

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(136) CRM-M-39200-2022 (O&M)
Reserved on: 08.01.2024
Date of pronouncement: 22.01.2024

Kulvir KaurPetitioner

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET KAUR JEEVAN

Present: Ms. Shivya Sehgal, Advocate, for the petitioner.

HARPREET KAUR JEEVAN, J.(ORAL)

CRM-372-2024

1. By way of present application, applicant/petitioner seeks permission to place on record copy of the final report filed under Section 173 Cr.P,C. by the Investigating Agency as Annexure P-7, Copy of Final Statement as Annexure P-8, Copy of *Jamabandias* Annexure P-9 and photographs as Annexure P-10 and for exemption for filing certified copy of the same.
2. Application is allowed as prayed for subject to all just exceptions.
3. Documents Annexures P-7 to P-10 are taken on record.

Main Case

1. Prayer in the present petition under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred as Code of 1973) is for quashing of the impugned order dated 26.07.2022 (Annexure P-6) whereby, the trial Court has declined the protest petition filed by the petitioner/complainant and accepted the cancellation report in FIR No.57

dated 28.04.2016 under Sections 406, 498-A IPC, registered at P. S. Sadar Phagwara, District Kapurthala.

2. The factual matrix is that the petitioner-wife presented a written complaint to Senior Superintendent of Police, Kapurthala, with the allegations that she got married to Baljinder Singh Cheema on 25.12.2011 and a sum of Rs.14-15 Lakhs was spent by her parents at the time of her marriage. Her husband left India and went to Belgium after about one and half months. Initially her husband used to take care of the petitioner and used to talk to her on phone but at the instance of relatives of the husband of the petitioner, he stopped interacting with the petitioner. In the said complaint, the petitioner had leveled specific allegations against Surinder Singh(brother-in-law), Sharanjeet Kaur(sister-in-law) and Jaspinder Kaur (daughter of Surinder Singh), who are relatives of her husband and living in India in the same house where the petitioner went and stayed after her marriage.

2.1 After conducting the investigation, the Investigating Agency presented the final report under Section 173 Cr.P.C. only against the husband of the petitioner. His relatives who were named in the complaint were declared innocent and their names were kept in column No.2 of the report. The husband of the petitioner was declared proclaimed person by Judicial Magistrate 1st Class, Phagwara vide order dated 07.09.2019 (Annexure P-2). As per the order dated 19.11.2019 (Annexure P-3), Judicial Magistrate 1st Class, Phagwara had closed the prosecution evidence under Section 299 Cr.P.C. and ordered to consign the file to the record room.

2.2. The petitioner had challenged the said order by way of filing of CRM-M-27512-2020 but the same was dismissed as withdrawn by the Coordinate Bench of this Court vide order dated 18.09.2020 (Annexure P-4)

with the liberty to the petitioner to avail appropriate remedy by way of filing a protest petition for redressal of her grievances.

2.3. The petitioner had presented a protest petition dated 07.10.2020 before the Area Magistrate, Phagwara (Annexure P-5) raising a challenge for closing the proceedings in the final report under Section 173 Cr.P.C. without giving any opportunity of hearing to her. The challenge was also raised for declaring Surinder Singh, Sharanjeet Kaur and Jaspinder Kaur as innocent by the Investigating Agency alleging that there are specific allegations against the said persons for giving merciless beatings to the petitioner and that in February, 2012 the petitioner was thrown out of her matrimonial house by the said accused persons. It was further alleged that it is has been specifically mentioned in the FIR that the said accused persons had admitted their guilt and took the petitioner back in the matrimonial house in March, 2012 but their demand for dowry and harassment to the petitioner did not end and she was again thrown out of her matrimonial home by Surinder Singh, Sharanjeet Kaur and Jaspinder Kaur in March, 2012 itself after giving her merciless beatings. It was further alleged that at the time of turning out the petitioner from her matrimonial house, her *Istridhan* and gold ornaments were misappropriated by the said accused persons, as such offence under Section 406 IPC is clearly made out against them.

2.4. The protest petition filed by the petitioner was declined by the Judicial Magistrate 1st Class, Phagwara by passing the impugned order dated 26.07.2022 (Annexure P-6).

2.5. The petitioner had challenged the dismissal of her protest petition by the Area Magistrate vide impugned order dated 26.07.2022 (Annexure P-6) by way of filing the present petition under Section 482 of the Code of 1973.

3. Counsel for the petitioner *inter alia* contends that the Area Magistrate had closed the final report under Section 173 Cr.P.C whereby the relatives of the husband of the petitioner were mentioned as innocent without affording any opportunity of hearing to the petitioner. Even the findings by the Investigating Agency that the relatives of the husband of the petitioner who are specifically named in the FIR are innocent have been accepted by the trial Court. Counsel for the petitioner further contends that the relatives of the husband of the petitioner were declared innocent on the basis of an enquiry report by Superintendent of Police, Sub Division, Phagwara. The said enquiry is baseless. It is further contended that the husband of the petitioner and the aforesaid persons are hand in glove.

4. Referring to the copy of the Jamabandi for the year 2010-11 (Annexure P-9), it is contended on behalf of the learned counsel for the petitioner that husband of the petitioner-Baljinder Singh Cheema had transferred his 1/6th share in the agricultural land measuring 7 kanals 5 marlas as well as his share in the residential house situated in the village in favour of Sharanjeet Kaur wife of Surinder Singh, who is none-else than wife of the real brother of the husband of the petitioner. She is specifically named in the FIR and there are allegations that both husband and wife namely Surinder Singh and the said Sharanjeet Kaur have turned out the petitioner from her matrimonial house and even misappropriated her dowry articles. Mutation No.1686 dated 09.12.2023 is reflected in the copy of Jamabandi (Annexure P-9). Raising the aforesaid contentions, counsel for the petitioner submits that the trial Court has erred while dismissing the protest petition filed by the petitioner. The cognizance should have been taken on the basis of the said petition. A prayer was made to remand the matter to the Area Magistrate to take a fresh decision.

5. Keeping in view the nature of prayer made by learned counsel for the petitioner, the issuance of notice to Surinder Singh, Sharanjeet Kaur and Jaspinder Kaur in the present petition is dispensed with .

6. However, learned State counsel contends that no FIR was registered against the relatives of the husband of the petitioner on the basis of the inquiry report by Superintendent of Police, Sub-Division, Phagwara.

7. As per the order passed by the trial Court, the protest petition filed by the petitioner was dismissed primarily on the ground that the Investigating Agency has not given clean chit to the husband of the petitioner who is residing abroad, secondly, it was observed that police had found during investigation that cruelty on account of demand of dowry was only at the instance of the husband and none-else and thirdly, it was observed by the trial Court that complainant had failed to produce any other witness to support her contentions and to rebut the conclusions drawn by the police during the investigation. The relevant observations made by the trial Court which is read as under:

“5. Having considered the submissions of the complainant, this court is of the view that prayer is there for taking cognizance of offence against the accused under section 406 and 498-A of the IPC. First of all it cannot be said that police has given clean chit in crime complained of by the complainant to all the persons as the husband of the complainant is kept as accused by the police. The present prayer is for taking cognizance against other relatives of the husband that too being distant relatives that is sister-in-law, brother-in-law and daughter of sister-in-law and daughter in law. The husband of the complainant is admittedly residing abroad. Now, there is no difference in statement before the court in the present protest petition or the police and complainant has just repeated/reiterated the version already investigated by the police. The investigation is the domain of the police and in the present case also, the file shows that police had carried out thorough investigation which formed the part of the file as report No.173 dated 21.04.2016 and in said report both complainant and accused were examined/heard by the police and after

undertaking thorough inquiry, the police has clearly held that the crime of cruelty/dowry on the pretext of coercing the complainant to bring dowry has been done only by husband and no one else. The hon'ble Supreme Court of India has number of time discussed that there is increase in tendency of roping in all the relatives of husband by wife so as to effect compromise etc. and the present application for taking cognizance and summoning additional accused is against no one else but brother in law, sister in law and their daughter. The thing remains that in the thorough inquiry it is already found that accused sought to be summoned were not involved in the alleged cruelty or non-return of the dowry. Complainant has failed to bring any other witness to support the contention of the complainant or rebut the conclusion which has been drawn by the police and at this stage there is no ground made out to discard the investigation of the police simply on the basis of statement of complainant, in which she has attributed generic allegations, without any specific role to each accused with date and time. Moreover, there is considerable delay on the part of the complainant too in filing the complaint to the police also. This court is not supposed to act as Post Master upon receipt of such kind of application and is supposed to consider the entire file before coming to any conclusion."

7.1. The trial Court has further observed that the complainant can avail remedy under Section 200 Cr.P.C. but there is nothing on record to take cognizance of the offence against the accused who are already declared as innocent. Relevant portion of the observation reads as under:-

"The complainant can well establish her case by availing separate remedy under section 200 Cr.P.C. but there is nothing on record to take cognizance of offence against the accused already declared innocent."

8. As per the FIR (Annexure P-1), the husband of the petitioner-complainant had left India about one and a half month after the marriage. The petitioner had categorically alleged that her husband and relatives of her husband-accused No.2 (Surinder Singh) and accused No.3 (Sharanjit Kaur) and other relatives were given dowry ornaments and clothes as per their demands. There are also allegations that accused No.2 to 4 i.e. Surinder Singh

(*Jeth*), Sharanjit Kaur (*Jethani*) and Jaspinder Kaur (daughter of Surinder Singh) started harassing the petitioner without any reason and in February 2012, accused No.2 to 4 abused the complainant and gave her beatings and she was turned out of her matrimonial home. The counsel for the petitioner had also projected that the said relatives had been in connivance with the husband of the petitioner, since the husband of the petitioner had transferred his share in the landed property as well as his share in the residential house in favour of accused Sharanjit Kaur, who is the wife of brother of accused Baljinder Singh (husband). The trial Court has dismissed the protest petition filed by the petitioner-complainant without properly appreciating the said allegations on wrong premises that the allegation of cruelty and demand of dowry were only against the husband and none else.

9. The trial Court was also having misconception that the investigation is the exclusive domain of the police. The trial Court fell into error and omit to exercise the powers conferred upon a Magistrate under Section 190 of the Code of Criminal Procedure, which specially empowers a Magistrate of the First Class or Second Class to take cognizance of any offence in three contingencies. Under Section 190 of the Code of Criminal Procedure, the Magistrate is having jurisdiction and may take cognizance of any offence (a) upon receiving a complaint of facts, which constitute such offence; (b) upon a police report of such facts; (c) upon information received from any person other than a police report, or upon his own knowledge, that such offence has been committed. Section 190 of the Code of Criminal Procedure, 1973 reads as under:-

190. Cognizance of offences by Magistrates.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence -

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

10. The Constitution Bench of Hon'ble Apex Court in **Dharam Pal and others Vs. State of Haryana and Another**, Criminal Appeal No.148 of 2003 decided on 18.07.2013, has considered the question as to what course can be adopted by a Magistrate if he disagrees with the report of a Police officer, the question before the Hon'ble Constitution Bench of the Apex Court was as under:-

“If the Magistrate disagrees with the police report and is convinced that a case had also been made out for trial against the person who had been placed in column No.2 of the report, does he have the jurisdiction to issue summons against them also in order to include their names, along with Nafe Singh, to stand trial in connection with the case made out in the police report?”

11. While considering the aforesaid question, the Constitution Bench of the Hon'ble Apex Court held that in event the Magistrate disagrees with the police report, he has two choices, he may act on the basis of a protest petition that may be filed or he may, while disagreeing with the Police report, issue process and summon the accused. The observation by the Constitution Bench are as follow:-

“24. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(3) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column no.2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.”

12. The said observations were also considered by the Hon'ble Apex Court in a subsequent decision dated 07.07.2015 in Criminal Appeal No.866 of 2015 titled as **Chandra Babu @ Moses Vs. State Through Inspector of Police** and it was categorically held that the Magistrate has a jurisdiction to ignore the opinion expressed by the Investigation Officer and independently apply his mind to the facts that have emerged from the investigation. The Magistrate can disagree with the Police report and take cognizance and issue process and summon the accused. The observation by the Hon'ble Apex Court reads as under:-

“In *Dharam Pal v. State of Haryana*, the Constitution Bench, while accepting the view in *Kishun Singh v. State of Bihar*, has held thus:-

“35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) CrPC. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.

36. This brings us to the third question as to the procedure to be followed by the Magistrate if he was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decided to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Sessions Court.”

16. We have referred to the aforesaid authorities to reiterate the legal position that a Magistrate can disagree with the police report and take cognizance and issue process and summons to the accused. Thus, the Magistrate has the jurisdiction to ignore the opinion expressed by the investigating officer and independently apply his mind to the facts that have emerged from the investigation.”

13. Coming to the facts of the present case, the trial Court has ignored to take cognizance despite there being oral statement of the petitioner/complainant which is further evident from the conduct of the accused, who have been declared innocent as after the registration of the FIR, they got transferred the share of the husband of the petitioner in the agricultural land as well as in the residential house on the name of accused Sharanjit Kaur and there are specific allegations by the petitioner/complainant in the FIR that she was turned out from her matrimonial home. The complainant has also alleged that dowry articles and her *istridhan* were misappropriated by the accused and there are also allegations of physical assault in the said complaint. The petitioner had filed a detailed protest petition. The reasons recorded by the Magistrate for declining the protest petition are not sustainable in the eyes of law.

14. In view of the above circumstances by accepting the cancellation report filed by the State and not acting on the protest petition filed by the petitioner/complainant, miscarriage of justice has been done.

15. Section 482 of the Code of 1973 saves inherent power of the High Court to prevent abuse of process of any Court or otherwise to secure the ends of justice. The guidelines which were exercised of such powers is provided in Section 482 of the Code of 1973 itself i.e. to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Keeping in view the facts and circumstance of the present matter, the powers under Section 482 of the Code of 1973 can be exercised to secure the ends of justice. Consequently, the present revision petition has merits and the same is accepted. The impugned order dated 26.07.2022 (Annexure P-6) passed by the Magistrate is set aside. The Area Magistrate shall re-appreciate the facts after giving an

opportunity of hearing to the petitioner and to the State. The petitioner shall appear before the Area Magistrate on 16.02.2024.

16. All pending miscellaneous applications, if any, shall stand disposed of.

22.01.2024
Anil/P.Bhatt

(HARPREET KAUR JEEVAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No