

226-2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2903-2017
Date of Decision: 25.07.2024

Rajesh ...Petitioner

versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Tejas Bansal, Advocate
for the petitioner.

Mr. Dinesh Arora, Advocate
for respondent No.2.

Mr. Vikas Bharadwaj, AAG Haryana

HARPREET SINGH BRAR, J.(ORAL)

1. The present revision petition is preferred against judgment dated 19.08.2017 passed by the learned Additional Sessions Judge, Rohtak whereby the judgment of acquittal dated 15.04.2015 passed by the learned Chief Judicial Magistrate, Rohtak in FIR No. 137 dated 08.05.1995 registered under Section 294 IPC at Police Station City Rohtak, was set aside and the appellant was convicted and sentenced as under:

Offence under	Sentence
Section 294 IPC	Rigorous imprisonment of 3 months and a fine of Rs. 5,000/-, in default of which simple imprisonment of 15 days

2. Briefly, the facts are that on 27.04.1995, at about 8 AM, the complainant was going to the market when the petitioner-accused called her ‘darling’ and asked her when would she submit herself, while proclaiming his

love for her. He also made obscene gestures and announced that he has some

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articles lying under her bed. The complainant narrated the story to her mother, who brought out a polythene wrapped gift thrown by the appellant into the courtyard of the complainant, and showed it to her father.

3. On assessing all the material available on the record, the learned trial Court acquitted the petitioner of the charges framed against him vide judgment dated 15.04.2015. Aggrieved by the same, the complainant preferred an appeal before the lower Appellate Court, which was allowed vide judgment dated 19.08.2017 and the petitioner was sentenced as mentioned above.

4. Learned counsel for the petitioner *inter alia* contends that the learned lower Appellate Court has fallen into grave error by reversing the verdict of the learned trial Court as the offence under Section 294 is not made out against the petitioner. The narrative put forward by the complainant does not indicate presence of any ingredients required to attract the offence under Section 294 IPC. The wife of the petitioner is the complainant in FIR No. 136 dated 06.05.1995 registered under Section 354 IPC at Police Station City Rohtak which was lodged against the five family members of the complainant in FIR(supra). All of the five accused in FIR No. 136 dated 06.05.1995 were convicted vide judgment dated 15.04.2015(Annexure R-1) passed by learned Chief Judicial Magistrate, Rohtak. As such, it is evident that the petitioner has only been implicated in FIR(supra) out of private spite. Further, the offence under Section 294 IPC is cognizable but bailable in nature, as such, the appeal under Section 378 Cr.P.C. against judgment of acquittal dated 15.04.2015 passed by the learned trial Court was not maintainable before the learned lower Appellate Court in the first place.

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5. Learned counsel for respondent No.2 submits that FIR No. 136 dated 06.05.1995 registered under Section 354 IPC at Police Station City Rohtak was registered by the wife of the petitioner and pertains to incident dated 01.05.1995, however the incident qua which FIR(supra) was registered occurred on 27.04.1995. As such, the FIR(supra) cannot be viewed to be lodged as a counterblast to FIR No. 136 dated 06.05.1995. Moreover, the petitioner had publically misbehaved with the complainant to teach a lesson to her family for outraging modesty of his wife. The impugned judgment dated 19.08.2017 has been passed by the learned lower Appellate Court based on correct appreciation of the facts and the law, and as such, does not warrant any interference by this Court.

6. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the petitioner has been convicted and sentenced for commission of an offence under Section 294 IPC vide impugned judgment and order of sentence dated 19.08.2017. Section 294 IPC reads as follows:

Section 294. Obscene acts and songs.

Whoever, to the annoyance of others,

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

7. A two Judge bench of the Hon'ble Supreme Court in ***N.S. Madhanagopal and another vs. K. Lalitha 2022(4) Cri.C.C. 119***, has opined as under:

“8. It is to be noted that the test of obscenity under Section 294(b) of the I.P.C. is whether the tendency of the matter charged as obscenity is



to deprave and corrupt those whose minds are open to such immoral influences. The following passage from the judgment authored by Justice K.K. Mathew (as his Lordship then was) reported in **P.T. Chacko v. Nainan (1967 KLT 799)** explains as follows:

"The only point argued was that the 1st accused has not committed an offence punishable under Section 294(b) IPC., by uttering the words above-mentioned. The courts below have held that the words uttered were obscene and the utterance caused annoyance to the public. I am not inclined to take this view. In the **Queen v. Hicklin, [L.R.] 3 Q.B. 360 at 371** Cockburn C.J. Laid down the test of 'obscenity' in these words:

"..... the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences" This test has been uniformly followed in India. The Supreme Court has accepted the correctness of the test in **Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC 881**. In **Samuel Roth v. U.S.A., 354 US 476 (1957)**, Chief Justice Warren said that the test of 'obscenity' is the "substantial tendency to corrupt by arousing lustful desires". Mr. Justice Harlan observed that in order to be 'obscene' the matter must "tend to sexually impure thoughts". I do not think that the words uttered in this case have such a tendency. It may be that the words are defamatory of the complainant, I do not think that the words are 'obscene' and the utterance would constitute an offence punishable under S. 294(b) IPC".

9. It has to be noted that in the instance case, the absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the accused. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. **Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC. To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case.** No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the appellants accused annoyed others, it can not be said that the ingredients of the offence under Section 294 (b) of IPC is made out." (emphasis added)

8. A perusal of the factual matrix as well as the testimony of PW1-complainant would indicate that there were no obscene words uttered by the petitioner. Even the testimony of the mother of the complainant- Darshana,



who appeared as PW2, only reflects that the petitioner was standing in the market and tried to give goods to the complainant. As such, the ingredients of the offence under Section 294 IPC are not made out. Moreover, there is a delay of 11 days in lodging FIR(supra). The prosecution claims that said delay was result of the fact that a possibility of compromise was being explored with assistance of the panchayat. However, no proof regarding convening such a panchayat has been brought on the record.

9. Furthermore, an appeal under Section 378 Cr.P.C. would only be maintainable in case of a cognizable and non-bailable offence. Since the offence under Section 294 IPC is bailable in nature and the petitioner was acquitted qua the same vide judgment dated 15.04.2015 passed by the learned trial Court, the complainant ought to have preferred an appeal before the High Court in view of the bar under Section 378(1)(b) Cr.P.C., as opposed to filing an appeal before the Court of Session. A two Judge bench of the Hon'ble Supreme Court in ***Subhash Chand vs. State (Delhi Admn.) (2013) 2 SCC 17***, speaking through Justice Ranjana P. Desai, has held as follows:

“18. If we analyse Sections 378(1)(a) and (b), it is clear that the State Government cannot direct the Public Prosecutor to file an appeal against an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence because of the categorical bar created by Section 378(1)(b). Such appeals, that is, appeals against orders of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence can only be filed in the Sessions Court at the instance of the Public Prosecutor as directed by the District Magistrate. Section 378(1)(b) uses the words “in any case” but leaves out orders of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence from the control of the State Government. Therefore, in all other cases where orders of acquittal are passed appeals can be filed by the Public Prosecutor as directed by the State Government to the High Court.”

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10. In view of the discussion above, this Court finds that learned lower Appellate Court has erred in convicting the petitioner for offence under Section 294 IPC. Accordingly, the present revision petition is allowed. The impugned judgment dated 19.08.2017 passed by the learned Additional Sessions Judge, Rohtak is hereby set aside and the petitioner is acquitted of the charges framed against him. His bail bonds and surety bonds also stand discharged.

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

(HARPREET SINGH BRAR)
JUDGE

25.07.2024*Ajay Goswami*

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No