

CRM-M-27403-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.118

Case No. : CRM-M-27403-2023

Date of Decision : May 30, 2023

Bimla Devi and others
vs.

.... Petitioners

State of Haryana and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Vineet Kumar Jakhar, Advocate
for the petitioners.

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GURBIR SINGH, J. :

1. Prayer in this petition filed under Section 482 Cr.P.C. is for quashing and setting aside the order dated 27.11.2020 (Annexure P-14), passed by learned Additional Chief Judicial Magistrate, Fatehabad, in case No. **COMI-39-2017** titled **Alem Kaur vs. Bimla Devi etc.**, instituted on 12.06.2017, whereby the petitioners have been summoned to face trial for the commission of offence punishable under Sections 323, 506 read with Section 34 IPC, along with all consequential proceedings arising therefrom, with a further prayer to set aside the order dated 09.03.2023 (Annexure P-25), whereby the application moved by the petitioners under Section 256 has been dismissed.

2. The FIR bearing No.208 dated 08.05.2017, under Sections 323, 34, 506 IPC (Annexure P-1) was registered at Police Station Sadar, Fatehabad, at the instance of petitioner no.4 Budh Ram, against respondent no.2 and others. Challan was presented. Charges were framed against

accused persons. In order to pressurise the petitioners, by abusing the process of law, respondent no.2 filed a complaint bearing No. COMI-39-2017 titled Alem Kaur vs. Bimla Devi etc., before the learned Court on 22.09.2017. Respondent no.2, after tendering the documents and statements, closed the preliminary evidence but the matter was adjourned for arguments on different dates. Copies of relevant zimni orders have been placed on file as Annexures P-5 to P-12. An application for summoning Dr. Sumit Kamboj in preliminary evidence was moved, which was allowed vide order dated 25.07.2019 by the Trial Court. Without considering the actual facts and circumstances of the case, learned Additional Chief Judicial Magistrate, Fatehabad, vide order dated 27.11.2020 (Annexure P-14), summoned the petitioners to face trial for the offence committed under Sections 323, 506, 34 IPC. The case was adjourned on different dates. On eight occasions, case was adjourned for want of complainant's witness and evidence. The petitioners moved petition bearing CRM-M-55000-2022 for setting aside the afore-said order dated 27.11.2020. However, the said petition was dismissed as withdrawn vide order dated 29.11.2022 (Annexure P-23) passed by a Co-ordinate Bench of this Court, with liberty to the petitioners to move an application under Section 256 Cr.P.C. Accordingly, the petitioners moved an application under Section 256 Cr.P.C. dated 13.12.2022 (Annexure P-24), which was dismissed by learned Trial Court vide order dated 09.03.2023 (Annexure P-25). Learned counsel for the petitioners submits that mere presence of the complainant was not sufficient. The complainant was required to lead the evidence but the complainant failed to do so. So, the learned Trial Court was required to record the

complainant as “absent” and then to close the evidence of the complainant. Since the complaint filed by respondent no.2 is a cross-case, the same is to be heard and decided with the case registered against respondent no.2 and others. In order to delay the disposal of case, respondent no.2 is not examining the witnesses. Reliance in this context has been placed on A. T. Mydeen vs. Customs Department reported as 2021 SCC Online SC 1017, wherein it has been held that both the trials should be conducted simultaneously or in case of the appeal, they should be heard simultaneously. Learned counsel has also relied upon State of Haryana vs. Bhajan Lal reported as (1992) AIR 604 1990 SCR and has prayed for setting aside the order dated 27.11.2020 (Annexure P-14).

3. The earlier petition filed by the petitioners i.e. CRM-M-55000-2022 for setting aside the order dated 27.11.2020, whereby the petitioners were summoned to face trial, was dismissed as withdrawn vide order dated 29.11.2022 (Annexure P-23) passed by a Co-ordinate Bench of this Court, with liberty to the petitioners to move an application under Section 256 Cr.P.C. The operative part of the said order is as under :-

“Learned counsel for the petitioners submits that at this stage, the petitioners may be permitted to withdraw the present petition with liberty to move an application under Section 256 Cr.P.C. before the trial Court for taking all the legal grounds available to them.

Dismissed as withdrawn with liberty aforesaid.

In case the petitioners move an application under Section 256 Cr.P.C. within a period of 15

days from today, the same will be decided within 03 months thereafter, after affording an opportunity of hearing to the parties.

Liberty is granted to the petitioners to file a petition, in case any adverse order is passed by the trial Court.”

4. The petitioners filed an application under Section 256 Cr.P.C. to acquit the accused persons since no evidence has been adduced by the complainant, which was dismissed vide impugned order dated 09.03.2023 (Annexure P-25). Para nos. 5 and 6 of the said order are as under :-

“5. However, it is revealed on record that after passing of summoning order against all the nine accused vide order dated 27.11.2020 they have put their appearance on 02.02.2021 and 24.02.2021. Since then w.e.f. 06.04.2021 present case has been fixed for evidence of complainant on 29.04.2021, 31.08.2021, 10.12.2021, 09.02.2022, 28.02.2022, 11.03.2022, 28.04.2022, 27.07.2022, 23.08.2022, 27.09.2022, 11.11.2022, 21.11.2022, 17.01.2023. Even on so many dates last opportunity has been granted to complainant to adduce evidence but he has been failed to adduce any evidence. The fact that exemption application has been filed by accused on some dates does not debar the complainant to adduce evidence. It cannot be ruled out that complainant wants to linger on the matter and does not want to lead evidence. The case of the complainant was at the stage of evidence of complainant when present application was filed. Therefore, in the interest of justice one more opportunity is granted to

complainant to lead her entire evidence on 16.03.2023 subject to payment of cost of Rs. 500/- in DLSA, Fatehabad.

6. Accordingly, application under section 256 Cr. P.C. is disposed of being devoid of merit. Complainant is directed to lead her evidence on 16.03.2023 and it is made clear to her that in case she failed to adduce her evidence on the date fixed, her evidence shall be closed and case shall be proceeded as per law.”

5. The order dated 16.03.2023 passed by the Trial Court has not been placed on record. On asking, learned counsel for the petitioners submits that on 16.03.2023, perhaps some evidence was recorded. The provisions of Section 256 Cr.P.C. are only attracted if in a summons case, the complainant does not appear or has expired. Then the Court can dismiss the complaint and can acquit the accused. In the case in hand, complainant is appearing in the Court although she has delayed the recording of the evidence but the Court has already directed her to adduce the evidence on 16.03.2023, failing which, her evidence would be closed. Moreover, in the instant case, Court is recording pre-charge evidence which means Court has adopted procedure of warrant case. So, the accused, at this stage, cannot be acquitted, as per Section 256 Cr.P.C.

6. Thus, there is no illegality in the order dated 09.03.2023 (Annexure P-25), passed by learned Additional Chief Judicial Magistrate, Fatehabad, on the application moved by the petitioners under Section 256 Cr.P.C.

without merit and the same is hereby dismissed.

8. Since it is a cross case and is to be decided with the case instituted on police report, the learned Trial Court is directed not to grant any unnecessary adjournment to any of the parties so that disposal of the case is not delayed.

9. However, nothing contained herein above shall be construed as an expression of opinion on the merits of the cases.

May 30, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.