

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**128****CRM-M-11563-2024(O&M)****Date of order: 05.03.2024****Jasbir Kaur Bhasin****.....Petitioner(s)****Vs.****State of Haryana & Others****.....Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:-** Mr. Japneet Singh Wadhwa, Advocate
for the petitioner.

Mr. R.S. Arya, Addl. AG Haryana.

Nidhi Gupta, J.

Present petition under Section 482 Cr.P.C. is filed seeking quashing/setting aside of impugned judgment dated 30.01.2024 (Annexure P5) passed by learned Additional Sessions Judge, Ambala in Criminal Revision No.17 of 2021 (instituted on 19.02.2021) titled as "Jasbir Kaur Bhasin Vs. State of Haryana & Others", whereby the criminal revision petition filed by the petitioner seeking modification of order dated 18.02.2020 (Annexure P2) passed by learned JMIC, Ambala to the extent that respondents No.2 to 4 be summoned under Sections 403, 420, 440, 500, 506 and 510 IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961, also, has been dismissed; and Criminal Revision No.86 of 2022 (instituted on 18.07.2022) titled as "Vaibhav Sharma Vs. State of Haryana & Another" filed by respondent No.3, has been allowed, and a well-reasoned order dated 18.02.2020 (Annexure P2) passed by learned JMIC, Ambala whereby

respondents No.2 to 4 were already summoned under Sections 406 and 120-B IPC in complaint bearing No.UCR/70/2018, was set aside.

2. Learned counsel for the petitioner/complainant inter alia submits that the petitioner is a retired Haryana Government employee and marriage of her daughter was fixed with respondent No.2 on 21.04.2015. However, prior to the marriage i.e. on 19.04.2015, respondents No.2 to 4/accused telephonically communicated with the petitioner and demanded a luxury car along with cash of Rs.1 crore. When the complainant/petitioner showed her inability to fulfil the said demands, respondents No.2 to 4 expressed their disagreement and refused to solemnize marriage of respondent No.2 with the daughter of the petitioner. It is submitted that the petitioner requested the said respondents not to cancel the marriage but to no avail. Even the articles gifted by the petitioner side to the accused persons at the time of ring and roka ceremony were misappropriated by respondents No.2 to 4. As a result, the daughter of the petitioner suffered a huge mental trauma and also underwent psychiatric treatment for a longtime. It is in this circumstance that the petitioner registered FIR No.122 dated 01.05.2015(Annexure P1) under Sections 3 and 4 of Dowry Prohibition Act, 1961 and Sections 406, 420 and 506 IPC at Police Station Baldev Nagar, District Ambala. However, after investigation, cancellation report was submitted in the said FIR on 05.11.2015. Aggrieved of the same, the petitioner filed protest petition before the learned JMIC, Ambala, in which vide order dated 18.02.2020 (Annexure P2), the accused were summoned. Since the accused persons were not summoned under Sections 3 and 4 of Dowry Prohibition Act, 1961

and Sections 403, 406, 420, 440, 500, 506 and 510 IPC, being aggrieved, the petitioner preferred a criminal revision petition bearing No.17 of 2021 (instituted on 19.02.2021) titled as “Jasbir Kaur Bhasin Vs. State of Haryana & Others” before the learned Additional Sessions Judge, Ambala against order dated 18.02.2020 (Annexure P2).

3. Simultaneously, respondent No.3 also preferred cross criminal revision petition bearing No.86 of 2022 (Annexure P4) (instituted on 18.07.2022) titled as “Vaibhav Sharma Vs. State of Haryana & Another” for setting aside order dated 18.02.2020 passed by learned JMJC, Ambala. Now, vide the impugned order, the revision petition filed by the petitioner has been dismissed and criminal revision filed by respondent No.3 has been allowed by setting aside order dated 18.02.2020.

4. Learned counsel submits that while passing the impugned judgment, the learned Additional Sessions Judge, Ambala has failed to appreciate the fact that in instant case, since, impugned order dated 18.02.2020 vide which request for summoning accused under Sections 3 & 4 of Dowry Prohibition Act, 1961 and Sections 403, 406, 420, 440, 500, 506, 510 IPC has not been accepted by Ld. Trial Court nor has it given a reasoning for declining the same, impugned order being non-speaking to the extent that it did not summon the accused for these sections was liable to be set aside as there was sufficient evidence of the complainant, oral as well as documentary, to establish that these offences were made out. Moreover, the Ld. Additional Sessions Judge, Ambala as well as the Ld. Trial Court failed to appreciate the fact that as per provisions of Section 3 & 4 of Dowry Prohibition Act, 1961, any demand made prior to

marriage of dowry also constitutes the offence punishable under the said Sections. The Ld. Additional Sessions Judge, Ambala as well as the Ld. Trial Court also failed to appreciate the fact that the request of the accused to drop Sections 406 and 120B IPC from the summoning order also lacks substance because the lists of items given to the accused in roka and ring ceremony have already been proved in accordance with law and further there was a demand raised for dowry on 19.04.2015, which when not accepted by the petitioner resulted in the marriage proposal being recalled and even the items already given were never returned, and were misappropriated by the accused.

5. No other argument is made on behalf of the petitioner.
6. I have heard learned counsel for the petitioner and perused the case file in detail.
7. Relevant findings of the learned Additional Sessions Judge, Ambala as contained in impugned order dated 30.01.2024 (Annexure P5) are reproduced hereinbelow:-

“Now, only thing to be seen is with regard to application of provisions of Sections 3 & 4 of the Act, 1961, in respect of the accused not summoned by Id. Trial Court to face trial, but other- wise prayed in the present revision on behalf of the complainant/revisionist to summon based on the evidence led. whether the reason given for cancellation of marriage fixed for 21.04.2015 through mobile talk on dated 19.04.2015, is believable and justified?

The answer to this question is negative.

There is no dispute that dowry demand raised at or before marriage is covered within the definition of Section 2 of the

*Dowry Prohibition Act, 1961. To this effect, reliance is placed upon the law down in the case **Koppiseti's case (supra)**. To see the truthfulness of the claim of the demand of dowry raised on dated 19.04.2015 by the accused, on one side, there is self-serving statement of the complainant and on the other hand, there are detailed investigation reports not even once, but thrice ending into cancellation submitted by various police authorities claiming allegations of the complainant made in the complaint as false and in such reports reliance has also been placed upon the Hindi version of the mobile conversation taken place between Smt. Jasbir Kaur, complainant and accused Vyom and complainant's son Inderjot. Before proceeding further, it is worth to notice that as per report of investigating officer, the complainant during investigation by the police had never tried to challenge such conversation or legality of recording, nor, she associated herself to give her voice to dispute its contents despite police having given opportunity to do the same. On the contrary, there is a CFSL report dated 15.09.2015 placed on record with report of investigation, depicting that audio recording having duration of 19.04 minutes is authenticated. In the given circumstances, the report of conversation dated 19.04.2015 is the deciding factor to see whether or not the demand of dowry was raised before canceling the marriage?*

The perusal of the conversation indicate that Vyom accused is not showing his dissent to get married with the complainant's daughter, but, explaining reasons not to marry on the date fixed as his father was in critical medical condition. The father of the accused Vyom was getting treatment in PGI, thus admitted there in critical condition during that period and thereafter who ultimately expired has also been proved on record by investigating officer through report. If this be the position, only thing to be concluded is that on dated

19.04.2015 through mobile conversation, the accused Vyom did not raise any demand of a car and Rs. 1 crore in cash, as otherwise claimed by complainant. Rather, such allegations levelled as such do not inspire confidence because when accused Vyom's father was admitted in hospital that too in critical condition, there was no reason for him to raise demand just two days prior to his expected date of marriage, as at that time as a son only task of his was to look-after his father and not to demand dowry. In nutshell, even if the marriage was not solemnized on the date fixed, prima facie it does not appear to be because of alleged demand of dowry raised on dated 19.04.2015, but because of some misunderstanding, mention of which is repeatedly there in the conversation dated 19.04,2015 and the said misunderstanding cannot be substituted with the word "Demand of Dowry" Hence, in the case in hand, the accused have rightly not been summoned under Section 4 of the Act, 1961 and when demand is not proved, question of attracting provisions of Section 3 of the Act, 1961, does not arise.

Though, Id. counsels for the complainant/revisionist has harped upon an issue that this mobile conversation dated 19.04.2015 is incomplete, thus not reliable, as conversation taken prior thereto is not on record, but otherwise mention of the same is there in the second line of conversation in the manner "Dr. Vyom - Ha, Ji, Baat Puri na ho Pai thi (or words to that effect)". This court is not inclined to accept this argument to disbelieve conversation dated 19.04.2015, because if the complainant party had anything to the contrary recorded prior thereto or had any justified explanation in support of its allegations in the complaint, it should have had proved it on record, but the same is not done. Resultantly, scientifically proved conversation dated 19.04.2015 is to be relied and has rightly been relied by investigating agency to cancel the case.

Consequently, non summoning of the accused under Sections 3 & 4 of the Act, 1961, by Id. Trial Court is justified.

(g) Non-summoning of accused under Sections 420, 440, 500, 506 and 510 IPC.

Since, entire perusal of oral as well as documentary evidence led by the complainant in her preliminary evidence, no way establishes on record as to what kind of inducement was given by the accused which made the complainant to deliver any property or to omit to do something which she would otherwise have not done or omitted, provisions of Section 420 IPC has no application. Otherwise also, Section 420 and 406 IPC being antithesis cannot go together as otherwise projected by the complainant in her complaint. Consequently, prima facie provisions of Section 420 IPC are not attracted against any of the accused arrayed.

Similarly, in the absence of proof of mischief committed led by the complainant against the accused, Section 440 IPC is not made out in this case. Further, accused cannot be summoned in the Section 500 IPC for want of non-compliance of provisions of Section 199 Cr.P.C. Otherwise also, dispute concerning matrimonial issue does not amount to "defamation" term defined in Section 499 IPC.

Since, there is no evidence led by the complainant to attract the provisions of Section 506 IPC i.e criminal intimidation, nor mere threat attract such penal provisions, the accused have rightly not been summoned under Section 506 IPC.

Summoning of the accused under Section 510 IPC in this case cannot be done as there is no cogent evidence in specific regarding misconduct of the accused in public in a drunkard condition.

*The reasoning given above for non-summoning, indicate that without relevant evidence on record, a court can't be expected to pass a summoning order, even if the complaint is full of flowery language and Sections. Here, it would be apt to quote the law laid down by Hon'ble Apex Court in **Neelu Chopra Vs Bharti 2010 (1) RCR (Crl.) 115**, wherein it was observed that "to lodge a criminal complaint, mere mention of the Sections and their language is not sufficient. What is required to be brought to the notice of the court is the particular of the offence committed by each and every accused and the role played by each and every accused in committing the offence".*

Since, in the instant case, the contents of complaint, evidence of complainant, is vague and insufficient, impugned summoning order deserves to be set aside on the ground that despite there being no evidence against the accused, still learned trial court has issued the process under Section 406 read with Section 120B IPC.

13. No other issue or point was agitated by counsels for either of the party."

8. Learned counsel for the petitioner is unable to controvert the above said concurrent findings of the learned Courts below. Nothing whatsoever has been shown to this Court to dispute the above said findings of fact, as also law.

9. In view of the above, I find no ground is made out to interfere in the impugned order. Present petition, is accordingly, **dismissed**.

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

05.03.2024

Sunena

Whether speaking/reasoned

Whether reportable

(Nidhi Gupta)

Judge

Yes/No

Yes/No