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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-6251-2021

Date of decision: 03.05.2024

Anu

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rahul Garg, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG Punjab

HARPREET SINGH BRAR, J.

1. The present petition is preferred under Section 482 Cr.P.C. seeking quashing of DDR No. 25 dtd 26.03.2020 registered under Section 452, 427 IPC at Police Station Sadar, Hoshiarpur which is a cross version in FIR No. 79 dated 21.05.2019 registered under Section 376, 354, 506, 323, 148, 149 IPC registered at Police Station Sadar, Hoshiarpur.
2. Briefly, the facts are that the prosecutrix-Ranjit Kaur was in a live in relationship with one Hardeep Kumar @ Deepu. He convinced her to divorce her husband and promised to marry her and adopt her son. The accused made physical relations with her on the pretext of marriage but failed to honour the promise of marriage even after one year. On 20.05.2019, the accused called the prosecutrix to his residence, where 12-13 other persons were also present, and gave her beatings. The prosecutrix raised hue and cry causing someone to call the police. Seeing the same, the accused persons ran away while threatening to kill her.

3. Learned counsel for petitioner submits that the petitioner is a witness in the FIR (supra) case and after one year of its lodging, the petitioner found out that a cross version has been registered vide DDR(supra) when the police raided her house. The DDR (Supra) has been lodged merely to pressurize the prosecutrix to enter into a compromise qua the FIR (surpa) case. There is a substantive delay of 10 months in lodging the cross-version by means of the DDR(supra), which is suggestive of its malicious nature. The FIR(supra) categorically states that accused-Hardeep Singh have given beatings to the prosecutrix while being inebriated and she was saved by ASI Jasvir Singh.

4. The DDR(supra) was registered on the allegations that on 20.05.2019, the prosecutrix called Hardeep Kumar and asked him to meet at his house. On his refusal to do so, she informed him that she is going to his house regardless. The petitioner and the prosecutrix forcibly entered the house of Hardeep Kumar and damaged the 44 inch LED TV with a chair amongst other articles.

5. *Per contra* learned State counsel submits that the report under Section 173 Cr.P.C. has been presented qua Hardeep Singh in the FIR(supra) and the prosecutrix and the petitioner in the cross case. Both cases are now pending consideration before learned Additional Chief Judicial Magistrate, slated on 20.12.2023.

6. Having heard the learned counsel for the petitioner and after perusing the record with his able assistance, it transpires that this Court does not find it proper to adjudicate upon disputed question of facts while the matter is pending consideration before the learned Court below. The matter requires to be adjudicated by the learned trial Court on the basis of the evidence adduced by

the parties and the probable defence as set up by the petitioner cannot be gone into at this stage. A two Judge bench of the Hon'ble Supreme Court in **HMT Watches Limited vs M.A. Abida (2015) 11 SCC 776** has held that inherent powers under Section 482 of the Cr.P.C. cannot be extended to determining question of facts. It is only for the trial Court to determine the disputed questions of fact after examining the evidence on record and interference by this Court with regards to factual questions is impermissible in law.

7. A two Judge bench of the Hon'ble Supreme Court in the **Rathish Babu Unnikrishnan Vs. State (Govt. of NCT) 2022 SCC Online SC 513**, speaking through Justice Hrishikesh Roy, observed as under:

“17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”

8. In view of the foregoing discussion, the present petition is hereby dismissed. However, keeping in view the fact that the petitioner is a household lady, this Court is of the considered opinion that her personal appearance before the learned trial Court can be exempted. A two Judge Bench of the Hon'ble Supreme Court in **S.V. Muzumdar v. Gujarat State Fertilizer Co. Ltd 2005(2) RCR (Criminal) 860**, has laid down the law that while deciding on the issue of exemption, the Court has to consider whether any useful purpose would be served by requiring the personal attendance of the accused or whether progress of the trial is likely to be hampered on account of his absence. Further, a two

Judge Bench of the Hon'ble Supreme Court has laid down the ratio in ***M/s. Bhaskar Ind. Ltd. v. M/s. Bhiwani Denim & Apparels Ltd., 2001(4) RCR (Criminal) 137*** that the accused need not appear before the Magistrate and that the Magistrate can allow the accused to make even the first appearance through his counsel. Speaking through Justice K.T. Thomas, the following was observed:

"14. The normal rule is that the evidence shall be taken in the presence of the accused. However, even in the absence of the accused such evidence can be taken but then his counsel must be present in the Court, provided he has been granted exemption from attending the Court. The concern of the criminal Court should primarily be the administration of criminal justice. For that purpose the proceedings of the Court in the case should register progress. Presence of the accused in the Court is not for marking his attendance just for the sake of seeking him in the Court. It is to enable the Court to proceed with the trial. If the progress of the trial can be achieved even in the absence of the accused the Court can certainly take into account the magnitude of the sufferings which a particular accused person may have to bear within in order to make himself present in the Court in that particular case.

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17. Thus, in appropriate cases the magistrate can allow an accused to make even the first appearance through a counsel. The magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. Section 317 of the Code has to be viewed in the above perspective as it empowers the Court to dispense with the personal attendance of the accused (provided he is represented by a counsel in that case) even for proceeding with the further steps in the case. However, one precaution which the Court should take in such a situation is that the said benefit need be granted only to an accused who gives as undertaking to the satisfaction of the Court that he would not dispute his identity as the particular accused in the case, and that a counsel on his behalf would be present in Court and that he has no objection in taking evidence in his absence. This precaution is necessary for the further progress of the proceedings including examination of the witnesses."

9. Therefore, in view of the facts and circumstance of the case and the ratio laid down by this Court in ***Suresh Kumar and another Vs. The State of***

Haryana and another 2023 (2) Law Herald 1498, the personal appearance of the petitioner before the learned trial Court is ordered to be exempted, subject to the following conditions:-

- (i) petitioner shall be represented through her counsel;
- (ii) shall not delay/stall the proceedings;
- (iii) shall not dispute her identity;
- (iv) shall have no objection if the prosecution evidence is recorded in her absence but in the presence of her counsel;
- (v) shall appear before the Court as and when required; and
- (vi) any other condition, which the Court below may impose.

10. Pending miscellaneous application(s), if any, also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

03.05.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No