



216

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRR-1664-2022(O&amp;M)

Date of Decision:03.09.2024

Neha

... Petitioner

Versus

Ghanshyam Dass and others

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sachin Gupta Ladwa, Advocate  
for the petitioner.

\*\*\*

HARPREET SINGH BRAR, J. (ORAL)CRM-1664-2022

The present application is preferred under Section 5 of the Limitation Act, 1963 read with Section 482 of the Code of Criminal Procedure, 1973(hereinafter 'Cr.P.C.') seeking condonation of 70 days in filing the instant revision petition.

For the reasons mentioned in the application, the same is allowed and the delay of 70 days in filing the instant revision petition is hereby condoned.

CRR-1664-2022

1. The present revision petition has been preferred under Section 482 of the Cr.P.C. against the impugned order dated 05.08.2021 passed by the learned Additional Sessions Judge, Panipat in criminal complaint no.



RBT/68/2020 filed under Sections 306, 511, 120-B, 149, 109 IPC, whereby the respondents-accused were discharged by the learned Court below.

2. Briefly, the facts, as alleged by the prosecution, are that the marriage between the petitioner and respondent No.2 was solemnized on 08.02.2011 in accordance with Hindu rites and rituals. Two sons namely Manik and Garvik were born out of this wedlock. Since the inception of their married life, respondent No.1-father-in-law used to outrage the petitioner's modesty. She informed her husband i.e. respondent No.2, of the same, but he chose to ignore it. In the year 2016, respondent No.1 touched her inappropriately yet again. The petitioner informed her husband but she was accused by him and her in laws of attempting to defame their family. She was physically assaulted and shunned out of the matrimonial home. In January, 2017, a panchayat was convened wherein the respondents apologized and brought the petitioner back to their home. On 12.04.2017, respondent No.1 attempted to rape the petitioner but she managed to escape. The respondents did not pay any heed when she narrated the incident to them, rather respondent No.2 inflicted knife blows on her right hand.

3. Thereafter, the petitioner and respondent No.2 started residing separately from rest of the in-laws family. Respondent No.2 mentally and physically harassed her and also pressurized her to abort the foetus when she was pregnant with their second child. She was pressurized by respondent No.2 to end her life if she wants to avoid a slow, painful death and was forced to reside with respondents No.1 to 3. Consequently, the petitioner was in a depressed state of mind. On 16.11.2017, at about 10:45 PM, the petitioner was forced to jump into the canal near Assandh Road, Panipat. However, she was



saved by one Mahender son of Chelu Ram, who also admitted her in the hospital.

4. On assessing all the material available on the record, the learned trial Court discharged the respondents-accused vide impugned order dated 05.08.2021. Aggrieved by the same, the petitioner has preferred the present revision petition.

5. Learned counsel for the petitioner *inter alia* contends that an FIR bearing No. 430 dated 13.04.2017 filed under Sections 323, 324, 34, 354, 376, 798-A, 506, 511 IPC was lodged against the respondents at Police Station City Panipat. However, the petitioner was forced to compromise the same due to pressure from the panchayat as well as respondents No.4 and 5, who played a pivotal role in the said panchayat. Respondents No.4 and 5 specifically told the petitioner to reside with respondents No. 1 to 3 on their terms and conditions. Respondents No.1 to 3 intentionally harassed the petitioner mentally and physically and often told her to end her life. The petitioner moved a compliant dated 15.11.2017 to reopen the abovesaid FIR No. 430. Due to lecherous conduct of respondent No.1 and the constant harassment from respondents No.1 to 3, the petitioner in fact jumped into the canal. Fortunately, she was saved by one Mahender and admitted to the hospital. The petitioner moved a complaint dated 18.11.2017 to the police but instead of taking action against the respondents, FIR under Section 309 IPC was registered against the petitioner. Left with no other option, the petitioner moved the complaint(supra) but the learned trial Court below fell into grave error by discharging the respondents-accused therein as it failed to consider any documents and evidence available on the record.



6. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, it transpires that the petitioner was allegedly harassed by the respondents to such an extent that she attempted to take her own life. Fortunately, she was saved by one Mahender when she jumped into the canal. Accordingly, it was argued that the respondents should be charged with an offence under Section 306 read with 511 IPC. Proper adjudication of the case would require a study of Section 511 IPC, which reads as follows:

***Section 511- Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment***

*Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.*

7. A two Judge bench of the Hon'ble Supreme Court in ***Satbir Singh vs. State of Punjab 2001(4) R.C.R.(Criminal) 355*** has held that Section 511 IPC is a residuary provision which can only be read in when the accused has attempted to commit an offence punishable under the IPC but its attempt is not made expressly punishable. Moreover, when the said offence is already covered by another provision, Section 511 IPC cannot be invoked. Speaking through Justice K.T. Thomas, the following was opined:

*"8. At the outset we may point out that on the aforesaid facts no offence linked with Section 306 Indian Penal Code can be found against any of the appellants. The said section penalises abetment of suicide. It is worded thus : "If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of*



*either description for a term which may extend to ten years, and shall also be liable to fine." It is a unique legal phenomenon in the Indian Penal Code that the only act, the attempt of which alone will become an offence. The person who attempts to commit suicide is guilty of the offence under Section 309 Indian Penal Code whereas the person who committed suicide cannot be reached at all. **Section 306 renders the person who abets the commission of suicide punishable for which the condition precedent is that suicide should necessarily have been committed. It is possible to abet the commission of suicide. But nobody would abet a mere attempt to commit suicide. It would be preposterous if law could afford to penalise an abetment to the offence of mere attempt to commit suicide.***

xxx

xxx

xxx

10. Now, we have to see whether the appellants can be convicted under Section 511 read with Section 304B Indian Penal Code. For that purpose it is necessary to extract Section 511 as under :-

*"511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment. - Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with such fine as is provided for the offence, or with both."*

**11. The above section is the solitary provision included in the last chapter of the Indian Penal Code under the title "Of Attempts to Commit Offences". It makes attempt to commit an offence punishable. The offence attempted should be one punishable by the Code with imprisonment. The conditions stipulated in the provision for completion of the said offence are : (1) The offender should have done some act towards commission of the main offence. (2) Such an attempt is not expressly covered as a penal provision elsewhere in the Code.**

12. Thus, "attempt" on the part of the accused is sine qua non for the offence under Section 511. Before considering the question as to what is meant by doing "any act towards the commission of the offence" as an inevitable part of the process of attempt, we may point out that the last act attributed to the accused in this case is that they asked Tejinder Pal



*Kaur (PW-5) to go those the rail track and commit suicide. That act of the accused is alleged to have driven the young lady to proceed to the railway line on the next morning to be run over by the train. **Assuming that the said act was perpetrated by the appellants and that the said act could fall within the ambit of "attempt" to commit the offence under Section 304B it has to be considered whether there is any other express provision in the Code which makes such act punishable. For this purpose we have to look at Section 498A which has been added to the Indian Penal Code by Act 46 of 1983.** That provision makes "cruelty" (which a husband of a woman or his relative subjects her to) as a punishable offence. One of the categories included in the explanation to the said section (by which the word cruelty is defined) is thus :*

*"(a) Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman;*

*13. Thus, if the act of the accused asking Tejinder Pal Kaur (PW-5) to go and commit suicide had driven her to proceed to the railway track for ending her life **then it is expressly made punishable under Section 498A Indian Penal Code. When it is so expressly made punishable the act involved therein stands lifted out of the purview of Section 511 Indian Penal Code. The very policy underlying in Section 511 seems to be for providing it as a residuary provision. The corollary, therefore, is that the accused, in this case, cannot be convicted under Section 511 on account of the acts alleged against him.***(emphasis added)

8. Adverting to the factual matrix of the case at hand, it appears that the petitioner was constantly harassed by respondents No.1 to 3 and they frequently told her to end her life. The matrimonial discord was attempted to be assuaged by the panchayat of which respondents No. 4 and 5 were a part and they had explicitly told the petitioner to reside with respondents No.1 to 3 on their terms and conditions, as unfair they might be. It was due to these circumstances that the petitioner's mental health deteriorated and she attempted suicide. Per the discussion made above, death by suicide is a



necessary ingredient to invoke Section 306 IPC. Further, Section 511 IPC can only be invoked if the principal offence is concluded to have been committed. Since the petitioner survived the suicide attempt, the threshold of Section 306 IPC is not breached. As such, it would be absurd to charge the respondents with an attempt to abet suicide by invoking Section 511 IPC, when the prime factor itself is not satisfied. Furthermore, the numerous allegations of cruelty levied on respondents No.1 to 3 are covered by the offence defined under Section 498-A IPC. Therefore, when a separate provision to cover the alleged conduct already exists, Section 511 IPC cannot be invoked.

9. A perusal of the record indicates that the alleged cruelty inflicted upon the petitioner was not related to any dowry demands made by the respondents. Respondent No.1 was accused of molesting the petitioner and respondent No.2 was accused of beating her while no allegations are made qua respondent No.3. Moreover, respondents No.4 and 5 are distant relatives of respondents No.1 to 3 and reside separately from them even before the couple was married. No allegations qua abetment to suicide or demand of dowry have been made qua respondents No.4 and 5. In fact, their names never surfaced in the FIRs or the complaints moved by the petitioner previously. They were named for the first time in complaint dated 28.08.2019, which was moved two years after the occurrence of the alleged incident.

10. In fact, respondent No.1 was exonerated by the police after the matter in FIR No. 430 and FIR No. 46 was investigated and the final report under Section 173 Cr.P.C. was filed only against respondent No.2. It is an admitted fact that respondent No.2 and the petitioner were residing separately from 28.04.2017 to 16.11.2017 in a rented accommodation, as such,



respondent No.1 and 3 cannot be said to have played any part in provoking the petitioner to end her life or inflicted any cruelty upon her, especially in view of the lack of medical evidence qua respondent No.1 and specific allegations qua respondent No.3.

11. The law on the issue with regard to the nature and degree of evaluation of the material available on the record before the trial Court at the time of framing of charge is well settled. The trial Court, at this stage, is only to form a presumptive opinion with regard to the existence of the factual ingredients breaching the threshold of the offence alleged. Further, at the stage of formation of opinion under Sections 227, 239 and 240 of Cr.P.C, the trial Court is not required to weigh the probative value of the material brought on record in the golden scale or to presume the prosecution story as gospel truth. The nature and degree of evaluation of material available on the record at this stage is limited to determine whether a prima facie case exists depending upon the facts of each case.

12. Recently, a two Judge Bench the Hon'ble Supreme Court in ***State through Deputy Superintendent of Police Vs. R.Soundirarasu etc. 2023 (2) RCR Criminal 206*** concluded that the primary consideration at this stage of framing of charges is the test of existence of a prima facie case and the probative value of the material available on record is not to be gone into. The discharge of the accused under Section 239 of Cr.P.C is permissible only when the case set up by the prosecution after the completion of investigation is found to be 'groundless'. Speaking through Justice J.B. Pardiwala, the following was held:



*“69. The real test for determining whether the charge should be considered groundless under section 239 of the CrPC, 1973 is that whether the materials are such that even if unrebutted make out no case whatsoever, the accused should be discharged under section 239 of the CrPC, 1973. The trial court will have to consider, whether the materials relied upon by the prosecution against the applicant herein for the purpose of framing of the charge, if unrebutted make out any case at all.*

xxx

xxx

xxx

*72. The ambit and scope of exercise of power under sections 239 and 240 of the CrPC, 1973 are therefore fairly well settled. The obligation to discharge the accused under Section 239 arises when the Magistrate considers the charge against the accused to be "groundless". The Section mandates that the Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and the documents sent with it under Section 173, (ii) examining the accused, if necessary, and (iii) giving the prosecution and the accused an opportunity of being heard, he considers the charge against the accused to be groundless, ie, either there is no legal evidence or that the facts are such that no offence is made out at all. No detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken at this stage the only consideration at the stage of Section 239/240 is as to whether the allegation/charge is groundless. 73. This would not be the stage for weighing the pros and cons of all the implications of the materials, nor for sifting the materials placed by the prosecution- the exercise at this stage is to be confined to considering the police report and the documents to decide whether the allegations against the accused can be said to be "groundless". ”*

13. In view of the discussion above, this Court is of the considered opinion that the learned Court below has discharged the respondents based on correct appreciation of the facts and the law and does not warrant any interference by this Court. Accordingly, the present petition is dismissed and the impugned order dated 05.08.2021 passed by the learned Additional Sessions Judge, Panipat, is upheld.



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

03.09.2024  
manisha

(HARPREET SINGH BRAR)  
JUDGE

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |