
(2014) 09 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : C.R.M. No. M-31331 of 2008 (O&M)

Vipin Aggarwal and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Arms Act, 1959 — Section 25, 27

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 200, 208, 210(1)

Penal Code, 1860 (IPC) — Section 182, 34, 342, 376, 376(2)(g)

Citation : (2015) 1 RCR(Criminal) 173

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : S.S. Narula, Advocates for the Appellant; Ajay Gulati, D.A.G, Advocates for the Respondent

Judgement

Jitendra Chauhan, J.—This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of criminal complaint No. 512 titled as "Smt. Kusum Gupta v. Vipin Aggarwal and others" (Annexure P-1), summoning order dated 8.03.2008, passed by the JMIC Faridabad (Annexure P-2) and the order framing charge/charge-sheet dated 17.09.2008, passed by the Additional Sessions Judge, Faridabad (Annexure P-3), and all consequential proceedings arising therefrom. Brief facts of this case are that on 13.10.2005 S.I. Narayan Singh alongwith Constable Sanjay Kumar No. 111, driver Dharambir Singh No. 684 were on patrolling duty in a Govt. vehicle and were present near the Vatika when Smt. Kusum Gupta and Sh. Madan Pal Nagar, Advocate came present and Smt. Kusum Gupta got her statement recorded which is as under "I am resident of above said address and I am in business of buying and selling of shares. My husband expired on 15th August 2003. I have one son Nitain aged 23 years and one daughter Neha aged 17 years. I was in business for nearly 2 months from 21.06.2005 in the office of Bonanza Portfolio opposite Bata Chowk, Sector 11. The owner of the office is Vipin Aggarwal, who has an office in Delhi also. In this office Kapil Uppal is the Branch Manager, Smt. Kiran Shukla, Smt. Parul Sharma

and Sanjay Shukla and other persons also work in this office. During my tenure, in the month of July, I gave one cheque of Rs. 30,000/- and one cheque of Rs. 40,000/- and one cheque of Rs. 50,000/- to Kapil Uppal for purchasing shares. And my cheque of Rs. 50,000/- bounced, so I gave Rs. 50,000/- in cash to Kapil Uppal. On 1.02.2005, I got my FD encashed pre-maturely from Escort Nagar Post Office, and gave Rs. 1,20,000/- more to Kapil Uppal to purchase more shares. Two three times I asked Vipin Aggarwal and Branch Manager Kapil Uppal to clear my accounts regarding my shares. Nearly a week earlier, Kapil gave me Rs. 5,000/- in cash and gave a cheque of about Rs. 23,500/-. Yesterday on 12.10.2005, I received a call on my mobile phone No. 9911122364 from Vipin Aggarwal Branch owner Delhi from his phone, between 9:05 P.M. to 9:15 P.M. who said "come tomorrow on 13.10.2005, I will be coming to the office in Sector-11 after 4:00 P.M.". On 13.10.2005 I reached their office about 4.15 P.M., I found Kapil Uppal, Vipin Aggarwal, Kiran Shukla, Parul Sharma, Sanjay Shukla were already there. As they started talking about the accounts, Kiran Shukla snatched the mobile phone from my hand and as I stated to walk out, Kapil Uppal bolted the door. Kiran Shukla covered my mouth by her hand from behind and caught hold of me and Parul Sharma caught hold of my right hand and Kail caught hold of my left hand and then pushed me down on the floor. Then Vipin Aggarwal broke the "Nara" of my "Salwar" and took the "Nara" out of it. And the Vipin Aggarwal forcibly removed my "Salwar" and then did wrong deed with me against my wishes. Then Vipin Aggarwal stood up and caught hold of my left hand which Kapil was holding, and then Kapil Uppal did wrong deed with me against my wishes. And my "Nara" was also not returned to me. I pinned up the "Salwar" with the safety pin after taking it out from my Dupatta. I was kept inside for a long time and I kept lying on the ground. And then when it grew dark, Parul Sharma opened the back gate, and Kapil Uppal, Vipin Aggarwal, Kiran Shukla left the office and Sanjay Shukla stood up holding a revolver and kept it by the side of my ear and asked me not to tell anybody about this otherwise I would be shot and that I should go straight home. After getting released from the clutches of these monsters/persons, I in a state of shock reached near the G.T. Road, Bata Chowk, where I met Sh. Madan Pal, Advocate. I then accompanied by the Advocate went to lodge a report. As the accused persons forcibly raped me, I suffered abrasions and swelling on my both hands, knees and on the waist. Legal action be taken against the accused persons.

2. The case as it unfolds from the documents on record is that the accused petitioners are running a share trading company in the name and style of M/s. Bonanza Portfolio Ltd. The prosecutrix opened an account with the said company for trading in shares, the same being account No. 181, one Madan Pal Nagar Advocate who has been examined by the prosecutrix as a witness also opened an account with the company of the petitioners on the same date viz. account No. 180. After having delved in share trading, the prosecutrix and Madan Pal Nagar Advocate apparently suffered losses and were pressing upon the petitioners to make good their losses.

3. On 13.10.2005, F.I.R. No. 382 was got registered at Police Station Sector-7, Faridabad for the offences under Sections 376, 342, 506/34 I.P.C. and section 25, 27 of the Arms Act by the prosecutrix on the allegations that she had been called by Vipin Aggarwal to his office in Faridabad on 13.10.2005 to settle the matter. On her reaching there at about 4.15 P.M., she found the petitioners present in the office alongwith Parul Sharma, Kiran Shukla and Sanjay Shukla. As they started talking about the accounts, Kiran Shukla snatched the mobile phone of the prosecutrix, whereas the petitioner No. 2 bolted the door, Kiran Shukla covered her mouth from behind and caught her, Parul Shukla also caught her from the right hand and with their help petitioner No. 2 pushed her down on the ground. Then petitioner No. 1 Vipin Aggarwal broke the string of her salwar and committed rape upon her, whereafter, petitioner No. 2 committed rape, while petitioner No. 1 held her hand. She was let off later and immediately on coming out Madan Pal Nagar Advocate met her, who helped her to lodge the report.

4. Investigation of the case was taken up by Inspector Ramesh Kumar SHO, Police Station Sector-7, Faridabad, who investigated the matter thoroughly and reported the case to be false and having been lodged with the intention to grab money from the petitioners so as to make up the losses suffered by the prosecutrix and Madan Pal Nagar Advocate in share trading. He recommended action against the prosecutrix under section 182 I.P.C. The said report was prepared on 26.10.2005.

5. Aggrieved by the said report, the prosecutrix approached to the higher authorities and the matter was entrusted to Inspector Sushila, Incharge, C.A.W. Cell Faridabad who also found that the case was lodged by the prosecutrix to be false and before she could submit her final report, the prosecutrix approached this Court vide CRM-63379-M of 2005, airing grievance against the investigation. Vide order dated 12.12.2005, the matter was directed to be investigated by Superintendent of Police, State Vigilance Bureau, Gurgaon. The case then came to be investigated by Smt. Charu Bali IPS, who conducted a thorough investigation in the matter all over again.

6. During her detailed investigation, she even deemed fit to get the DNA test conducted for the purpose of determining whether, the occurrence as asserted by the complainant and whether had taken place the previous investigation was biased. A letter was sent by her to the Director, Central Forensic Science Laboratory, Chandigarh, and DNA samples of the prosecutrix and the petitioners were asked for. While the petitioners readily gave their blood samples, the prosecutrix declined to give her blood sample for DNA testing. In the Final report dated 09.01.2007, submitted by the Superintendent of Police, it was concluded that the prosecutrix had got the case registered with the intention to grab more money than the loss suffered, and recommendation was also made for taking I action against the prosecutrix under section 182 IPC.

7. The said report was once again challenged by the prosecutrix vide CRM-18790-M of 2006 titled as Smt. Kusum Gupta v. State of Haryana. By way of the said

petition, the prosecutrix sought transfer of investigation to the CBI wherein, the petitioners were not impleaded. This Court, vide order dated 02.03.2007 dismissed the petition while taking into consideration the final report of the investigation by the Superintendent of Police and also the fact that the criminal case had already been initiated by the prosecutrix and Madan Pal Nagar Advocate to make good their losses by pressurizing the office bearers of M/s. Bonanza Portfolio, DLF Centre, Sector-17 Faridabad.

8. In the meanwhile, the complainant chose to file a criminal complaint under Section 200 Cr.P.C. before the Judicial Magistrate 1st Class Faridabad on 29.10.2005. The prosecutrix examined herself in the said complaint as CW-2 while Madan Pal Nagar Advocate was examined as CW-3, and Dr. N. Kaur as CW-1. The Final Report under Section 173 Cr.P.C. was also put up before the said Judicial Magistrate 1st Class Faridabad whereby cancellation of the F.I.R. was recommended. Vide order dated 08.03.2008, the Judicial Magistrate 1st Class Faridabad while declining to accept the Final Report under Section 173 Cr.P.C., and considering the evidence led by the prosecutrix sought to summon the petitioners for the offences under Sections 376/342 I.P.C. After compliance of Section 208 Cr.P.C. and providing all requisite documents to the petitioners, the case was committed to the Court of Sessions vide order dated 19.07.2008. Thereafter, the petitioners were charged by the Additional Sessions Judge Faridabad vide order dated 17.09.2008 to be tried for offences under section 376(2)(g) IPC and Section 342 IPC.

9. Hence this petition.

10. The counsel for the petitioners has contended that the summoning order and the proceedings emanating there from cannot be sustained for the solitary reason that the Judicial Magistrate 1st Class Faridabad failed to take into consideration the well reasoned final investigation report which left no scope in revealing that the prosecution of the petitioners at the instance of the prosecutrix was completely malicious and mala fide. He further contended that as settled by the Apex Court in the case of M/s. Pepsi Foods Limited v. Special Judicial Magistrate, 1998 SCC (Criminal 1400) the Magistrate before summoning the accused ought to have even questioned the prosecutrix to elicit the truth because summoning of a accused for a serious offence is not an idle formality.

11. On the other hand, the learned counsel for the complainant opposed the prayer and pressed upon the investigation reports being biased and prepared under influence of the petitioners, as also the complaint disclosing the offence under Section 376 I.P.C. being clearly made out. The Counsel for the State obviously supported the cancellation reports filed in Court.

12. With the assistance of the counsel for the parties, I have perused and considered the report of investigation conducted by the Inspector Ramesh Kumar SHO Police Station Sector-7, Faridabad minutely and as also the report of Superintendent of Police which is Annexure P-9. The said reports are categoric in

recording that the prosecutrix alongwith Madan Pal Nagar Advocate had initiated criminal prosecution of the petitioners by making false statement only order to make good losses suffered by them in dealing in shares The concluding part of the report is as under:-

On 12.10.2005 upon returning from abroad to Delhi, Vipin Aggarwal rang up Kusum Gupta from his mobile and spoke to her about her account to which Kusum Gupta said if her lost amount is not returned to her, she will get him implicated him in a case in such a manner shat he will not even get bail. Then on 13.10.2005 Smt. Kusum Gupta reached DLF Center, in the office of Bonanza at around 4.30 P.M. after making an entry in the register. At that time accused Smt. Parul and employees of the office Sh. Deepak Malik, Smt. Vandana Misra, Sachin Kumar, Pammi and other persons namely Mr. Ramesh Jaju, Sh. Umesh Aggarwal, Sh. Parveen Kushmankar and Ajay Sharma were present there. Sh. Kapil Uppal Manager and Vipin Aggarwal, Kiran Shukla and Sanjay Shukla were not present. As per the statements of witnesses and mobile details and during enquiry of accused it was found that Sh. Vipin Aggarwal was in Suraj Kund area to see place for opening his new office from around 3.15 P.M. to 6.45 P.M. Sh. Kapil Uppal was also found to be in Delhi office and Tagore Hospital, Delhi at the time of occurrence. Kiran Shukla and Sanjay Shukla are real brother and sister and were at Faridabad with their father at the time of occurrence. Smt. Parul Sharma was present in the office at the time of occurrence and during inquiry by P.S. Central Faridabad no revolver was found with Sanjay Shukla. But to still investigate the matter in detail, a latter was written to Director Central Forensic Science Laboratory, Plot No. 2, Sector 36-A, Chandigarh for DNA test. The CFSL officials asked for the blood sample of accused and complainant. The complainant was informed a number of times through letters to give her blood simple for DNA testing. She neither presented herself for giving the sample nor it sent and later on sent a letter refusing to give her blood sample for DNA testing. In this connection, accused Sh. Vipin Aggarwal and Sh. Kapil Uppal voluntarily gave their blood samples for DNA testing. Since the sample of complainant was not there, DNA test could not be conducted in the case. It is clear that complainant Smt. Kusum Gupta and Sh. Madan Pal Nagar Advocate in order to get more compensation for the loss suffered in shares had filed a false case in connivance and in a planned manner. Regarding the allegations against Sh. Ramesh Kumar Inspector/SHO P.S. Sector-7, Faridabad that he misbehaved with complainant, on 13.10.2005 and 14.10.2005 these were investigated by S.I. Narayan. It was found out that on 13.10.2005 Inspector Ramesh Kumar was out of the station for investigation of another case. On 16.10.2005 complainant Mrs. Kusum Gupta and witness Advocate Madan Pal went to the Police Station and presented an application to the Inspector Ramesh Kumar and threatened that if he cancels the case, they will file a complaint against him in the Court. To pressurize the police, the complainant and Madan Pal filed a complaint in the Court, which is still pending consideration by the Court in Faridabad. From my investigation it was found that the complainant had got the present case registered with intention to

grab more money than the loss suffered. So cancellation report is prepared and the same is being sent to the Higher Officials for the consideration. It is further recommended that action should be taken against complainant under Section 182 I.P.C. in the present case".

13. The report also reveals that the prosecutrix did not come ahead to give her blood samples for DNA in order to avoid fair investigation in the matter, although the accused petitioners voluntarily gave their blood samples for the purpose. It is further worth noticing that when investigating Officer Inspector Ramesh Kumar conducted a fair investigation and prepared a cancellation report in the F.I.R., the prosecutrix, once again with the help of Madan Pal Nagar Advocate, who chose to be her witness, went ahead to prosecute the said investigating officer also by making up a story of his having tried to outrage her modesty. Although the occurrence was alleged to have taken place on 13.10.2005, complaint was filed against the Inspector on 29.10.2005, after the cancellation report came to be prepared, may be to teach him a lesson for not helping the prosecutrix. All these facts clearly reveals the maliciousness of the prosecution of the petitioners and the mala fide, oblique motive of the prosecutrix.

14. The story set up by the prosecutrix is even otherwise completely bereft of truth and appears to be false, improbable and unnatural. She seeks it to be believed that two girls namely Parul Sharma and Kiran Shukla would in open public view pin the prosecutrix down for being ravished physically by their employer Vipin Aggarwal petitioner No. 1 and the Branch Manager Kapil Uppal petitioner No. 2. It is further sought to be made to believe that Kiran Shukla was at that time accompanied by her real brother Sanjay Shukla who also threatened the prosecutrix with a pistol. It has been, as a matter of fact, established during the course of investigation that neither does Sanjay Shukla possess any such pistol, nor were Kiran Shukla and Sanjay Shukla present at the place of occurrence and the allegations set out by the prosecutrix appears to be completely false and fabricated. It was rather noticed during the investigation that there were other customers and employees in the office at the relevant time. Their statements were also recorded by the investigating officers under Section 161 Cr.P.C. which substantiates that the allegations levelled by the prosecutrix are not believable and thus are completely false. It would be completely unbelievable that a brother and sister would together facilitate rape of a lady simply that they happen to be in the employment of the alleged accused.

15. Investigation has even tried to establish by collecting documentary evidence in the shape of call detail records along with tower locations of the petitioners, and medical record of petitioner No. 2 that they were not in their office at the relevant time.

16. The case could even otherwise not be allowed to continue for the reason of non-compliance of section 210(2) Cr.P.C. Once the final report under section 173 Cr.P.C. was before the Judicial Magistrate 1st Class and the Magistrate had

chosen not to accept the cancellation report, the only course with the Magistrate was to try the complaint case and State Case together as if instituted by the State. Section 210(1) and (2) mandates as under:

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report".

17. As such proceedings which are continuing as a complaint case is an abuse of process of law and cannot be permitted to continue.

18. It is a fit case where the jurisdiction of this Court under Section 482 Cr.P.C. needs to be exercised in order to prevent the abuse of the process of Court. The prosecution being malicious and mala fide has been duly established by subsequent investigations carried out at the instance of the prosecutrix herself, and can therefore not be allowed to continue, whatever the stage as has been pronounced by the Apex Court in *G. Sagar Suri v. U.P. State*, 2000 SCC (Criminal 513). This Court in *Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others*, observed thus:-

"It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto"

19. In the above premise it is deemed fit to set aside the order of Judicial Magistrate 1st Class, Faridabad, dated 08.03.2008, thereby the cancellation report filed by the police has not been accepted, and petitioners have been summoned in the complaint case under Sections 376/342 IPC. It is considered appropriate in the facts and circumstances of the case to accept the cancellation

report and quash the complaint which is intended with malicious mala fide motives and is an abuse of the process of the Court.

20. Keeping in view the above discussion, this Crl. Misc. Petition No. 31331 of 2008 is allowed; Criminal complaint No. 512 titled as "Smt. Kusum Gupta v. Vipin Aggarwal" and others (annexure P-1); summoning order dated 8.03.2008 passed by JMIC, Faridabad (Annexure P-2) and order dated 17.09.2008 framing charge by the Additional Sessions Judge, Faridabad (Annexure P-3), are, hereby, quashed qua the petitioners.

21. In Crl. Revision No. 1005 of 2010, Smt. Kusum Gupta-complainant challenged the order dated 22.02.2010 passed by the Additional Sessions Judge, Faridabad, vide which the application moved by the complainant Smt. Kusum Gupta for summoning Ms. Kiran Shukla and Ms. Parul Sharma under Section 319 Cr.P.C. to face trial as additional accused was dismissed. Keeping in view the above, this Criminal Revision No. 1005 of 2010 has been rendered infructuous. Dismissed as having rendered infructuous.