

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

108

CRR-2486-2018 (O&M)

Date of Decision: 14.01.2019

Brijesh Kumar Pandey

.....Petitioner

Versus

Karuna Kant Dixit and others

.....Respondents

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

**Present: Mr. Sunil Panwar, Advocate,
for the petitioner.**

HARI PAL VERMA, J.

CRM-26394-2018

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 288 days in filing the present revision petition.

Learned counsel for the petitioner has argued that the petitioner is father of deceased and is suffering from various ailments. Ever since the untimely death of his daughter, the petitioner and his family had lived under the constant threats from the respondents-accused to desist from prosecuting the present case. For this purpose, FIR regarding threats by the respondents to harm the petitioner's family and minor son of the deceased has been lodged. Another FIR was registered with the Police Station, Sector 3, Chandigarh regarding stealing of the case file and other record of the petitioner from the High Court premises, which was also recorded in CCTV

footage. He has further argued that case file relates to this revision petition was stolen from the premises of this Court by Prem Kant Dixit @ Ashu Dixit, who is a close relative of the respondents. The incident was noticed from the CCTV footage. For this purpose, complete paper-book of the case was not reconstructed. It is only after reconstructing the case file, present revision petition could be filed and in this manner, delay of 288 days has been occurred, which is not intentional.

I have heard learned counsel for the petitioner.

Considering the arguments as well as averment made in the application, this Court finds that the petitioner must have put his efforts which has caused delay. The reasoning given by the petitioner seeking condonation of delay appeals to this Court. The case file related to the case was stolen from the Court premises for which the matter was reported to the police.

Accordingly, for the reasons stated in the application, same is allowed and the delay of 288 days in filing the present revision petition, is hereby condoned.

CRR-2486-2018 (O&M)

Petitioner has filed the present revision petition against the order dated 18.07.2017 passed by learned Additional Sessions Judge, Gurugram, whereby application filed by the public prosecutor under Section 319 Cr.P.C. to summon Uma Shankar Dixit, Smt. Prema Dixit wife of Uma Shankar Dixit and Ramakant Dixit son of Uma Shankar Dixit as an additional accused to face trial under Section 306 IPC, was dismissed.

FIR No.109 dated 17.03.2016 under Sections 302, 304-B IPC,

Police Station Bhondsi, District Gurugram, was registered against the

accused. Smt. Manju wife of Karuna Kant Dixit had died as she committed suicide. Manju was married with accused Karuna Kant Dixit on 08.12.2008 and out of this wedlock, one son Arnav was born. For the death of Manju on 26.03.2016, FIR was registered against her husband , parents-in-laws and brother-in-law. However, during the course of investigation, the police found respondent Nos.2 to 4 (i.e. in-laws and brother-in-law of the deceased) innocent. Accordingly, application under Section 319 Cr.P.C. for summoning respondent Nos.2 to 4 as an additional accused was moved, but the same was dismissed vide order dated 18.07.2017.

Learned counsel for the petitioner has argued that testimony of PW1-Arnav and PW5-Brijesh Kumar Pandey (complainant) is quite trustworthy and consistent from the very beginning, which establishes the involvement of the additional accused sought to be summoned. But the trial court has not appreciated the testimony of PW1 and PW5, which *prima facie* indicates involvement of the accused. The offence committed is grave in nature. Initial statement of complainant-Brijesh Kumar Pandey (PW5), which forms the very basis of FIR is specific and trustworthy warranting summoning of the additional accused, as made in the application under Section 319 Cr.P.C. The order dated 18.07.2017, whereby the application under Section 319 Cr.P.C. was dismissed while passing the aforesaid order, the trial court has committed patent error of jurisdiction, which has caused serious prejudice to the prosecution. Dismissal of the aforesaid application is nothing, but prejudging the issue even before appreciating the complete evidence brought on record in the case. It is settled law that the trial court is not required to meticulously discuss the evidence while exercising power under Section 319 Cr.P.C. and the court is not required to go into the matter

deeply. Once there are specific allegations against the accused sought to be summoned, the trial court ought to have summoned them to face the trial.

I have heard learned counsel for the petitioner.

The police has found the respondent Nos.2 to 4 innocent during the course of investigation. These accused have joined the investigation on 18.04.2016. During investigation, the offence punishable under Section 120-B IPC was also deleted from the FIR. Initially, FIR was registered under Section 302 IPC. However, vide order dated 17.11.2016, accused Karuna Kant Dixit (husband of the deceased), who was facing trial in the case, was charge-sheeted under Sections 498-A and 306 IPC. Petitioner-Brijesh Kumar Pandey who is complainant in the case has been examined as PW5. Similarly, Arnav who is son of the deceased, aged about 09 years was also examined as PW1. In the complaint (Ex.P-10) to which the petitioner is an author, he has recorded specific words that he had come to know from the neighbours that his daughter had been strangled to death by her husband Karuna Kant Dixit. It has been admitted by the complainant that from July, 2015 till the time of death of Manju on 26.03.2016, she was living alone with her husband Karuna Kant Dixit at Gurugram, whereas the proposed accused had not been residing with her at Gurugram. The couple was married on 08.12.2008. The trial court has examined PW1-Arn timer elaborately. Trial court examined him after removing any kind of apprehension in the mind of PW1 in a very natural manner. The examination of PW1-Arn timer nowhere suggests even remotely which may attract any material warranting summoning of the proposed accused-respondent Nos.2 to 4. The Investigating Officer who conducted the investigation is a senior rank police officer i.e. Assistant Commissioner of

Police. The marriage took place in the year 2008. Therefore, after a gap of this much of period, the allegation of demand of dowry is too unrealistic, more particularly when the deceased was not living with the proposed accused-respondent Nos.2 to 4.

The present revision petition is accordingly dismissed.

January 14, 2019
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No