

In the High Court of Punjab and Haryana at Chandigarh

115

CRM-M-25512 of 2019(O&M)

Date of Decision: 23.02.2023

Jiauddin and others

---Petitioners

versus

State of Haryana and another

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr.Rohan Mittal, Advocate
for the petitioner
Ms. Dimple Jain, AAG, Haryana
Mr. Kamal Deep Sehra, Advocate
for respondent No. 2

JAGMOHAN BANSAL, J. (ORAL)

CRM-5769 of 2023

Allowed as prayed for.

Original affidavit dated 03.02.2023 (Annexure R-2/1) of respondent No. 2 is taken on record. Registry is directed to tag the same at an appropriate place.

CRM-M-25512 of 2019

1. The petitioners, through the instant petition under Section 482 Cr.P.C., are seeking quashing of order dated 11.01.2019 passed by Additional Sessions Judge, Palwal whereby revision of the petitioners against order dated 16.08.2016 passed by trial court has

been dismissed.

2. The brief facts emerging from record and arguments of both sides are that Nikah of respondent No. 2 i.e. Sabnoor and her elder sister Jule khan daughters of Salauddin was solemnized with Jiauddin (petitioner No. 1) and Arif (petitioner No. 2) respectively. Complainant at that point of time was minor whereas elder sister was major, thus, elder sister Jule khan joined company of her husband Arif on 20.02.2005. The complainant did not join company of petitioner No. 1 because she was minor. Matrimonial discord took place between elder sister of the complainant and her husband. The sister of the complainant left company of her husband. Though complainant did not join company of petitioner No. 1 at any point of time yet lodged complaint with the police authorities which resulted into registration of FIR No. 579 dated 25.12.2013, under Sections 498A, 406, 506 and 34 IPC at Police Station, Palwal. The police thoroughly investigated the matter and did not find substance in the allegations of the complainant. The police after completion of investigation filed cancellation report before the trial court.

3. The complainant apart from approaching the police preferred a complaint under Section 190 Cr.P.C. before trial court seeking summoning and trial of petitioners under Sections 498-A, 406 and 34 IPC. The matter came up for consideration before JMIC, Palwal who vide order dated 16.8.2016 summoned the petitioners to face trial for commission of offence punishable under Sections 498-A, 406 and 34 IPC. The petitioners preferred revision before Sessions Court seeking setting aside of summoning order. The matter came up

for consideration before ASJ, Palwal who vide impugned order dated 11.01.2019 dismissed the revision petition.

4. Learned counsel for the petitioner inter alia contends that complainant never joined company of the petitioners, thus, no offence is made out under Section 498-A, 406 and 34 IPC. The complainant has lodged complaint against the petitioner No. 1 and other family members because there was matrimonial discord between her elder sister and family of the petitioners. The elder sister of the complainant after leaving company of her husband has got re-married and she is having children. The trial court summoned the petitioners in a mechanical manner and revisionary court has dismissed revision without appreciating the facts and circumstances.

5. Learned counsel for respondent No. 2 (complainant) submits that it is factually correct that complainant did not join company of the petitioners, however, there was harassment and cruelty on the part of petitioners caused to elder sister of the complainant as well as complainant. The elder sister came to her parental home only because of harassment on the part of petitioners. The trial court as well as revisionary court has passed well reasoned and speaking order warranting no interference.

6. Learned State counsel submits that police conducted investigation and found no substance in the complaint of the complainant. During investigation, it was found that complainant has never joined company of the petitioner and his family members and there was matrimonial discord between elder sister of the complainant and her in-laws.

7. I have heard learned counsel for the parties and perused the record.

8. The relevant extracts of summoning order dated 16.08.2016 read as:-

*“6. The criteria at the stage of issuing process is whether there is evidence to summon the accused and not whether there is sufficient evidence to warrant conviction. In the case titled **M/s Lily Hire Purchase Pvt. Ltd. Vs. Darshan Lal 1997(2) Cr.Co. Judgments 23** it was held by Hon'ble High Court of Punjab & Haryana High that when a man files a complaint and support it by his oath, rendering himself liable to prosecution and imprisonment if it is false, he is entitled to be believed unless there are apparent reason for disbelieving him. Further, it was held by the Hon'ble Supreme Court in the case titled **Shivjee Singh Vs. Nagender Tiwary 2010 (7), SCC 578**, that if there is prima facie evidence, the Magistrate is bound to issue process even if the person charged with an offence in complaint might have a defence.*

7. In view of foregoing discussion, this Court is of the opinion that at this stage there is sufficient preliminary evidence on the case file to call for summoning of accused no. 1 to 4 i.e. the husband,

*brother-in-law, mother-in-law and father-in-law of the complainant Sabnoor under Sections 498-A and 406 read with Section 34 I.P.C. However, no case for summoning is being made out against the remaining accused no. 5 i.e. Khan Sahab son of Sardar as the allegations against him have not been supported with the help of any cogent evidence. Ingredients of Section 506 IPC are also not made out as there is nothing on record apart from the bare statements which shows that the complainant was threatened with her life. Accordingly, the accused persons namely **Jayauddin son of Ramjan, Aarif son of Ramjan, Ramjan son of Kamar Khan and Sahidan wife of Ramjan** be summoned for commission of offences punishable under Sections 498-A, 406 read with Section 34 IPC for 03.10.2016 on filing of PF, copies of complaint and list of witnesses etc. and **the complaint regarding the accused no. 5 namely Khan Sahab son of Sardar is hereby dismissed.***

9. The Findings returned by the revisionary court read as:-

“8. After going through the summoned record, it transpires that complainant has given very lengthy and detailed account of the alleged acts of cruelty and demand of dowry, on the part of the accused. It transpires from her deposition that the two

sisters were married together and the elder sister had joined the matrimonial company of her husband Aarif while complainant Sabnoor being younger had not joined the matrimonial company of her husband Jiyauddin and she continued to live with her parents. Her statement establishes that even her sister Jule Khan had to leave matrimonial company of her husband due to acts of cruelty and demand of dowry and she was residing with her parents. The facts of complaint and deposition of complainant and her witnesses establish that it is not only with regard to alleged acts of cruelty and demand of dowry qua Jule Khan but even in regard to complainant Sabnoor complaint has been filed and witnesses deposed. The evidence of complainant as CW1, her father Salauddin as CW3 and a relative namely Kutbuddin as CW2 was sufficient to establish prima facie allegations to summon the accused for offence u/s 498-A IPC.

9. *Whatever has been contended on behalf of the revisionists cannot be appreciated at this stage to discredit on oath depositions of complainant and her witnesses. The fact that police had filed cancellation report does not benefit the accused at this age when otherwise complainant's on oath deposition is descriptive in nature giving a*

detailed account of acts of cruelty and demand of dowry Prima facie, the fact that two sisters are living with their parents itself indicates that everything is not in tune to the social norms and unless there are over-acts of cruelty, the sisters would not be residing with their parents. At this stage, learned lower court was only (required to examine the evidence to consider if the allegations are groundless or not and which in light of matter on record before it did not appear to be groundless and learned lower court committed no error on law or facts requiring indulgence of this court. Only because another opinion on the same facts and evidence could be formed that cannot be sufficient enough to set aside the learned lower court's order summoning the accused.”

10. The conceded position emerging from the record is that Nikah of complainant and her elder sister was performed with petitioners No. 1 and 2 respectively, meaning thereby there are two brothers on the one side and two sisters on another side. At the time of Nikah, elder sister was major, however, complainant was minor. Nikah of both the sisters was solemnized in accordance with Muslim rites and ceremonies. The complainant stayed with her parents as she was minor at the time of Nikah. Police registered FIR and thereafter conducted investigation. The police in its report had categorically found that complainant had never joined company of petitioner No. 1

and no *istridhan* was handed over to the petitioners because complainant at all points remained with her parents. Petitioner No. 1 has solemnized marriage with another girl in the year 2015. The elder sister of the complainant has also solemnized second marriage and she is staying with her second husband.

11. From the perusal of impugned orders passed by the trial court as well revisionary court it comes out that petitioners have been summoned to face trial simply on the basis of oral statement of the complainant. The police has conducted investigation and found no substance in the complaint. It is conceded fact that complainant never joined company of petitioner No. 1. At the time of Nikah, she was minor and she always remained with her parents. Matrimonial discord took place between elder sister of the complainant and her husband which aggravated in the year 2012 and she came back to her parental home. The complainant lodged FIR against the petitioners in the year 2013 and no FIR was lodged by elder sister of the complainant who was legally wedded wife of petitioner No. 2 and she remained in the company of her husband from 2005 to 2012. The complainant solemnized marriage in 2005 and till 2012 i.e. the year of aggravated discord between her sister and her in-laws, no FIR was registered. This shows that there was no cruelty or demand of dowry on the part of petitioners till 2012. She lodged complaint in 2013 when her sister came to her parental home. It is surprising that elder sister did not lodge complaint even though she had remained in the company of her husband for seven years. The averments made by the complainant are general which this Court has found that in every case of matrimonial

disputes are made. The police report in the absence of any allegation of bias cannot be ignored. The complainant never joined company of the petitioners and she did not lodge any complaint till 2013, thus, it seems that the complainant through impugned complaint is trying to settle her score qua dispute of her elder sister with her husband.

In view of the above facts and circumstances, this Court is of the considered opinion that impugned orders deserves to be quashed and present petition deserves to be allowed. Accordingly, the impugned order dated 11.01.2019 passed by Additional Sessions Judge, Palwal and order dated 16.08.2016 passed by trial court are hereby quashed qua the petitioners.

(JAGMOHAN BANSAL)
JUDGE

23.02.2023

paramjit

Whether speaking/reasoned : Yes

Whether reportable : Yes/No