

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

126

CRM-M-45985-2019

Date of Decision:29.10.2019

Kamaljit Kaur

.....Petitioner

Versus

Sarabjit Singh and others

.....Respondents

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

Present: Mr. Dinesh Nagar, Advocate,
for the petitioner.

HARI PAL VERMA, J.

Petitioner has filed the present petition under Section 482 Cr.P.C. impugning the order dated 09.05.2018(Annexure P-2) passed by learned Judicial Magistrate 1st Class, Hoshiarpur, declining her prayer to summon respondents No.1 to 3 to face trial for offence punishable under Sections 354, 382 IPC and to dismiss the complaint qua respondent No.4. Challenge has also been laid to the order dated 18.09.2019(Annexure P-4) passed by learned Additional Sessions Judge, Hoshiarpur, whereby revision petition filed by the petitioner against the order dated 09.05.2018, was dismissed.

Briefly stated, the petitioner has filed a complaint under Sections 354, 382, 506, 323, 452 IPC against the respondents. As per the complaint, the petitioner was earlier married to respondent No.1-Sarabjit Singh and was divorced by way of mutual consent in the year 2014.

Sarabjit Singh has given to her 06 marlas of land in village Khanpur and 14

marlas of land in village Pahowal. In addition thereto, he has given Rs.28 lakhs to the petitioner and her son Amandeep Singh as alimony. However, now all the accused are putting pressure upon her to return the entire property. Therefore, she moved a complaint to the SSP, Hoshiarpur on 20.12.2016, but no action was taken on the said complaint. It is on 18.02.2017, when at about 6 PM, she was in her house and the co-villagers namely Mohinderpal and his wife Laxmi had come to meet her, all the accused except respondent No.4-Ranjit Singh had come to her house. When she opened the gate, the accused attacked her with deadly weapons. The petitioner went inside her house so as to save herself from the accused. The accused caught hold of her from her hair, gave kick and slap blows to her and had torn her clothes. All the accused had threatened her to return entire property and money. Mohinder Pal and Laxmi saved her from the accused. The accused broke the household articles, took away her gold chain and cash of Rs.20,000/-. Thereafter, on 22.02.2017, she moved another complaint to the SSP, Hoshiarpur, but no action was taken on it till date. Hence, the complaint.

Learned Magistrate vide order dated 09.05.2018 while finding sufficient reasons to proceed against the accused had summoned accused Sarabjit Singh, Jaswant Singh and Karnail Singh to face trial for commission of offence punishable under Sections 452, 323, 506 read with Section 34 IPC. Learned Magistrate has not summoned respondent No.4-Ranjit Singh and other respondents were also not summoned under Sections 382, 354 IPC. The revision petition filed by the petitioner against the order dated 09.05.2018 was dismissed by learned Additional Sessions Judge, Hoshiarpur vide order dated 18.09.2019.

Learned counsel for the petitioner has argued that in the preliminary evidence, the petitioner has examined Mohinder Pal and Laxmi as CW1 and CW2, respectively and both have corroborated the ocular version. Thereafter, the petitioner was examined as CW3. She has proved on record copies of complaints moved to SSP, Hoshiarpur as Ex.C1 and Ex.C2 dated 20.12.2016 and 22.02.2017, but the learned trial Court has summoned only respondent Nos.1 to 3 for offence under Sections 452, 323, 506 read with Section 34 IPC leaving respondent No.4-Ranjit Singh in the case. It has not summoned the accused under Sections 354, 382 IPC. When CW1-Mohinder Pal and CW2-Laxmi have corroborated the ocular version, all the accused were required to be summoned in the case. There are specific allegations that the accused have entered the house of the complainant forcibly, who were armed with deadly weapons and have taken away Rs.20,000/- in cash and gold chain. Respondent No.4-Ranjit Singh had instigated and connived with the other accused but he (respondent No.4) was not summoned at all, whereas other co-accused have also not been summoned under Sections 354, 382 IPC. In this manner, the Courts below have not appreciated the *mens rea* of the respondents-accused which is writ large or so. The finding of the Courts below in this manner is based on conjectures and surmises.

Heard learned counsel for the petitioner.

The petitioner-complainant has raised allegations against accused Nos.1 to 3 of illegal trespassing her house and giving her kick and slap blows. There are allegations that the accused have caused damage to the household articles and have taken away Rs.20,000/- in cash and gold chain, but there was no material on record to substantiate these allegations.

No bill or other proof with regard to the gold chain, so as to prove that she was owner of the gold chain, has been placed on record. No sufficient explanation has come on record as regards the source of Rs.20,000/- with the complainant. The petitioner is ex wife of respondent No.1 and the marriage has already culminated into divorce in the year 2014. Learned trial Court while not summoning the accused sought to be summoned by the petitioner in the instant petition has rightly observed that there is no evidence as to which household articles were broken. There is no evidence as regards the gold chain and cash amount with the petitioner. Learned Additional Sessions Judge had dismissed the revision petition observing as under:-

“From the facts, it comes out that the complainant is Ex-wife of respondent No.1 Sarbjit Singh. Divorce has taken by mutual consent by the parties. Sufficient amount and property was given to the complainant at the time of divorce. Complainant has alleged that accused were threatening her to return the amount and property. She allegedly moved complaints to SSP on 18.12.2016 and then on 18.02.2017. Complainant was present in her house when accused No.1 to 3 entered her house and attacked her. They have allegedly taken Rs.20,000/- cash amount and gold chain. Complainant besides herself has examined two eye witnesses Mohinder Pal and his wife Laxmi who have corroborated the version of complainant. Complainant has produced only oral evidence and two applications moved to SSP, Hoshiarpur. Learned trial Court has rightly observed that there is no evidence as to which of the household articles were broken nor any evidence has been produced to show if she was having gold chain and cash amount with her. From the perusal of statement of complainant, the ingredients of Section 354 IPC are also not made out. Respondent No.4 was abroad and no involvement of

respondent No.4 in the alleged incident is prima-facie made out. Learnd trial Court after taking into consideration all the facts and evidence on record has summoned the accused No.1 to 3 only for the offences punishable under Sections 452, 323, 506 read with Section 34 IPC. No ground to summon accused No.4 or to summon all the respodents for offences under Sections 382 & 354 IPC is made out. There is no illegality much less perversity in the order under revision. No ground to interfere in the same is made out. As such, revision-petition filed by revisionist Kamaljit Kaur being without merits, is hereby dismissed. Record of the trial court along with copy of the judgment be sent back. Revision file be consigned to the record room.”

Summoning of an accused is a serious offence. The Hon'ble Supreme Court in ***Pepsi Foods Limited and another Versus Special Judicial Magistrate and others-(1998) 5 Supreme Court Cases 749*** has held as under:-

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

Thus, in view of the fact that the petitioner has failed to make out a case for summoning the accused, no ground for interference by this Court is made out to the well-reasoned orders passed by the Courts below.

Dismissed.

October 29, 2019
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No