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SANTOSH BAKSHI

v.

STATE OF PUNJAB & ORS.

(Criminal Appeal No. 1251 of 2014)

JUNE 30, 2014

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**[SUDHANSU JYOTI MUKHOPADHAYA AND
KURIAN JOSEPH, JJ.]**

Protection of Women from Domestic Violence Act, 2005:

- C *Complaint under the Act – Duty of investigating agency and the court – Held: When a complaint is made by any woman alleging offence under the Act, committed by any member of the family, the matter is to be looked upon seriously – The Police without proper verification and investigation cannot*
- D *submit a report that no case is made out – The Investigating Agency is required to make proper enquiry not only from the members of the family but also from neighbours, friends and others – After such enquiry, the Investigating Agency may form a definite opinion and file a report but it is for the Court*
- E *to decide finally whether to take cognizance for any offence under any of the provisions of the Act – Crime against women.*

Penal Code, 1860: s.182 – Essential ingredients – Discussed.

- F *Code of Criminal Procedure, 1973: s.482 – Quashing of proceedings – Domestic violence case filed by appellant in which compromise entered with in-laws that they would not harass her and would allow her to stay in matrimonial home – Respondent no.3-brother-in-law of appellant filed complaint*
- G *invoking s.182 IPC on the ground that the complaint filed by appellant under domestic violence was false – Approval of authorities granted to take action against the appellant – Petition u/s.482 Cr.P.C. for quashing s.182 proceedings – High Court refusing to quash s.182 proceedings – Held: The*

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investigating agency failed to show that the appellant had given information which she was knowing and believing to be false – Respondent Nos. 1 and 2 failed to make out a case u/s.182 IPC – It was a fit case to quash the proceedings u/s.182 IPC –High Court failed to notice the relevant facts and mechanically dismissed the application u/s.482 – The complaint filed by respondent no.3 u/s.182 IPC, the order of approval granted by the SSP and proceeding if initiated against the appellant quashed – Penal Code, 1860 – s.182.

The appellant was wife of the brother of respondent no. 3. She had filed Domestic Violence case against her in laws and in said case her in-laws arrived at compromise with the appellant that they would not harass her and would allow her to live in her matrimonial house. After about two weeks, respondent no. 3 filed an affidavit before the Police Authorities that the allegations by appellant in Domestic Violence case were false and action should be taken against her under Section 182, IPC. In the affidavit, respondent no. 3 alleged that the appellant has lodged false complaint against his parents, sister, brother and brother-in-law and initially the name of respondent no. 3 was not there but when he helped his old parents, brother, sister and brother-in-law in shifting from Ludhiana to Jalandhar then appellant mentioned his name also. Respondent no. 3 further alleged that the appellant and her husband were harassing him by lodging false complaint at Ludhaina as well as at Jalandhar and requested the authorities to take legal action against them under Section 182 IPC. On the basis of affidavit, Police submitted calendra and presented in the court and the approval for taking action against the appellant under Section 182, IPC was obtained from SSP. Aggrieved, the appellant filed petition under Section 482, Cr.P.C. The High Court dismissed the

A petition. The instant appeal was filed challenging the order of the High Court.

Allowing the appeal, the Court

B HELD: 1. When a complaint is made by any woman alleging offence under the Protection of Women from Domestic Violence Act, 2005 committed by any member of the family, the matter is to be looked upon seriously. The Police without proper verification and investigation cannot submit a report that no case is made out. The C Investigating Agency is required to make proper enquiry not only from the members of the family but also from neighbours, friends and others. After such enquiry, the Investigating Agency may form a definite opinion and file report but it is for the Court to decide finally whether to D take cognizance for any offence under any of the provisions of the Act. [Para 14] [145-E-G]

2. Section 182 IPC relates to false information, with intent to cause public servant to use his lawful power to the injury of another person. To make out a case under E Section 182 IPC, the following ingredients are to be proved: (i) An information was given by a person to a public servant. ii) The information was given by a person, who knows or believes such statement to be false. (iii) F Such information was given with an intention to cause or knowing it to be likely to cause (a) such public servant to do or not to do anything if the true state of facts respecting which such information is given were known by him, or (b) to use the lawful power of such public servant to the injury or annoyance of any person. In the G instant case, the investigating agency failed to show that the appellant had given information which she was knowing and believing to be false. In the investigation report, it was not reported that the appellant was knowing that the information given was false but still gave

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the information to harass the respondent No.3. Respondent Nos. 1 and 2 having failed to make out a case under Section 182 IPC, it was a fit case to quash the proceedings under Section 182 IPC. The High Court failed to notice the relevant facts and mechanically dismissed the application under Section 482 Cr.PC. The complaint filed by respondent no.3 under Section 182 IPC, the order of approval granted by the SSP and proceeding if initiated against the appellant are quashed. [Paras 15 to 19] [145-G; 146-D-H; 147-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1251 of 2014.

From the judgment and Order dated 12.07.2013 of the High Court of Punjab & Haryana at Chandigarh in Criminal Misc. No. M-1834 of 2010 (O&M)

D. K. Bhatta, Dev Suman, Dr. Dinesh Kumar, Debasis Misra for the Appellant.

Jayant K. Sud, Jasleen Chahal, AAG, Ujas Kumar, Ajay P. Tushir, Nareesh Bakshi, Rajesh Tyagi, Atish Dipankar for the Respondents.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. Leave granted.

2. This appeal is directed against the order dated 12th July, 2013 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Miscellaneous No.M-1834 of 2010 (O&M). By the impugned order, the High Court rejected the petition filed u/s 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.PC') preferred by the appellant.

3. The case of the appellant is that she got married to the brother of respondent no.3-Vivek Kumar Bakshi on 4th August,

A 2006. After marriage, she shifted to her matrimonial house at
 Ludhiana and just thereafter her in-laws started demanding
 dowry. The husband of the appellant always stood with her and
 protected her from various atrocities committed by in-laws and
 respondent no.3. When the matter became out of control the
 B appellant on 17th January, 2009 made a complaint to the
 Senior Superintendent of Police, Jalandhar (now known as
 Commissioner of Police, Jalandhar) alleging therein continuous
 harassment, beating and maltreating meted out to her in
 connection with dowry with specific allegations with date, time
 C etc.

4. According to the appellant, Police kept the matter
 pending for long at the instance of respondent no.3 and refused
 to take any action. No FIR was registered in spite of the fact
 that the complaint disclosed cognizable offence.
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5. On 6th April, 2009, the appellant filed a complaint under
 the Protection of Women from Domestic Violence Act, 2005
 (hereinafter referred to as, 'the Act') against her in-laws. In the
 said case, her in-laws arrived at a compromise with the
 E appellant that they will allow her to live in her matrimonial house
 at Ludhiana. They also agreed that no maltreatment will be
 meted out to her and they will keep her in a nice manner and
 they will remain bound by their statements.

6. Further case of the appellant is that respondent no.3
 F having personal grudge with her husband due to greed of
 property submitted an affidavit on 23rd April, 2009 before the
 Police Authorities. Respondent no.3 also stated that the
 allegations in the complaint are false and to take action u/s 182
 IPC against the appellant. On 24th April, 2009, Deputy
 G Superintendant of Police, Jalandhar submitted a report in which
 the assertions made by respondent no.3 were considered and
 the complaint was filed in the office. On the basis of affidavit,
 Police submitted a Calendra No.18 dated 5th October, 2009
 in the Police Station Division No.1, which was prepared and
 H presented in the Court by Rajesh Kumar, SI SHO Division

No.1, Jalandhar. The approval for taking action against the appellant u/s 182 IPC was obtained from SSP, Jalandhar in November, 2009.

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7. Aggrieved by the aforesaid false and frivolous Calendra, the appellant filed Criminal Miscellaneous No.M-1834 of 2010 u/s 482 Cr.PC before the High Court of Punjab and Haryana at Chandigarh which was rejected by the High Court by impugned order and judgment dated 12th July, 2013.

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8. Learned counsel for the appellant made the following submissions:

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(i) The High Court has wrongly concluded that since husband of the appellant was not made a party, complaint was filed with ulterior motive.

(ii) The High Court also failed to consider that in the complaint under the Protection of Women from Domestic Violence Act, 2005, the allegations are identical to the complaint made to the Police.

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9. On the other hand, according to learned counsel for the respondents, the appellant all the time filed false and frivolous complaints before the Police Authorities.

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10. In the affidavit (Annexure P/3) respondent no.3 alleged that the appellant has lodged false complaint against his parents, sister, brother and brother-in-law. Name of Respondent No.3 was not there but when he helped his old parents, brother, sister and brother-in-law in shifting from Ludhiana to Jalandhar then appellant mentioned his name. Respondent no.3 further alleged that the appellant and her husband are harassing him by lodging false complaint at Ludhiana as well as at Jalandhar and requested the authorities to take legal action against them u/s 182 IPC. The SHO, P.S. Div. No.1 by note dated 1st May, 2009 forwarded the said affidavit. The deposition of respondent no.3 was recorded by Executive Magistrate, Tehsil, District Ludhiana. However, the deposition is not on record.

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A 11. The Deputy Superintendent of Police, Jalandhar by
letter dated 24th April, 2009 referring to the application filed
by the appellant intimated that for the purpose of investigation
when the appellant was summoned she has narrated the matter
in the same way as mentioned in her application. He further
B intimated that statement of Vivek Bakshi s/o Kewal Krishan
Bakshi has got recorded. In his statement, Vivek Bakshi has
stated that the application which has been moved against him
by his sister-in-law is wrong and he has no dispute with her.
Moreover, she is intentionally harassing him and leveling
C allegation of dowry against his parents and others, which is
absolutely incorrect and wrong. It was further mentioned in the
letter that the said case being related to a family property
partition, the Police cannot interfere with the same and that a
case is pending in Court and the allegations leveled by the
D complainant (appellant herein) regarding the misappropriation
of dowry articles etc. are not proved. The dowry articles and
jewellery of the appellant were lying as it is in her house and
there is no truth in the application. It was recommended to file
the application. On the basis of such letter, after advise of
District Attorney (Legal), approval of the SSP, Jalandhar was
E taken and Calendra u/s 182 IPC was prepared and was
ordered to be presented before the Court.

12. The respondents have not disputed that the
complainant-appellant earlier submitted complaint dated 17th
F January, 2009 to the Senior Superintendent of Police, Jalandhar
(now known as Commissioner of Police, Jalandhar). In the said
complaint, allegation of continuous harassment, beating and
maltreatment of the appellant for demand of dowry with specific
allegations with date, time etc. were made. It is alleged that the
G Police Authorities kept the complaint pending for long and failed
to register any FIR. In the meantime, the appellant filed an
application under the Protection of Women from Domestic
Violence Act, 2005. In the said case, the in-laws of appellant
arrived at a comprise with the appellant and agreed to allow
H the appellant to live in her matrimonial house at Ludhiana.

Further, they also gave assurance that the appellant will not be meted out with any maltreatment and they will keep appellant in nice manner. A

13. The aforesaid fact has not been disputed by the respondents. The reading of the statement made by the parties clarifies the following facts: B

(a) That the appellant was thrown out of her matrimonial house at the instance of one or other persons among the in-laws. C

(b) Assurance given by in-laws that they will not maltreat the appellant makes a presumption that one or other member of the family maltreated the appellant. .

(c) Assurance given by the in-laws they will keep the appellant in nice manner in future, suggests that the appellant was not treated in nice manner by one or other member of the family. D

14. The complaint, if made, by any woman alleging offence under the Protection of Women from Domestic Violence Act, 2005 committed by any member of the family, the matter is to be looked upon seriously. The Police without proper verification and investigation cannot submit a report that no case is made out. The Investigating Agency is required to make proper enquiry not only from the members of the family but also from neighbours, friends and others. After such enquiry, the Investigating Agency may form a definite opinion and file report but it is for the Court to decide finally whether to take cognizance for any offence under any of the provisions of the Act. E F

15. Section 182 IPC relates to false information, with intent to cause public servant to use his lawful power to the injury of another person and reads as follows: G

"182. False information, with intent to cause public servant to use his lawful power to the injury of another H

A *person.- Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant-*

B (a) *to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or*

C (b) *to use the lawful power of such public servant to the injury or annoyance of any person,*

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

D 16. To make out a case u/s 182 IPC, the following ingredients are to be proved:

(i) An information was given by a person to a public servant.

E (ii) The information was given by a person who knows or believes such statement to be false.

F (iii) Such information was given with an intention to cause or knowing it to be likely to cause (a) such public servant to do not to do anything if the true state of facts respecting which such information is given were known by him, or (b) to use the lawful power of such public servant to the injury or annoyance of any person,

G 17. In the present case, the investigating agency has failed to show that the appellant has given information which she was knowing and believing to be false. In the investigation report it has not been reported that the appellant was knowing that the

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information given is false but still gave the information to harass the respondent No.3. A

18. Respondent Nos.1 and 2 having failed to make out a case u/s 182 IPC, we are of the opinion that it was a fit case to quash the proceedings u/s 182 IPC. The High Court failed to notice the relevant facts and mechanically dismissed the application u/s 482 Cr.PC. B

19. For the reasons aforesaid, we set aside the impugned order dated 12th July, 2013 passed by the High Court of Punjab and Haryana at Chandigarh, quash the complaint filed by respondent no.3 u/s 182 IPC, the order of approval granted by the SSP in November, 2009 and proceeding if initiated against the appellant. C

20. The appeal is allowed. No costs. D

Devika Gujral

Appeal allowed.