

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-37505 of 2019

Date of Decision: 05.09.2019

Kanchan Nagpal

...Petitioner(s)

Versus

Gobind Lal Nagpal & others

...Respondent(s)

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

Present:- Mr. Ashwani Bakshi, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

Petitioner – complainant - Kanchan Nagpal has filed the present petition under Section 482 CrPC for setting aside the order dated 10.07.2018 (Annexure P-6) passed by Judicial Magistrate Ist Class, Bhiwani, whereby the application filed by the petitioner under Section 319 CrPC to summon respondents no.2 to 8, as additional accused, was dismissed. Further challenge has been laid to judgment dated 26.04.2019 (Annexure P-8) passed by Additional Sessions Judge, Bhiwani, whereby the revision petition preferred by the petitioner against the order dated 10.07.2018 was dismissed.

As per the allegations so made by the petitioner-complainant in FIR No.0330 dated 17.08.2016 under Sections 323, 34, 498A, 506 IPC registered at Police Station Bhiwani City, Bhiwani, the marriage of the complainant was solemnised with Manish Nagpal on 14.04.2014, by the

father of the complainant-petitioner who gave dowry beyond his capacity. Even at the time of engagement, more cash was demanded by the respondents-accused, which was duly given to them. Thereafter, the parents of the complainant were asked to give more dowry, big car, expensive jewellery. Soon after the marriage, the in-laws started maltreating the complainant, as they were not satisfied with the dowry brought by the complainant. The in-laws of the complainant started taunting her and also tortured her mentally and physically. On number of times, she was pulled by hairs, given beatings and locked in the room. At times, she was thrown out of the matrimonial home during night time. Her sister-in-law Monika Singh and brother-in-law Vinay Kumar Singh also mentally tortured her on many occasions, whereas her mother-in-law Kailash Nagpal and her husband Manish Nagpal kept on torturing her physically daily. When the complainant complained against the accused to her parents, her father-in-law G.L. Nagpal threatened to kill them. Her husband's uncle Shyam Sunder Nagpal and aunt Varsha Nagpal used to give her false solace, so as to prevent her from taking legal recourse. Her brother-in-law Rajnish Nagpal pulled her from hairs and gave beatings on several times. The son of her husband's *Mama* got her signatures on blank papers and made her and her husband to leave the house. Her husband left the house on 30.03.2016 saying that he was going to Hyberabad for some work. Thereafter, on reaching there he never telephoned her. Whenever the complainant made a phone call to him, he never picked the call and switched off his mobile phone. On 06.04.2016, a person came to her with divorce papers, which she refused to receive, because no quarrel

whatsoever had taken place between the complainant and her husband on 30.03.2016. The aforesaid FIR was investigated and the respondents-accused sought to be summoned were found innocent. Thereafter, an application was filed by the complainant under Section 319 CrPC for summoning of Gobind Lal Nagpal (father-in-law), Smt. Kailash Nagpal wife of Govind Lal Nagpal (Mother-in-law), Rajnish Nagpal son of Govind Nagpal (*Devar* of Complainant), Monika Singh sister-in-law of the complainant and wife of Sh. Vinay Kumar Singh, Vinay Kumar Singh (*Nandoi*), Shyam Nagpal, uncle of the husband, Versha Nagpal wife of Shyam Lal Nagpal, Vipin Dhall son of maternal uncle of husband of complainant, as additional accused.

The said application for summoning of the respondents-accused, as additional accused, was dismissed by learned Magistrate on the ground that the health condition of mother-in-law Kailash Nagpal and father-in-law Govind Lal Nagpal is not good. Kailash Nagpal is getting treatment for chronic type-II respiratory failure. She is on continuous oxygen therapy + non-invasive ventilatory support at home (BIPAP) since 23.01.2014. Her functional activities of daily livings are affected because of respiratory disability and she is almost bed ridden. Any activity beyond the activities of daily living carry a risk of cardio pulmonary decompensation including cardio pulmonary arrest. Similarly, as regards Gobind Lal Nagpal, father-in-law, who is 77 years of age, is suffering from Acute Extensive Wall M1, single vessel disease, Post PTCA with stent to LAD(2014) LV Dysfunction (EF-47%) and chronic cystitis with mild hepatomegaly. Due to his health condition, he has been advised to avoid

stressful situations and prolonged exertional activities. He is required regular follow up at a tertiary cardiac care centre and long term medications. Thus, it was found father-in-law and mother-in-law of the complainant are having very bad health conditions and are under regular treatment. So far as the application of the complainant *qua* sister-in-law Monika Singh and her husband Vinay Kumar Singh is concerned, it was found that they live in Delhi and are not residing with in-laws of the complainant and they have is no connection in the case. There are other distant relatives of the husband, who are already facing trial and with this minute classification of role and relation of the accused in demand of dowry, learned Magistrate has declined the application vide order dated 10.07.2018.

Further, the revision petition filed against the aforesaid order dated 10.07.2018 has also been dismissed by learned Additional Sessions Judge, Bhiwani vide order dated 26.04.2019. The relevant paragraphs no.9 and 10 of the order passed by the revisionary Court read as under:-

9. It is evident from the allegations made in the FIR that proposed accused No.1 Gobind Lal Nagpal, father-in-law, accused No.2 Kailash Nagpal, mother-in-law, accused No.3 Rajnish Nagpal, brother of Manish Nagpal, accused No.4 Monika Singh Nagpal, daughter of Gobind Lal Nagpal, accused No.5 Vinay Kumar Singh, husband of accused No.4, accused No.6 Shyam Sunder Nagpal, accused No.7 Varsha Nagpal and accused No.9 Vipin Dhall were in relations to the main accused Manish Nagpal. The complainant had alleged that all these proposed accused persons not only caused injuries to her but in collusion with each other, they used to raise demand of dowry during the subsistence of marriage. In

the FIR, so deposed later in her evidence, she levelled allegations at her father-in-law, mother-in-law, brother-in-law, sister-in-law, husband of sister-in-law, uncle and aunt of Manish Nagpal demanded golden ornaments and they threatened her to put her to death and got her signatures on blank papers.

10. It has categorically come on record that the proposed accused No1 Gobind Lal Nagpal and his wife Kailash Nagpal proposed accused No.2 were suffering from various kinds of illness that included cardiac and respiratory problems. Brother-in-law Rajnesh, proposed accused No.3 was residing separately from accused Manish Nagpal before the time of marriage as evident from the rent agreement so placed on record. Sister-in-law and her husband, proposed accused No.4&5 seem to be enjoying their marital life at the house of her husband as proposed accused No.5 was defence personnel. Proposed accused No. 6 to 8 Shyam Sunder Nagpal, Varsha Nagpal and Vipin Dhall all are residing at different places as that of proposed accused No.1&2 and main accused Manish. One writing was also placed on record before the learned lower court wherein the complainant on 31.12.2015 herself made the statement of receiving the entire jewellery from her in-laws. It seems that all these facts had already come during the course of investigation. As such, the proposed accused were not impleaded by filing challan against them.

It is in these circumstances, the petitioner has filed the present petition challenging the orders dated 10.07.2018 and 26.04.2019 passed by the Courts below.

Counsel for the petitioner has argued that the petitioner has moved the application under Section 319 CrPC for summoning respondents

no.4 to 8, as additional accused, as the police had deleted their names intentionally in collusion with them, despite there being sufficient material available on record to challan them. However, learned Magistrate has dismissed the said application on 10.07.2018 and further, the revisionary Court also dismissed the revision petition vide order dated 26.04.2019 in mechanical manner. The Courts below have taken into consideration the extraneous material and documents produced by the accused persons and have relied upon the same, while passing the impugned orders. Merely because the accused sought to be summoned had some health problems, is not a relevant consideration so as to decline summoning of the accused, so far as father-in-law and mother-in-law are concerned. Similarly, the sister-in-law of the petitioner and husband of sister-in-law have not been summoned merely because they are living separately. There is no presumption in law that a sister-in-law or other relatives of the husband living separately cannot harass the complainant. The petitioner had given specific instances and the manner in which she has been harassed and maltreated by the aforesaid accused, sought to be summoned, but the same have not been taken into consideration.

I have heard learned counsel for the petitioner perused the orders passed by the Courts below.

The health condition of in-laws of the petitioner, as narrated above, does speak that they are not physically fit enough to move freely. They are almost confined to bed on account of poor health condition and multiple diseases. They are aged persons. Kailash Nagpal, mother-in-law, is getting treatment for chronic type-II respiratory failure and is on

continuous oxygen therapy and non-invasive ventilatory support at home (BIPAP) since 23.01.2014. She is mostly bed-ridden. Similarly, Gobind Lal Nagpal, father-in-law, who is 77 years of age, is suffering from Acute Extensive Wall M1, single vessel disease, Post PTCA with stent to LAD(2014) LV Dysfunction (EF-47%) and chronic cystitis with mild hepatomegaly. The sister-in-law Monika Singh and her husband Vinay Kumar Singh are living separately at Delhi. The allegations so levelled by the petitioner have duly been looked into by the police during investigation. No such material has been left to be brought on record, warranting summoning of respondents, as additional accused.

The argument raised by learned counsel for the petitioner that the aforesaid accused persons have been specifically named in the FIR and in the statement under Section 161 CrPC, specific roles has been attributed to the respondents-accused sought to be summoned, has been dealt with by the trial Court and has declined to summon the accused sought to be summoned on account of their poor health conditions as far as father-in-law and mother-in-law of the petitioner are concerned, whereas the sister-in-law and her husband being distantly placed. There is no entrustment of any dowry articles to them. This Court feels that once the petitioner has sought summoning of even distant relations, it create serious doubt about the allegations levelled against the in-laws of the petitioner as well. Learned revisionary Court has given complete reasoning and justification while dealing with the revision petition filed against the order dated 10.07.2018 passed by learned Magistrate.

In the case of **Geeta Mehrotra and another Versus State of U.P. and another** 2012(4) RCR (Criminal) 812, Hon'ble the Apex Court has held that in criminal cases, arising out of a matrimonial disputes, a fact borne out of experience cannot be overlooked that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute. In the said case, while quashing the FIR against the family members of the husband, it was held as under:-

“21. In yet another case reported in AIR 2003 SC 1386 in the matter of B.S. Joshi & Ors. vs. State of Haryana & Anr. it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife under Section 498A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power.

22. In the instant matter, when the complainant and her husband are divorced as the complainant-wife secured an ex-parte decree of divorce, the same could have weighed with the High Court to consider whether proceeding initiated prior to

the divorce decree was fit to be pursued in spite of absence of specific allegations at least against the brother and sister of the complainant's husband and whether continuing with this proceeding could not have amounted to abuse of the process of the court. The High Court, however, seems not to have examined these aspects carefully and have thus side-tracked all these considerations merely on the ground that the territorial jurisdiction could be raised only before the magistrate conducting the trial.

*23. In the instant case, the question of territorial jurisdiction was just one of the grounds for quashing the proceedings along with the other grounds and, therefore, the High Court should have examined whether the prosecution case was fit to be quashed on other grounds or not. At this stage, the question also crops up whether the matter is fit to be remanded to the High Court to consider all these aspects. But in matters arising out of a criminal case, fresh consideration by remanding the same would further result into a protracted and vexatious proceeding which is unwarranted as was held by this Court in the case of **Ramesh vs. State of Tamil Nadu (supra)** that such a course of remand would be unnecessary and inexpedient as there was no need to prolong the controversy. The facts in this matter on this aspect was although somewhat different since the complainant had lodged the complaint after seven years of delay, yet in the instant matter the factual position remains that the complaint as it stands lacks ingredients constituting the offence under Section 498A and Section 3/4 Dowry Prohibition Act against the appellants who are sister and brother of the complainant's husband and their involvement in the whole incident appears only by way of a casual inclusion of their names. Hence, it cannot be overlooked that it would be total abuse of the process of law if we were to remand the matter to the High Court to consider whether there were still*

any material to hold that the trial should proceed against them in spite of absence of prima facie material constituting the offence alleged against them.

24. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.”

The allegations against the respondents, sought to be summoned, are general in nature. Though it has been alleged that the additional accused/respondents were also involved in physical and mental torture of the petitioner-complainant, but such allegations are without mentioning even a single specific incident against them. Considering the fact that the father-in-law and mother-in-law of the petitioner-complainant are almost bed-ridden, as their health conditions have duly been considered by the Court below, whereas the other respondents-accused, sought to be summoned, are in distant relations of the husband and are living separately at a far off place and it is difficult to believe as to how those persons could be motivated to demand dowry, this Court finds that there being no illegality in the impugned orders passed by the Courts below, this petition deserves to be dismissed with costs.

Accordingly, the present petition is dismissed with costs of Rs.10,000/- to be deposited with the Haryana State Legal Services Authority, Panchkula within a month from today.

September 05, 2019
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No