

CRM-M-31745-2016 (O & M)

::1::

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-31745-2016 (O & M)

Date of decision:24.05.2023

Faujia and anr.

..... Petitioners

V/s

State of Punjab and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Dr. Anmol Rattan Singh Sidhu, Sr. Advocate,
with Mr. Shiv Kumar, Advocate,
for the petitioners.

Ms. Ramta K Chaudhary, DAG, Punjab.

Mr. Jatinder K. Sharma, Advocate,
for respondent No.2.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of complaint No.5 dated 14.06.2012 (Annexure P-1) titled as "Abdul Sattar Vs. Kausar Parveen & Others" under Sections 313, 325, 329, 342, 452, 506, 120-B IPC pending before the Court of Sub Divisional Judicial Magistrate, Malerkotla, summoning order dated 06.08.2016 (Annexure P-2) and all subsequent proceedings arising therefrom.

2. The brief facts of the case as emanating from the pleadings are that the respondent No.2 (complainant) instituted the present complaint with the allegations that on account of multiple litigations pending between the

CRM-M-31745-2016 (O & M)

::2::

Parveen alongwith Mohd. Kaleem and other accused surrounded his wife-Shehnaz and attacked her. Kausar Parveen gagged her mouth with a curtain whereas Kaleem and Faujia started abusing his wife. They gave fist and kick blows in her abdomen and stomach. During this time, Mehardin, Rashidan and Nazia kept instigating the petitioners and Mohd. Kaleem to make his (complainant's) wife barren so that she could never bear a child. He had taken his wife for treatment on 21.09.2006 to Civil Hospital, Malerkotla. The accused had caused her miscarriage without her consent, and therefore, a DDR No.7 dated 24.09.2006 came to be recorded at Police Station City Malerkotla regarding the occurrence. However, on being approached, the local police informed him and his wife that as there were numerous litigations pending between the parties, the present complaint appeared to have been given by the complainant in order to settle the matter by mounting pressure on the accused (who were complainants in the 307 IPC case). Therefore, when his wife came to be acquitted in a case under Section 307 IPC, he had instituted the instant complaint after more than 06 years of the occurrence. A copy of the complaint dated 14.06.2012 under Sections 313, 325, 329, 342, 452, 506, 120-B IPC is attached as Annexure P-1.

Based on the evidence led including the statements of CW-1/Shehnaz, the alleged victim (Annexure P-4) and CW-2/Abdul Sattar-complainant (Annexure P-5) alongwith other witnesses, the petitioners and their co-accused came to be summoned for having committed the offence

CRM-M-31745-2016 (O & M)

::3::

120-B IPC. A copy of the aforesaid order dated 06.08.2016 passed by Sub Divisional Judicial Magistrate, Malerkotla is attached as Annexure P-2.

3. The aforementioned complaint dated 14.06.2012 (Annexure P-1), summoning order dated 06.08.2016 (Annexure P-2) and all subsequent proceedings arising therefrom are sought to be quashed by way of filing of the present petition.

4. The learned Senior counsel contends that the instant complaint has been lodged on account of a *mala fide* on the part of the complainant party. In fact, there were multiple civil and criminal litigations pending between the parties and the present complaint has been filed with a view to pressurize the accused.

He contends that the occurrence pertains to 21.09.2006. The DDR regarding the occurrence bearing DDR No.7 came to be recorded on 24.09.2006 (Annexure P-3). The instant complaint came to be instituted on 14.06.2012 whereas the summoning order came to be passed on 06.08.2016. This delay in the filing of the complaint was fatal to the case of the complainant, and therefore, the proceedings were liable to be quashed on this count alone.

He contends that the allegations as levelled in the FIR regarding beatings having been given to the wife of the complainant, namely, Shehnaz, leading to the commission of an offence under Section 325 and 313 IPC are completely baseless. As per DDR No.7 dated 24.09.2006 (Annexure P-3), Shehnaz has referred to the beatings being given to her on 21.09.2006 but

CRM-M-31745-2016 (O & M)

::4::

suffered by her. The MLR of the even date also shows that there were no signs of swelling or bruises on the abdomen which could have led to her miscarriage. He contends that a reading of Annexures P-8 to P-18 which are statements of various witnesses and the relevant medical record would show that though the wife of the complainant, namely, Shehnaz was pregnant and that some occurrence had taken place on 21.09.2006, however, the injuries received by Shehnaz were at best simple in nature thereby attracting Section 323 IPC. An ultra-sound was suggested alongwith the opinion of a Gynecologist. However, after the due examination, it was apparent that Shehnaz has been treated conservatively, she responded adequately and had been discharged in a satisfactory condition. In fact, there were no evidence of any grievous external injury on her person and no evidence of a miscarriage. He, thus, contends that no offence under Section 313 IPC alongwith Section 325 IPC was made out.

As regards the offences under Section 342 and 452 IPC, he contends that the complainant party and the petitioners reside in the same house but in different portions. Therefore, these offences are also not made out. Even otherwise, it is his contention that the allegations entailing offences under Section 342 IPC alongwith Section 452 IPC are easy to level but must be considered with a pinch of salt given the fact there are multiple litigations pending between the parties.

He contends that as per the record, the only possible offence which could be made out is one under Section 323 IPC, which is on account

CRM-M-31745-2016 (O & M)

::5::

and consequent to which Shehnaz did remain admitted in hospital. He, however, states that keeping in view the fact that the occurrence was of September 2006, the complaint came to be instituted in June 2012, the summoning order was passed in August 2016 whereas the present petition has been taken for hearing now, the interest of justice required that no proceedings be allowed to continue with respect to the alleged commission of offence under Section 323 IPC as well.

He, therefore, contends that the complaint and summoning order be quashed to secure the ends of justice.

5. The learned counsel for the complainant, on the other hand, has fairly conceded that there was no evidence of any grievous hurt as envisaged under Section 325 IPC or the evidence of miscarriage as defined under Section 313 IPC. He, however, states that the offences under Sections 323, 342 and 452 IPC were clearly made out from the medical evidence and the ocular account on record. As regards the complaint being filed after a delay of 06 years, it is his contention that this was on account of the fact that the investigating agency had told them (complainant party) that as there were numerous litigations pending between the parties, the instant complaint would seem to only amount to a pressure tactic upon the accused. It was on this count that the complaint came to be filed only when Shehnaz, the wife of the complainant, was acquitted for having committed an offence under Section 307 IPC.

6. The learned counsel for the respondent No.1-State has supported the complainant and states that no case for quashing of the

CRM-M-31745-2016 (O & M)

::6::

complaint, summoning order and the subsequent proceedings arising therefrom was made out.

7. I have heard the learned counsel for the parties.

8. In the instant case, a perusal of the entire medical evidence on record would clearly reveal that though Shehnaz, wife of the complainant, was pregnant, there is absolutely no evidence on record of a miscarriage having taken place on account of beatings being meted out by the petitioners and their co-accused. Similarly, there is absolutely no evidence of the injured-Shehnaz suffering an injury attracting Section 325 IPC. In fact, the learned counsel for the complainant while examining the record has admitted the said fact.

As regards the offences under Sections 342 IPC and 452 IPC, it would be relevant to mention here that the complainant party and the accused reside on different floors of the same house. Therefore, while on the one hand, it is doubtful if either of the offence was made out, on the other hand, it would be a travesty of justice to allow the instant proceedings to continue against the petitioners given the fact that there are multiple litigations pending between the parties, and therefore, their false implication cannot be ruled out. Even otherwise, once a complaint has been instituted after a considerable delay, the complainant's version in its entirety becomes highly doubtful and an exaggerated version coming up cannot be ruled out.

As regards the offence under Section 323 IPC, it may be pointed out that though *prima facie*, the medical evidence would suggest that an

CRM-M-31745-2016 (O & M)

::7::

occurrence pertains to September 2006, the present complaint came to be instituted in June 2012, the summoning order came to be passed in August 2016 and the matter has come up for hearing now in May 2023. Therefore, it would be a travesty of justice to permit the prosecution of the petitioners for an offence under Section 323 IPC alone after 17 years of the alleged occurrence.

9. In view of the aforementioned discussion, the continuance of the proceedings emanating out of complaint No.5 dated 14.06.2012 (Annexure P-1) and summoning order dated 06.08.2016 (Annexure P-2) would be nothing but an abuse of the process of the Court, and therefore, the aforementioned complaint (Annexure P-1), summoning order (Annexure P-2) and all subsequent proceedings arising therefrom are hereby quashed qua the petitioners only.

10. The present petition is disposed of in above terms.

(JASJIT SINGH BEDI)
JUDGE

May 24, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes