
(2016) 05 P&H CK 0245

In the Punjab And Haryana At Chandigarh

Case No : C.M. No. 2638 of 2016 & CWP No. 26734 of 2014

Manmeet Singh

APPELLANT

Vs

State of Haryana & Others

RESPONDENT

Date of Decision : 20-05-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 3 Crimes 553 : (2016) 3 LawHerald 2048

Hon'ble Judges : K. Kannan, J.

Bench : Single Bench

Advocate : Ms. Tanu Bedi, Advocate, for the Appellant; Mr. Anik Kumar Yadav, Addl. A.G., Haryana, for the Respondent

Final Decision : Disposed Off

Judgement

K. Kannan, J.—The above writ petition had been filed seeking for protection of life and liberty for the petitioner, who complained that his wife was murdered. It was an instance of honour killing for his marriage outside the caste and to the consternation of the local khap and the parents of his wife. The situation was that the husband anticipated that his wife will be segregated from his company and done away with. As it turned out, the woman was murdered and body was found abandoned.

2. Considering the nature of case and the poignancy of the situation, I went beyond merely ordering protection and sensing that it was a repeated theme in the State of Haryana, of parents or local khaps actively advocating against sgotra marriages as well as marriages outside the boundaries of respective castes, I gave some directions, constituted a special investigation team and called upon the police to report the progress and the steps taken in the light of directions given to prevent the recurrence of the festering problem of the honour killings. While I had disposed of the case on 23.02.2015, I had directed the matter to be called on 07.04.2015 to submit a report outlining the actions actually taken by the police for implementation of the guidelines given.

3. The Superintendent of Police, Sirsa had filed a report in Court and my brother Judge before whom the case was brought on 07.04.2015 had found that the affidavit did not address all the directions given to the police and directed a specific affidavit to be given with regard to implementation of all the directions. The police had pointed out to circulation of Standard Operation Procedure (SOP) for investigation of cases relating to honour killing as alleged to have been issued by the Director General of Police, Haryana. This, according to the State would take care of every situation which this Court had contemplated and therefore, there was no need to file the affidavit. At the next date on 05.05.2016, the Sub Inspector Mr. Vikas brought to the attention of Court that the challan had been presented against five persons and requested the fact to be taken note of and also take into consideration the SOP issued by the Director General of Police. At the next hearing before yet another brother Judge, the State informed that the trial had already commenced and no further directions would be necessary. The case was directed to be placed before me by the orders of the Acting Chief Justice and at that stage, the petitioner at whose instance certain directions had been given had filed serious objections to the Memorandum of Procedure circulated and how deliberately the police had been shielding certain persons against whom the petitioner had given tangible proof of involvement in the murder of his wife but they had not been included in the charge sheet and they had been left out of reckoning from being arraigned as accused.

4. I directed the State to collect information about the objections given by the petitioner and I had also directed the police to share with me all the relevant records relating to the statement given by the petitioner and the reasons for dropping some of the names against whom imputation of guilt had been made by the petitioner. The copy of case diary was given to me and I made available a copy of the same to the petitioner also to find out if there was anything amiss that might require fresh instruction to be given to the police. I was not unaware that if the trial of the case had already commenced, it would be inappropriate for me to create an additional vista in this Court for parallel investigation but I only wanted to assure to myself that if there was any particular aspect that pointed out to a clear biased investigation or patently illegal approach to the manner in which the police was said to be acting as per the arguments of the counsel appearing on behalf of the petitioner it could be set right at this stage. I have, therefore, examined only certain core issues about some aspects of investigation of the case and leave the observations in this regard for a consideration by the trial Judge himself so that nothing of what is stated now will operate to the prejudice of either party. It is also my endeavour to add certain additional directions because the original directions given through my order dated 23.02.2015 have been trivialized and rendered futile by merely circulating it without minding ways of implementation because all the proposals have to be put in place at the grass root level. The SOP seemed a mere cosmetic exercise to hoodwink the Court into believing that there was some seriousness shown when nothing had actually changed either at the level of investigation or at the steps

for prevention of recurrence of the problem of honour killings.

5. First, an issue of whether I could give any instruction for arraigning as accused all persons against whom the petitioner had given a complaint, I must observe that this power is vested only with the trial Court under Section 319 of the Criminal Procedure Code. The State counsel Sh. Anil Kumar Yadav has produced before me a pen drive containing of digital recording of statement given by the petitioner implicating some other persons. I am not naming any one lest any prejudice is caused but I must observe that the persons against whom allegations were made by the petitioner had themselves moved this Court for impleadment. I have heard the counsel seeking for impleadment but I do not think any purpose will be served by allowing for impleadment when I am only passing an order to direct the trial Court itself to consider whether there is evidence enough for arraigning as accused the persons against whom the petitioner was making allegations but have not been challaned. The application for impleadment is dismissed.

6. Learned counsel appearing on behalf of the State would contend that they involved the persons against whom allegations were made by the petitioner in a further probe and they put them through narco analysis and they found that there was no credible information available to implicate any person other than the persons against whom challan has been presented before the competent Court from where the committal has been made to the Sessions Court. It is shocking that an attempt to put the persons through narco analysis test was made even after the judgment of the Supreme Court in Selvi and others v. State of Karnataka (2010) 7 SCC 263 holding the said practise to be unconstitutional. It is also sought to be stated that they had given evidence of alibi at the relevant time of occurrence and that had been considered by the police while preparing the Section 173 Cr.P.C. report and challenging the persons against whom the credible information was available for their involvement.

7. To repeat a theme of what I have already mentioned, I ought not to be seen as making any observations either against the conduct of the investigation or its impartiality but I must only record a fact that if a case of conspiracy is made of several persons in the village plotting to kill a couple on the run fearing for their lives because they had married against the wishes of the parents, it will be wrong to be looking for the presence of every person in the village to be necessary before they could be implicated. Abettors or conspirators may not be present at the spot and only circumstances would establish whether involvement of a particular person was established or not. In a judgment of the Supreme Court in Hardei v. State of U.P in Criminal Appeal No. 186 of 2016 pronounced on 30.03.2016, the Court was examining the powers of the trial Judge under Section 319 Cr.P.C. It had observed in para 9 of the said judgment as follows:-

"9. It is well accepted in criminal jurisprudence that FIR may not contain all the details of the occurrence or even the names of all the accused. It is not expected to be an encyclopedia even of facts already known. There are varieties of crimes

and by their very nature, details of some crimes can be unfolded only by a detailed and expert investigation. This is more true in crimes involving conspiracy, economic offences or cases not founded on eye witnesses accounts. The fact that police chose not to send up a suspect to fact trial does not affect power of the trial court under Section 319 of the Cr.P.C. to summon such a person on account of evidence recorded during trial. This is the factual scenario in the case at hand also."

8. I will make reference to this judgment only to draw parallel to the situation when the conspiracy theory is made. The absence of reference to the particular person in the FIR ought not to be material at all. This judgment also outlines the powers of the trial Court and include any person as an accused if there are materials brought before the court at the time of trial. The Court will examine this judgment and direction and it will be at liberty to pass appropriate orders to arraign any person as accused against any credible information is brought at the time of trial. This should, therefore, address the grievance made by the counsel appearing on behalf of the petitioner.

9. About the directions contained already in the judgment to prevent honour killings to include, inter alia, the investigation to be put in charge of a Special Investigation Team and the entrustment to the officer not below the rank of Deputy Superintendent of Police under direction supervision of the Senior Superintendent of Police, I have no material to see whether this direction was complied with. The reference to the Senior Superintendent of Police in my order was only to take note of the grave situation that prevailed in the State of Haryana in such like matters relating to honour killings and I directed the Senior Superintendent of Police to have a direct supervision of the evidence brought before the trial Court and assist the court in every possible way to bring every one responsible for the macabre killing to book.

10. Direction given by this Court itself was taken in a similar situation of honour killing that was brought to the attention of Madras High Court. In *B. Dilipkumar v. The Secretary to Govt. Department of Home, Government of Tamil Nadu and others* in CWP No. 26991 of 2014, the direction given by this Court was taken note of and additional directions were also given. It is in the mutual assistance to one Court to another that we can expand the jurisprudence in this area and I will take this opportunity to follow all the instructions given by the Madras High Court to handle this problem and I will incorporate them as further directions already contained in the order, drawing inspiration from the judgment of the Madras High Court:-

(i) Special Cells shall be created and a 24 hour helpline to receive and register such complaints and to provide necessary assistance/advice as well as protection to the couple.

(ii) Since all the police stations in the State appear to have been connected electronically through CCTNS Portal (Crime and Criminal Tracking Network and

Systems) Network, the State of Haryana shall examine the possibility of generating First Information Reports automatically (Auto-generated), upon the receipt of complaints from the aggrieved couple, even through helpline.

(iii) The Special Cell formed in each District shall monitor on a regular basis, the receipt of complaints through helpline or otherwise, the registration of the same and the action taken by the concerned police.

(iv) It shall be the duty of the Station House Officer of the police station within whose limits the couple move about, to provide protection to them. In order to ensure that such a protection is given, the Special Cell should ensure that the complaint received through helpline or otherwise is forwarded immediately to the police station within whose jurisdictional limits the couple apprehending danger are moving about. The forwarding of the complaint to the concerned police station will be facilitated easily if online registration through CCTNS Portal is possible. The moment the request of the couple is forwarded by the Special Cell to the concerned police station, it shall be the duty of the Station House Officer of that police station to provide protection to the couple.

(v) The State should set apart necessary funds for the purpose of eradicating the evil of honour killing and make available sufficient funds at the disposal of the Special Cells in each District. This fund can be utilised by the Special Cells for providing temporary shelters to the couples and for rehabilitating them wherever necessary. The Special Cells shall have a free hand to engage the services of Counsellors.

(vi) In the event of any untoward incident, the Special Cell should fix responsibility upon the officers who failed in their duty to protect the couple. The failure to provide protection should be viewed as a major misconduct. The State shall form the Special Cells and take the above measures within a period of three months.

11. Even apart from mere directions, I must point out that circulation of the order passed by this Court and making it a part of memorandum of procedure will carry no conviction at the grass root level unless some study is undertaken and bodies are set up by the Director General of Police or by the State operating through its Home Department. The problem of honour killings is not unique only to Haryana. This problem exists in Tamil Nadu, in West Uttar Pradesh and in Rajasthan in a fairly large measure. Maharashtra has also encountered the problem and it has grappled with the problem by passing a legislation called Maharashtra Prohibition of People from Social Boycott (Prevention, Prohibition and Redressal) Act, 2016. The Act features of the following aspects, as the media reports indicate:-

(i) The Act terms social boycott as a crime and says anybody indulging in it would face imprisonment maximum upto three years and a fine of Rs. 1 lakh rupees or both. It disallows social boycott of any individual or group by caste panchayats or groups of individuals or gavki or by its members or by social or

economically influential persons.

(ii) It disallows social boycott of any individual or groups by caste panchayats or groups of individuals or gavki or by its members or by social or economically influential persons.

(iii) Persons involved in practise of social boycott for reasons like rituals of worship, inter-caste marriage, any connection to lifestyle, dress or vocation will face stringent punishment.

(iv) The offence registered under the Act will be cognisable and bailable. It will be tried by a judicial magistrate of the first class.

(v) The victim of social boycott or any member of the victim's family can file a complaint either to police or directly to the magistrate.

(vi) The Act has indicated speedy trial within six months of filing charge sheet in such cases in order to ensure time bound results.

(vii) Government will recruit social boycott prohibition officers to ensure monitoring and to detect offences and assist the magistrate and police officers in tackling such cases.

12. A legislative exercise cannot be performed by a Court. I exhort the State of Haryana to consider passing a legislation on the above lines and bring a statutory force to the directions already given by this Court and the additions that I have now outlined. It will be appropriate to initiate a dialogue and constitute an expert body comprising of the senior functionaries of the Department of Social Justice and Empowerment and the Welfare of Scheduled Castes and Backward Class department operating in the State of Haryana at Chandigarh in Sector 17-A to ensure that many of the suggestions given in this order are not merely taken as lofty expressions through a judgment. I direct this order to be sent to the Secretary (Home), Haryana, the Director General of Police, Haryana and to departments named above. The State will constitute an ad hoc committee and recommend to the Government for passing appropriate legislation including:-

(i) The law that will invert the presumption of innocence and presuming guilt of persons involved in causing death of any one of newly married couples takes place other than under natural causes within a period of one year when there is evidence that they did not belong to the same caste or when they belong to the same gotra as an instance of honour killing and cause of presumption in the same manner as it is found relating to dowry death under Section 113-B of the Indian Evidence Act.

(ii) Consider the provisions of Maharashtra enactment for suitable incorporation to the extent relevant.

(iii) Provide for financial compensation for either of the survivors among the newly married couple and/or to the grieving parents if they are not themselves the aggressors, and take into consideration methods of securing protection

without having to approach the Court.

(iv) The suggestions of the Madras High Court incorporated in the judgment and which are reproduced in paragraph 10 shall be examined for due incorporation as mandatory directions to be followed.

13. I depart from the case with the hope that the next honour killing is not reported and if there is ever one, the State machinery had acted with adequate alacrity to bring the persons guilty of this abhorrent practise by swift conclusion of investigation and securing conviction in Court of law without losing time, take care of the couple and give protection and give adequate compensation when death or injury results to either of the couple. Any public spirited person may approach this Court if the State is found lacking in the initiative to put an end to the festering problems of honour killings and elicit from the State appropriate response for the suggestions given in this case through this order and earlier on. In the delicate separation of powers amongst the key functionaries of State and judiciary in the constitutional scheme, I make no attempt to rock the apple cart. This judicial exercise is an exhortation to just not the State executive and the legislature but also to the civil society as well, to get the act together to secure to themselves what they deserve; stem the rot of social evils by using law as an instrument of social engineering and trigger social reform through potent weapon of law.

14. The writ petition is disposed of with the above observations.