

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

120

**CWP-29855-2022 (O&M).
Date of Decision: 22.12.2022.**

Devika

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Kanhiya Soni, Advocate for the petitioner.

VINOD S. BHARDWAJ. J (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, 1950 seeking issuance of a writ in the nature of mandamus directing respondent No.2 to initiate legal action/departmental enquiry against respondents No.5 and 6 i.e. the Inspector Pawan (Retd.), the then SHO of Police Station, Rohrai (Rewari) and Mahender Singh, ACP Faridabad, the then DSP Kosli (Rewari).

The grievance espoused by the petitioner is that she was married on 29.11.2017 with one Pawan Kumar (not the respondent

Inspector Pawan – respondent No.5 herein). One male child namely Khushal was born on 04.02.2019, however, the marriage fell in rough weathers. Consequently, an FIR No.72 dated 05.05.2020 under Sections 323, 325, 498A and 506/34 of the Indian Penal Code against Pawan Kumar, the husband of the petitioner, her mother-in-law and her sister-in-law was registered. The petitioner suffered a statement that the offence under Section 313 of the Indian Penal Code regarding miscarriage had not been added in the FIR. The investigation of the case was conducted by the then SHO Pawan Kumar, who found accused Anshu (sister-in-law of the petitioner) as innocent. The final report under Section 173 (2) Cr.P.C. was submitted by the SHO on 18.08.2020 before the Illaqua Magistrate Kosli, at Rewari.

Dissatisfied with the investigation conducted by the Investigating Agency, the petitioner submitted an application for further investigation under Section 173 (8) of the Code of Criminal Procedure read with Section 156 (3) of the Code of Criminal Procedure. The aforesaid application was allowed by the Sub Divisional judicial Magistrate, Kosli, vide order dated 23.09.2021. The Investigating Officer was directed to conduct further investigation and to submit a supplementary challan. The petitioner was, however, aggrieved of the Sub Divisional Judicial Magistrate, Kosli, not commenting upon the second prayer i.e. to prosecute the Investigating Officer for the alleged lapse committed on his part during the course of investigation. Hence, a revision petition was filed by the petitioner before the Additional Sessions Judge, Rewari, which was dismissed vide order date 27.01.2022 stating that the trial Court is already seized of the matter and

further investigation has already been ordered and there was no occasion for initiation of any investigation/inquiry against the Investigating Officer.

The above order was subject matter of challenge before this Court in CRM-M-24267-2022 titled as 'Devika Vs. State of Haryana and others.' The same was disposed of vide order dated 31.05.2022 (Annexure P-9) with liberty to the petitioner to avail remedies in accordance with law.

The petitioner thereafter preferred a representation dated 10.06.2022 pointing out the alleged lacunae in the proceedings conducted by the respondents with a further prayer that appropriate action be taken against the respondents No.5 and 6. However, no action having been taken, the present petition has been filed.

I have heard the learned counsel for the petitioner and have gone through the documents appended along with the present petition.

The prayer of the petitioner which transpires from the contents of the petition and the documents appended therewith is two-folds. Firstly that offence under Section 313 of the Indian Penal Code had not been added by the Investigating Agency at the stage of registration of the FIR and also in the subsequent submission of the final report and secondly, finding sister-in-law Anshul as innocent during the course of investigation.

While adverting to the first issue raised by the petitioner, it is evident that the FIR fails to disclose any allegation in relation to commission of offence under Section 313 of the Indian Penal Code. So much so there is not even a whisper in the allegations noticed in the FIR

that the petitioner at any stage was pregnant and that the foetus was terminated by any illegal act and use of force or an act which is overtly attributed to the accused. The counsel for the petitioner has laid emphasis on the subsequent statement made by the petitioner on 06.05.2020. However, the primary documents to establish pregnancy and its termination have also not been appended with the present petition to substantiate such bald allegations. There is, thus, no reason for this Court to come to a prima facie conclusion at this stage that offence under Section 313 of the Indian Penal Code, is made out.

In so far as the grievance of the petitioner regarding one of the accused found innocent by the Investigating Agency is concerned, the same is a matter of satisfaction of the Investigating Agency. Furthermore, the petitioner had taken recourse to his remedies available to her in accordance with law by moving an application under Section 173 (8) of the Code of Criminal Procedure read with Section 156 (3) of the Code of Criminal Procedure and further investigation has already been directed. The revision petition preferred by the petitioner as well as the subsequent petition preferred under Section 482 of the Code of Criminal Procedure, raising a grievance against the said order already stand dismissed. Having taken recourse to the remedies available under the criminal law, the petitioner cannot reagitate the entire dispute by means of filing the present writ petition. Filing of the present petition is an apparent attempt of forum shopping by the petitioner so as to pressurize the Investigating Agency to toe the line of the complainant and to submit a report in a manner as is desired by the petitioner. Such an attempt deserves to be nipped in the bud.

Finding no merit, the present petition is accordingly dismissed.

December 22, 2022
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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