

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

[130]

CRM-M-6931-2023

Date of Decision:09.02.2023

Sunanda

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Sartej Singh Narula, Advocate
for the petitioner.

JAGMOHAN BANSAL, J. (Oral)

The petitioner through instant petition filed under Section 482 Cr.P.C. is seeking setting aside of order dated 30.11.2022 (Annexure P-1) whereby learned Judicial Magistrate Ist Class, Sonipat has dismissed the application of the petitioner filed under Section 190(1)(b) Cr.P.C.

The brief facts of the case are that on the basis of the statement of father of the petitioner, an FIR No.104 dated 06.08.2021 came to be registered under Sections 328, 34, 406, 498-A and 506 IPC at Police Station Sector 27, District Sonipat, Haryana. The police conducted investigation and during the course of investigation, statements were recorded and samples of '*Gastric Lavage*' of the petitioner were obtained. The samples of '*Gastric Lavage*' were sent to Forensic Science Laboratory, Haryana Madhuban, Karnal. The police after completing investigation filed final report under Section 173 Cr.P.C. alleging commission of offence under different sections of IPC,

however, Section 328 IPC was not invoked. The trial Court framed charges under different sections of IPC, however, charges were not framed under Section 307 or 328 IPC.

The petitioner feeling aggrieved from the order dated 29.04.2022, whereby charges were framed, preferred CRR-1256-2022 before this Court which came to be withdrawn with liberty to avail alternative remedy as may be available under law including invoking of provisions of Section 323 Cr.P.C. in accordance with law.

The petitioner preferred an application under Section 190 (1) (b) Cr.P.C. praying that trial Court should take cognizance of offences under Section 328 and 307 IPC. The petitioner further prayed that trial be committed to Sessions Court. The application of the petitioner came up for consideration before JMIC, Sonipat and vide impugned order dated 30.11.2022, the trial Court has dismissed the application of the petitioner.

Learned counsel for the petitioner, *inter alia*, contends that there are specific allegations of the petitioner that she was forced to consume milk containing poison, thus, offences under Section 307 and 328 IPC are made out still trial Court has not taken its cognizance. The trial Court has proceeded on assumption and surmises. The trial Court was bound to take a cognizance of Sections 307 and 328 IPC.

I have heard the arguments raised by learned counsel for the petitioner and perused the record.

The relevant extracts of the impugned judgment dated 30.11.2022 read as:

“Having heard the respective contentions of Ld. Counsel for State, complainant and accused and from the perusal of final report under Section 173 Cr.P.C., it can be fairly inferred that the police after threadbare investigation of the matter comes to the conclusion that no case punishable under Section 328 of IPC is made out. Certainly, from the report of viscera of the complainant, initially it was found that malathion was found in gastric lavage. However, subsequent investigation which are carried out by senior police officers including SSP Crime Branch as well as various medical opinion taken by Investigation Agency it has come on record that possibility of poisonous substance subsequently in the gastric lavage cannot be ruled out as the initial medical examination of Sunanda did not reveal any other change in her vital organs which is quite unusual. In this back drop after taking detail medical opinion and after detailed investigation police has concluded that no case punishable under Section 328 of IPC is made out.

Therefore, there is no other fact produced before the Court. There is nothing brought forth this Court that investigation made by police is not proper. Rather it can be fairly inferred from the facts that matter is thoroughly investigated, therefore, there is nothing before court to disbelieve the same.”

From the perusal of the impugned order dated 30.11.2022 and arguments of learned counsel, this Court does not find any ground to interfere with the impugned order. The trial Court has recorded categorical findings and there is no legal or factual infirmity in the said order. The criminal law cannot be put into motion at the whims and fancies of someone. It is well known fact that the criminal proceedings cause mental and physical agony. The attempt of the petitioner seems to implicate the respondents in serious and grave offences. It is apt to notice that petitioner on earlier occasions filed petition before this Court assailing charge-sheet which came to be dismissed as withdrawn.

No ground is made out for setting aside of order dated 30.11.2022 passed by learned Judicial Magistrate Ist Class, Sonipat, thus present petition deserves to be dismissed.

Dismissed.

(JAGMOHAN BANSAL)
JUDGE

09.02.2023
Anjal

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>