

136 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10068-2024
Date of decision: 26.02.2024

Megha NagpalPetitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Anand Chibbar, Senior Advocate
with Mr. Amitabh Tewari, Advocate,
Mr. Dilmrig Nayani, Advocate and
Mr. Satvik Bansal, Advocate
for the petitioner.

Mr. Gaurav Chopra, Senior Advocate
with Mr. Rajesh K, Sheoran, Advocate,
Mr. Hardeep Singh Poonia, Advocate and
Mr. Reshab, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J.

1. The petitioner has approached this Court by filing present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking quashing of FIR No. 109 dated 12.10.2023 (Annexure P-1) filed under Sections 506 of the IPC registered at Police Station DLF-II, Gurugram as well as final report under Section 173 of the Cr.P.C (chargesheet) dated 06.01.2024 (Annexure P-2) whereby offences under Sections 506 and 34 of the IPC have been made out post investigation.

FACTUAL BACKGROUND

2. Briefly, the facts are that the marriage between petitioner and respondent no.2 -complainant was solemnised on 06.05.2011 and two children

were born out of the said wedlock. The petitioner had been facing immense mental hardship during the marriage and finally moved out of her matrimonial home. On 26.06.2023, on account of a minor conflict and on asking of the petitioner, respondent no. 2 moved to his parents house while she stayed at their matrimonial house with their children. It was mutually agreed that the custody of the children would remain with the petitioner. In July of 2023, while respondent no. 2 was talking to the petitioner over call, a man suspected to be Karan Attrey, intervened and vilified him. The petitioner has not allowed respondent no. 2 to return to their house and has been threatening to falsely implicate respondent no. 2 and his family on various messages exchanged on WhatsApp. On 20.08.2023, the petitioner went to the house of Karan Attrey, along with her children and around 9:35 PM, respondent no. 2 received a WhatsApp call from Karan Attrey through the petitioner's number where he threatened to kill him and sexually assault his mother. He received another call at 10:15 PM where he was threatened by Karan Attrey again. Allegedly, Karan Attrey had been trying to take advantage of the matrimonial discord between the petitioner and respondent no. 2 and create a rift between them. Respondent no. 2 filed a complaint regarding the same on 15.09.2023.

3. On 16.09.2023, when the petitioner went to the house of respondent no. 2 to fetch the children, he refused to send them back. She visited his house again on the very next day, however found the house to be empty. Thereafter, on 18/09/2023, the petitioner filed a petition for custody before the learned Family Court, Gurugram under Sections 7, 10, 17 and 25 of the Guardians and Wards Act, 1894 read with Section 7(g) of the Family Courts Act, 1984. The learned Family Court, vide order dated 19.09.2023, restrained the petitioner from taking the custody of the children forcibly. Aggrieved by the

same, the petitioner approached this Court in revision where the applicability of order dated 19.09.2023 was stayed and the custody was ordered to be shared on weekly basis vide order dated 16.10.2023 (Annexure P-4). However, this Court vide order dated 21.02.2024, gave the custody of the children to respondent no. 2 till the next date of hearing.

4. During investigation, based on the statement of Hina, wife of Karan Attrey, it was concluded that the petitioner had provoked him to threaten respondent no. 2. Accordingly, Section 34 of the IPC was added and the petitioner was served with notice under Section 41A of the Cr.P.C. On completion of the investigation, the final report dated 06.01.2024 under Section 173 of the Cr.P.C was filed against Karan Attrey and the petitioner for committing offences under Sections 506 and 34 of the IPC.

CONTENTIONS

Learned senior counsel appearing for the petitioner *inter alia* submits that a perusal of the FIR would show that the petitioner is not named in the FIR, however, in the final report, she has been nominated as an accused with the aid of Section 34 of IPC and the record clearly indicates that no offence as alleged under Sections 506/34 of IPC is made out. The petitioner has been involved in the FIR (*supra*) only due to private and personal spite to present her into bad light at the behest of respondent No.2 to cause prejudice in the mind of the Court hearing the case of custody of the minor children of the petitioner. It is further contended that admittedly, the petitioner has not uttered a single word and it was Karan Attrey who had threatened and abused the complainant. As such, the essential ingredient of culpable intention to attract offence under Section 506 of IPC is clearly missing and learned senior counsel further emphasized that mere abuse, rudeness or insolence may not amount to

intentional insult as defined under Section 506 of IPC in the absence of the necessary element of intention to cause alarm is not available on record at all. Learned counsel relies upon the judgments passed in 'Mohammad Wajid and others Vs. State of U.P. and others' Criminal Appeal No.2340 of 2023, 'Manik Taneja and another Vs. State of Karnataka and another' Criminal Appeal No.141 of 2015 and 'Ramesh alias Dapinder Singh Vs. State of Himachal Pradesh' (2021) 15 SCC 52. Further reliance has been placed on para 16 of ***Ramesh alias Dapinder Singh (supra)***, to contend that where the overt acts are attributed to principal accused, the person accompanying the principal accused cannot be made liable in respect of every act committed by the former and there is nothing on record to even remotely suggest that petitioner shares common intention in respect of every act committed by co-accused-Karan Attrey and in the absence of such material which shows the prior meeting of mind, the FIR (*supra*) is liable to be quashed.

Per contra, the learned senior counsel appearing for respondent No.2 submits that there is cogent incriminating evidence available on record to indicate the complicity of the petitioner. Rather, the perusal of the final report and the statement of Heena, wife of Karan Attrey clearly proves that petitioner is the mastermind and Karan Attrey has acted at her behest and he refers to the transcript (Annexure P-7) of the recording of the conversation amongst the petitioner, Karan Attrey and respondent No.2 and submits that he has intimidated respondent No.2 by using phone of the petitioner in her presence and he has threatened to shoot respondent No.2 on his forehead. It is further contended that Investigating Officer has recorded the statement of Heena, wife of Karan Attrey, who has categorically stated that Karan Attrey has threatened respondent No.2 to shoot him after being instigated by the petitioner. He relies

upon the judgment of the Hon'ble Supreme Court passed in 'Ram Naresh Vs. State of U.P.' 2024 (1) R.C.R. (CrI.) 64 and submits that once the participation of the petitioner in crime is proved, Section 34 of IPC would come into play and the common intention is established.

OBSERVATIONS AND ANALYSIS

Having heard learned counsel for the parties and after perusing the record with able assistance, it transpires that the petitioner has gone to the house of Karan Attrey on the date of incident and it was the petitioner, who had made a call to respondent No.2 and Karan Attrey had threatened and abused respondent No.2 by using her mobile phone. Whether the essential ingredient of culpable intention to attract Section 506 of IPC is there or not would be a matter of trial and this factual aspect can only be decided by the learned trial Court on the basis of evidence.

CONCLUSION

In view of the above, without commenting further on the merits of the case lest it may prejudice the case of either party, this Court finds no ground to quash the FIR (*supra*) and the same stands dismissed.

However, keeping in view the fact that petitioner being a lady and mother of two minor children attending trial on each and every date would cause great hardship and inconvenience to her, in view of the ratio laid down by this court in CRM-M-25963-2023 titled as 'Suresh Kumar and another Vs. The State of Haryana and another' 2023 (2) Law Herald 1498, her personal appearance 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 trial proceedings;

- iii) shall not dispute her identity as accused;
- 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 trial Court as and when required; and
- vi) any other condition, which the trial Court may impose.

Nothing observed hereinabove shall be construed as an expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

26.02.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No