

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-8574-2017 (O&M)

Date of Decision: 19.04.2023

Sunil Devi

... Petitioner

VS.

Rattan Singh & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Akashdeep Singh, Advocate for the petitioner

Sandeep Moudgil, J.

This petition under Section 482 CrPC is for quashing of the order dated 10.01.2017 (Annexure P8) as well as the order dated 17.07.2012 passed by JMIC, Panipat vide which the complaint/protest petition (Annexure P6) filed by the petitioner in FIR No.55 dated 06.02.2009 under Section 302/307/149 IPC, registered at Police Station Samalkha has been dismissed.

The facts giving rise to this petition are that petitioner-complainant-Sunil Devi presented a complaint to Judicial Magistrate Ist Class, Panipat which was sent to Station House Officer, Police Station Samalkha, Panipat under Section 156(3) Cr.P.C. for registration of FIR and investigation. Accordingly, a case FIR No.55 dated 6.2.2009 under Sections 302 and 307 read with Section 149 IPC was registered. However, upon investigation, police presented cancellation report whereas the complainant filed the protest petition against such cancellation which has been dismissed by both the courts below.

Learned counsel for the petitioner submits that the petitioner was got married with Rajesh son of Rattan Singh (accused no.1) on 10.12.1999 as per Hindu rites and ceremonies at Azad Nagar, Panipat. Out of the said

wedlock, one daughter Arti was born on 6.2.2002 and one son Himanshu was born on 23.8.2004. The accused used to harass the petitioner and pressurize her husband to bring money from the father of the petitioner. Her husband refused to bring money from his in-laws. The accused were unhappy with the petitioner and her husband and used to fight on petty issues. Therefore, husband of the petitioner wanted to reside separate from the accused. In the evening of 4.11.2008, her husband Rajesh asked his father Rattan Singh (accused no.1) to separate him but all the accused in pursuance of their common intention gave beatings to her husband. The petitioner rescued her husband from the accused with the help of neighbours with great difficulty. Accused Vikram brother-in-law of petitioner threatened to eliminate her husband and both the children so that they could not get any share in the property. Accused Subhash is employed in police department and he stated that he has good relations in police department, therefore, he will manage the things. In the morning of 05.11.2008, petitioner asked her husband to drop both the children in school and she herself left for making dung cakes in her plot. After sometime when she came back, Santro and Roshni Devi caught her and stated that accused-Rattan Singh, Vikram Singh and Subhash have killed her husband and children and now they will eliminate her. They forcibly administered her celphos tablets after mixing in lassi. Thereafter, she lost her consciousness. On 9.11.2008, she regained her consciousness at Rohtak Medical Hospital and came to know that earlier accused got her admitted in Balaji Hospital, Panipat and thereafter, she was referred to Rohtak Medical Hospital for treatment. She came to know that all the accused in pursuance of their common intention killed her husband and both children

and on 5.11.2008 threw their dead bodies on railway line near village Manana. She was discharged on 13.11.2008 from Rohtak Medical Hospital. She was under shock due to the death of her husband and children Arti and Himanshu. She along with her father and other persons visited In charge Police Station Samalkha several times but no action was taken against the accused. She then filed complaint before Judicial Magistrate Ist Class, Panipat which was sent to Police Station for registration of FIR and investigation. However, the police filed cancellation report on 19.11.2010 upon which notice was issued to the petitioner and she stated that she is not satisfied with the cancellation report and wants to proceed with it as protest petition.

The trial court heard the protest petition and vide order dated 17.7.2012 dismissed the same. Aggrieved against the impugned dated 17.7.2012, petitioner filed present revision petition which was firstly allowed by the then learned Additional Sessions Judge, Panipat vide order dated 14.8.2013. However, against the aforesaid order dated 14.8.2013, accused filed revision petitions bearing No.CRM-M 8215 of 2014 and CRM-M 12076 of 2014 before this Court which were allowed vide order dated 11.7.2016, directing the revisional court for taking a fresh decision on the issue after hearing accused. Accordingly, notice of the revision was issued to the accused and thereafter vide order dated 10.01.2017, the protest petition was dismissed holding that there is no illegality, irregularity or perversity in the order dated 17.07.2012 passed by the trial court.

Learned counsel for the petitioner-complainant contended that the petitioner herself appeared in the witness box as CW1 and reiterated the

averments made in the complaint. Her statement was further corroborated by her father CW2 Mahabir Singh. Dr.Rajeev Kumar appeared as CW3 who has categorically stated that on 5.11.2008, the complainant was admitted in Balaji Hospital with alleged history of consumption of aluminum phosphate tablet. She was discharged on 8.11.2008 in partially improved condition and was referred to PGIMS Rohtak for further treatment. He has further proved certificate Ex.CW3/A. CW4 Bhupender Singh, Store Keeper of General Hospital, Panipat has proved on record copies of postmortem examination reports Ex.PW4/A to Ex.PW4/C of Rajsh, Himanshu and Arti respectively. CW5 Shiv Kumar, Medical Record Technician PGIMS Rohtak has brought the summoned record and stated that Sunil Devi was admitted in PGIMS Rohtak on 8.11.2008 and was treated by Dr.Rajesh Rajput. As per the record, the case was of poisoning and she was discharged on 13.11.2008. Dr.Rajesh Rajput, Senior Professor, Medicines PGIMS Rohtak has also appeared in the witness box as CW6 and has stated that Sunil Devi was under his treatment and was a suspected case of celphos poisoning. He has proved the treatment record of Sunil Devi as Ex.CW6/A. Thus, evidence on file was sufficient to summon the accused to face trial for commission of offence under Sections 302, 307 read with Section 149 IPC but the courts below have wrongly dismissed the protest petition.

Learned counsel further contended that on 30.3.2009 the police presented cancellation report in this present case whereby the petitioner filed a protest against the said cancellation report. The said protest was treated as a complaint case in which petitioner as well as other CW's deposed. As per the cancellation report, the investigation officer had taken into consideration FSL

report and statement of petitioner on 6.11.2008. A motor cycle bearing No.HR-60-4700 belonging to Vikram was also found parked near the railway track as per the FSL report. Further, Rajesh had gone to drop his children at Govt, School in which they were studying. However, it would be pertinent to mention here that in order to reach Govt. school from house of Rattan Singh, there is no need to cross the railway line as the railway line is at the other end of the village. Therefore, the theory as projected by the police while filing the cancellation report that the said occurrence was a railway accident does not seems probable on the face of it. The site plan of village showing house of Rattan Singh, school, railway line has also been attached as Annexure P5.

It is further averred that both the courts below after perusing the records dismissed the complaint relying upon the cancellation report filed by the police whereby it has been mentioned by the Investigating agency that it is a case of railway accident. Both the courts below also relied upon statement of petitioner given on 6.11.2008 which was part of cancellation report. A impugned order dated 17.7.2012 would reveal that the trial court had basically relied upon the documents which were part of the cancellation report which could not have been read and the trial court should have only relied upon the evidence produced before it in the shape of CW1 to CW6.

It has come on record that on 5.11.2008, Assistant Sub Inspector Suresh gave application to the Medical Officer seeking opinion as to whether petitioner is fit to make statement but the doctor opined her unfit to make statement. However, on 6.11.2008, she was declared fit by Dr.Rajiv Kumar and her statement was recorded by Assistant Sub Inspector Jagdish wherein she stated that she took celphos tablet by mistake instead of taking medicine

for fever and no one is responsible for this. Therefore, her own statement made to the police in hospital is sufficient to conclude that she was not administered any poisonous substance by the accused and she herself took celphos tablet by mistake. So far as the death of Rajesh, Himanshu and Arti is concerned, there is no eye witness to the occurrence. During investigation, it was found by the police that they were victims of train accident and the accused had no role to play in the occurrence. As per the scene of Crime Report of Forensic Science Laboratory, Madhuban submitted by Dr. Neelam Arya, the possibility of train accident could not be ruled out. During investigation, police recorded statement of one Ved Parkash who told that he had seen Rajesh, Himanshu and Arti on 5.11.2008 crossing the railway line. Therefore, there is no evidence on file to prove that the respondents committed murder of Rajesh, Himanshu and Arti. Suspicion cannot take place of proof, however, grave it is.

In her complaint, the petitioner has alleged that in the evening of 4.11.2008, all the accused with their common intention gave severe beatings to her husband and threatened to eliminate them and he was rescued with the help of neighbours, but no neighbour has been produced in the witness box to prove the alleged strained relations between the deceased and the respondent and any such threat to their lives extended by the respondent. Summoning of accused in criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course.

The courts below have rightly observed that it is not that the petitioner has to bring only two witnesses to support her allegations in the complaint to have criminal law set into motion. The order summoning the

accused must reflect due application of mind to the facts of the case and the law applicable thereto. The court is bound to examine the nature of allegations made in the complaint and the evidence, both oral and documentary in support thereof and that would be sufficient for the complainant to succeed in bring home the charge against the accused. It is not that trial court is silent spectator at the time of recording of preliminary evidence before summoning of accused. It has to carefully scrutinize the evidence brought on record and may even himself put question to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.

In the given facts and circumstances of the case, both the courts below by way of concurrent findings have rightly observed that the evidence brought on file by the petitioner is not *prima facie* sufficient to proceed against the accused and the orders dated 17.07.2012 (Annexure P6) and 10.01.2017 (Annexure P8) do not suffer from any infirmity or illegality to warrant interference of this Court.

Accordingly, this petition is dismissed.

19.04.2023

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No