

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-5637-2017 (O & M)

Date of decision:08.02.2023

Jagjit Singh and anr.

..... Petitioners

V/s

Amritpal Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rajesh Bhatheja, Advocate,
for the petitioners.

Mr. Vikas Garg, Advocate, for the respondent.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition is for the quashing of the criminal complaint No.54 dated 10.09.2012 titled as 'Amritpal Kaur versus Jagjit Singh and others' (Annexure P-8), the summoning order dated 09.08.2016 passed by the Judicial Magistrate Ist Class, Moga (Annexure P-9) and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that the brother of the petitioner No.1 and the husband of the complainant, namely, Ajmer Singh expired on 08.07.2011. On his death, the statement of the complainant-Amritpal Kaur, wife of the deceased-Ajmer Singh was recorded to the effect that her husband was suffering from asthma for a long time and despite medical treatment, his condition did not improve. Due to this reasons, he used to remain upset and on 08.07.2011, he consumed Sulphas tablets. She called her brother-in-law (petitioner No.1) Jagjit Singh and took the deceased to the Suresh Nursing Hospital, Moga, where the doctor advised them to take the

deceased to any other hospital. However, he died on the way. A copy of the statement of Amritpal Kaur is attached as Annexure P-1 to the petition.

Based on the said statement, a DDR/Rapat No.8 dated 09.07.2011 came to be registered under Section 174 Cr.P.C. A copy of the same is attached as Annexure P-2 to the petition.

A post-mortem of the deceased-Ajmer Singh was conducted and no external injury mark was found on the body. The cause of death was to be given after the receipt of the Chemical Examiner's report which was stated to be Aluminium Phosphide Insecticide.

3. Thereafter, allegedly, with a view to grab the property of the deceased, the brother of the complainant, namely, Malkiat Singh is stated to have fabricated an agreement to sell dated 09.07.2022 to the effect that the petitioner No.1 had agreed to sell his land to the said Malkiat Singh (plaintiff). A civil suit (Annexure P-4) for specific performance was filed by Malkiat Singh and a civil suit for declaration was filed by petitioner No.1. The same is attached as Annexure P-5 to the petition.

4. Thereafter, the complainant also got registered FIR No.No.28 dated 14.02.2012 under Sections 306/34 IPC against petitioner No.1-Jagjit Singh, petitioner No.2-Sukhwinder Kaur and one Jaswant Singh. The translated copy of the same is Annexure P-6.

5. After investigation, the accused-petitioners were found innocent and a cancellation report was prepared and sent to higher authorities for approval. A copy of the enquiry report dated 13.08.2012 is attached to the present petition as Annexure P-7.

6. Pursuant thereto, the instant private complaint came to be

302, 306 and Section 34 IPC with the allegations that not only did the accused harass her deceased-husband Ajmer Singh thereby committing an offence under Section 306 IPC, but on 08.07.2011, she saw that the petitioners alongwith Jaswant Singh and Teja Singh forcibly administered poison to her husband-Ajmer Singh. Ajmer Singh disclosed this fact to her as well. However, the accused had made her sign 5/6 blank papers. She had also found a typed complaint in the shirt worn by her husband which bore his thumb impressions in which he had stated that he (Ajmer Singh) apprehended danger from the petitioners, Jaswant Singh and Teja Singh. A copy of the complaint is attached as Annexure P-8 to the petition.

7. Based on the aforementioned complaint, the Court of Judicial Magistrate Ist Class, Moga, summoned the petitioners alongwith Jaswant Singh and Teja Singh vide order dated 09.08.2016 (Annexure P-9) for having committed the offences under Sections 302, 306 read with Section 34 IPC.

The aforesaid complaint (Annexure P-8) and the summoning order dated 09.08.2016 (Annexure P-9) are under challenge in the present petition.

8. The petitioners have raised primarily three contentions before this Court. It is their contention that the complainant/respondent-Amritpal Kaur (wife of the deceased-Ajmer Singh) herself had given statements at the time of the death of her husband that he had committed suicide on account of consuming poison as he was ailing. She had also taken financial benefit on account of the suicidal death of her husband as was borne out from the letter dated 13.12.2016 (Annexure P-10). The present proceedings were an

registered at her instance culminated in a cancellation report, the instant complaint came to be filed. It is, thus, their contention that the proceedings ought to be quashed, moreso, when the offences under Sections 306 IPC and 302 IPC have different ingredients and the petitioners could not have been summoned for both the offences together.

The complainant-respondent has filed a reply dated 22.01.2018. As per the said reply, there was a writing/dying declaration written by the deceased that he was apprehending danger from the petitioners and their co-accused. The instant complaint was filed because the police did not initiate action against the petitioner. It is, thus, her contention that the present petitioner deserves to be dismissed.

9. The learned counsel for the petitioners contends that initially, it was the case of the complainant-Amritpal Kaur wife of the deceased-Ajmer Singh that the deceased had committed suicide on account of his illness. The petitioner No.1-Jagjit Singh alongwith the complainant and other family members had taken the deceased to hospital but despite that fact, he had passed away. She had also availed financial benefit of Rs.2 lacs as was borne out from the document (Annexure P-10) which also shows that it was her case that the deceased had indeed committed suicide on account of his illness. He contends that an FIR No. 28 dated 14.02.2012 under Sections 306/34 IPC at Police Station Dharamkot, District Moga, on similar allegations came to be cancelled. In fact, all proceedings have been initiated against the petitioners on account of pending civil litigation instituted by the brother of the complainant against the petitioners. Even otherwise, the petitioners could have not been summoned for the offences under Sections

completely different. While Section 306 IPC provides punishment on account of a suicidal death, Section 302 IPC provides punishment for a homicidal death. He, thus, contends that the impugned complaint (Annexure P-8) and the summoning order (Annexure P-9) were liable to be set aside.

10. The learned counsel for the complainant while reiterating the contents of the reply dated 22.01.2018 submits that there was sufficient evidence to summon the accused. A revision petition ought to have been filed before the Lower Appellate Court which has not been done and the petitioners have directly approached this Court by way of the instant quashing petition. He, thus, contends that the present petition ought to be dismissed.

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

12. A perusal of the sequence of events would prima facie establish that the case of the complainant-respondent from the very outset was that her deceased-husband has committed suicide on account of his illness. It was only later on, on account of civil dispute initiated by her brother that firstly, the FIR came into existence and thereafter, the instant complaint (Annexure P-8) and consequent summoning order (Annexure P-9).

Be that as it may, without going into the respective contentions of either party, one thing is apparent that the summoning order (Annexure P-9) is for the offences under Sections 302, 306 read with Section 34 IPC. This kind of order could not have been passed. The categorical case of the complainant in the complaint (Annexure P-8) is that though the petitioners and others harassed her husband-Ajmer Singh (since deceased), on the date of the occurrence i.e. 08.07.2011, the accused administered poison to her

well. Therefore, taking the case of the complainant to be true, at best, an offence under Section 302 IPC could be made out and not under Section 306 IPC since the death could only be said to be homicidal.

13. In view of the abovesaid discussion, I find merit in the present petition, and therefore, the summoning order (Annexure P-9) and all subsequent proceedings arising from the aforesaid order stand quashed. The matter is remanded back to the concerned Magistrate for a fresh adjudication on merits.

15. The present petition is disposed of in the aforesaid terms.

(JASJIT SINGH BEDI)
JUDGE

Februry 08, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No