 13.06.2018, learned Additional Chief Judicial Magistrate had adjourned the case for 02.08.2018 for serving notice of accusation upon the accused-complainant (petitioner herein).

Dr. Anmol Rattan Sidhu, learned senior counsel for the petitioner has argued that a bare perusal of the report prepared by the SHO does reflect that the investigating officer had not visited the place of occurrence and without there being a visit to the spot by the investigating officer, the complaint cannot be inquired into. Nobody from the house of the petitioner-complainant was examined. The investigating officer has not examined even any neighbour witnesses and in this manner, the Calendra so prepared is one-

sided. In support of his contentions, learned senior counsel has relied upon *Arvind Kejriwal Versus Amit Sibal and another 2014(9) RCR (Criminal) 1952; Prabhu Chawla Versus State of Rajasthan and another 2016(4) RCR (Criminal) 270; Anand Kumar Mohatta and another Versus State (Govt. of NCT of Delhi) Department of Home and another 2019 AIR (SC) 210* and *Rajiv Thapar and others Versus Madan Lal Kapoor 2013(1) RCR (Criminal) 911*.

On the other hand, Mr. Sanjay Vashisth, learned counsel for respondent No.6 has taken a preliminary objection that against the impugned order dated 13.06.2018 passed by learned Magistrate, whereby the petitioner has been served notice of accusation for 02.08.2018, there is a remedy as provided under Section 397 Cr.PC available to the petitioner. Though charge in the case has not been framed, but remedy is still available. He has further argued that Calendra had been prepared on 25.01.2018 and it is wrong to suggest that Calendra was prepared on 15.03.2018.

I have heard learned counsel for the parties.

There is no dispute as far as the proposition of law laid down by Hon'ble Supreme Court in the aforementioned judgments cited by learned senior counsel for the petitioner is concerned, but in the case in hand, notice had been issued to the petitioner-accused vide impugned order dated 17.03.2018 passed by learned Magistrate and thereafter, vide impugned order dated 13.06.2018, the offence being bailable, the petitioner-accused was admitted on bail and the case was adjourned to 02.08.2018 for serving notice of accusation upon her. Though an appropriate remedy by filing a revision under Section 397 Cr.P.C. is available to the petitioner, but before availing

the same, she has approached this Court while invoking Section 482 Cr.P.C.

The provisions of Section 397 Cr.PC read as under:

“397. Calling for records to exercise powers of revision.—

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

There is no dispute as regard to the scope of interference under Section 482 Cr.PC, as suggested by learned senior counsel for the petitioner, but this Court finds that the petitioner has not shown any such extra-ordinary reason or circumstances as to why she be not relegated so as to avail the

remedy of revision against the impugned orders passed by learned Magistrate, as provided under Section 397 Cr.PC before approaching this Court. In the absence of any special circumstances to invoke the jurisdiction of this Court under Section 482 Cr.P.C., this Court finds that against the impugned Calendra and summoning thereof, the petitioner was required to avail the remedy of revision as provided under Section 397 Cr.P.C.

The present petition is, accordingly, dismissed.

However, the petitioner is at liberty to approach the revisionary Court within two months from today. In case she files a revision petition against the impugned orders passed by learned Magistrate within a period of two months from today, the same shall not be dismissed solely on the ground of limitation.

August 13, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No