

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

CRM M-38495 of 2016 (O&M)

Date of Decision: February 02, 2021

Kamlesh Kumari

...Petitioner

Versus

The State of Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. K. S. Dadwal, Advocate
for the petitioner.

Mr. Pawan Sharda, Sr. Dy. Advocate General,
Punjab for respondents No. 1 to 7/State.

Mr. Arunjeet S. Kakkar, Advocate
for respondents No. 8 to 10.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through
video-conferencing on account of lockdown due to outbreak of
pandemic COVID-19.

CRM 8607 of 2017

The claim of the applicant/petitioner Kamlesh Kumari
for initiation of appropriate action against respondent No.6 in the

main petition, that is, the Deputy Superintendent of Police, Hoshiarpur for having filed affidavit on behalf of respondent Nos. 1 to 7 by concealing material facts is a matter which cannot be gone into during the decision of the present petition, which is under Section 482 Cr.P.C. for handing over the investigations to some independent agency. If the applicant is aggrieved she has the remedy available to her under Section 340 Cr.P.C as the prima facie allegations are the DSP having committed offence affecting the administration of justice, which is punishable under Section 195 Cr.P.C. and, thus, no cause to show indulgence upon the applicant is made out. The application stands dismissed.

CRM 15669 of 2018

Heard. For the reasons mentioned in the application, the same stands allowed. Annexures R-6 and R-7 are taken on record. Office to tag the same as per the Rules.

CRM M-38495 of 2016

Petitioner Kamlesh Kumari has come in this instant petition under Section 482 Cr.P.C. seeking interference of this Court under its inherent jurisdiction for handing over the investigation in case got registered by way of FIR No. 87 dated 23.06.2016 under Section 304-B IPC registered at Police Station Model Town, Hoshiarpur to any other independent agency.

The brief claims of the petitioner are that her daughter Rachna was married to Sunil Kumar on 05th March 2016 wherein sufficient dowry was given and more than Rs.15,00,000/- was spent. The allegations as usual are to the effect that respondents often used to physically and mentally torture her daughter and demanded more dowry including demand of car which they failed to fulfill. It is, subsequently, the petitioner claims that her daughter was raped on 23rd June 2010. It is subsequent thereto the allegations hover around that all the family members including Dilbagh Singh father of husband of Rachna connived and conspired and murdered her daughter whose postmortem was performed at Civil Hospital

Hoshiarpur on 24.06.2016. The brief reasons for invoking the jurisdiction of this Court is improper investigations by the Investigating Agency, for which, specific allegations have come about by the petitioner. It is claim of the petitioner that she made repeated representations to the higher ups but to no avail.

In the different sets of the written replies by the respondents, the official respondents denied the allegations holding that the complaint of the petitioner was duly marked to (respondent No.6) and he conducted an inquiry and during the course of the same, it transpired that deceased had committed suicide by hanging in the house, regarding which, statements of the witnesses were duly recorded. It was further claimed that the deceased was having relations with one Arvind Kumar and they used to exchange WhatsApp messages and were in this relationship prior to and subsequent to this marriage and remained under medical care and denied each and every allegations of the petitioner. So is the ultimate submission of the private respondents in their reply claiming that the deceased was never happy in this matrimonial alliance since its inception

and did not feel comfortable in the company of the family and upon her medical examination it was opined that she was suffering from mental stress and, thus, showed unusual behavior, as a consequence of which, she often remained upset. It is further alleged that the husband had heard and seen her talking on the mobile phone and with innuendos was calling upon the person on the other side to either marry her else she will commit suicide and from which it was reflective that she was in a relationship with someone prior to her present marriage and it was disclosed that she was in a relationship with one Arvind Kumar but the family did not support her on that score and got her marriage performed with respondent No. 8. The respondents had denied the role of any other family member and it was claimed that the deceased on her own score had taken this extreme step.

Upon hearing Mr. K.S. Dadwal, learned counsel for the petitioner, Mr. Pawan Sharda, Sr. Dy. Advocate General, Punjab for respondents No. 1 to 7 and Mr. Arunjeet S. Kakkar, Advocate for respondents no. 8 to 10 and on perusal of records.

Section 190 of the Cr.P.C. lays down the procedure for initiation of proceedings in a criminal case and cognizance of offences by Magistrate. Prior to it in the scheme of the Act, Section 156(3) Cr.P.C. clearly underlines the powers of Magistrate to order investigation in terms of Section 190 Cr.P.C. The Apex Court in the case of **Sakiri Vasu Vs. State of U.P. and others, 2008(1) R.C.R. (Criminal) 392** that is sought to be relied upon by the respondents have claimed that the petitioner has simply jumped and after by-passing the hierarchy of judicial system and who ought to have first approached the concerned Magistrate in terms of Section 156(3) Cr.P.C. and it was laid by the Apex Court that where the Magistrate is satisfied that the investigations are not being done and the Investigating Agency has failed in its duty can direct the police to properly investigate the same and has even powers to monitor it. Not only this, the Magisterial powers are unbridled and can even re-open the investigation even after the police submits its final report. The arguments so raised by the respondents side by Mr. Pawan Sharda, Sr. Dy. Advocate General Punjab and Mr.

Arunjeet S. Kakkar, Advocate for respondents No. 8 to 10 could not be controverted by the counsel for the petitioner who has sought to rake up a plea more based on emotions and sympathy than of legality. Furthermore, it is well illustrative in **Sakiri Vasu (supra)** by the Supreme Court that no one can insist that an offence be investigated by a particular agency and therefore the plea to get investigation done by an independent agency does not impresses the Court much.

The claim of the official respondents shows that during the course of investigations, no specific evidence has come across against the other family of the accused as it was the extra marital affair of the deceased who was frustrated over it. The assertion of Mr. K.S. Dadwal, learned counsel for the petitioner that police have left off the hook certain accused are matters which can be adequately upon evidence by resort to provision of 319 Cr.P.C. and even if the petitioner is not satisfied she can have resort to filing of a complaint in terms of Section 200 of Cr.P.C.

Thus, what has emancipated before this Court from the foregoing discussion, it is too premature for the petitioner to have bye passed judicial hierarchy and come up before this Court by invoking the jurisdiction under Section 482 Cr.P.C. which are to be resorted to only in the rarest of rare cases in exceptional circumstances to meet the ends of justice. None of these requirements have been highlighted and, therefore, the petition being merit-less stands dismissed.

February 02, 2021
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No