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Neutral Citation No. - 2024:AHC-LKO:8399

Court No. - 29

Case :- CRIMINAL REVISION No. - 1438 of 2023

Revisionist :- Chetram

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Deptt. Civil Sectt. Lko And 2 Others

Counsel for Revisionist :- Amrish Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

The present revision has been preferred against the impugned judgment and order dated 21.08.2023 passed by the learned Special Judge (POCSO Act), Balrampur in connection to Final Report No. 45 of 2023 register No. 10 of 2023 (Chetram Vs. Rajan and others).

Notice to the private respondents have been served and Shri Amar Singh, learned counsel has put in appearance on their behalf.

As per case set out in FIR on 29.05.2019 at about 1:30 P.M the accused persons have enticed away the minor daughter of the revisionist and two others girls in jeep. He was seen by the brother of Ram Narayan on 30.05.2019. One unknown call from mobile number 97943307892 came who stated that the aforesaid three girls are present in namkeen factory situated at Gorakhpur. The revisionist reached and recovered the three girls. Gold and silver jewellery worn by the victims were also snatched by the accused. The accused have molested them mid way and dropped the victim in train wherefrom the victim ran away.

It is submitted by the learned counsel for the revisionist that the order of the learned trial court is against the evidence on record. Learned trial court committed manifest error in not believing the prosecution case which is more trustworthy. Witness Ram Narayan Pathak has supported the prosecution case. Both the victims supported the prosecution version in their statement recorded under Section 164 Cr.P.C. Learned trial court disbelieved the evidence of prosecution.

On the other hand learned counsel for the opposite party has submitted that the revisionist is habitual in lodging false FIRs and prior to this case two more FIRs were also registered by them against different persons. Learned trial court accepted the final report dated 22.11.2022 on the basis of investigation conducted by the Investigating Officer and learned trial court did not find any reliable content in the application to protest the FIR.

I have heard learned counsel for the parties and perused the record.

This is an admitted fact that the case was registered on the basis of an application moved by informant Chetram under Section 156 (3) Cr.P.C. The contents of the application was that daughter of informant Chetram and daughter of Ram Naresh were enticed away by accused Rajan and Nitesh @ Pappu. They were seen by brother of Ram Naresh when the victims were being taken by Jeep from Mahesh Bhari Chauraha Shambhu Pathak disclosed that he had seen the victim going with Rajan and Nitesh by Jeep. He received a call on 30.05.2019 at about 3:30 Pm on his phone number 9454174560 from mobile number 9794330789. The person who on phone requested him to take his daughter and two other victims who are roaming here and there and are now with him safely. The applicant and Ram Naresh went to Gorakhpur and

all the girls were found at the shop. The victims started weeping and revealed the story that they were enticed by Rajan. The daughter of Ram Naresh told that she came with Rs.8,000/- and few gold and silver jewellery which was taken by Rajan and he teased her also on the way. When they reached Badni, Rajan directed them to reach Gorakhpur, he will meet them in Gorakhpur. He along with her friend reached Gorakhpur at 1:00 am in the night but Rajan did not arrive. The statement of victim were recorded separately during investigation. The victim 'X' daughter of Chetram Sonker stated that Nikhil and Rajan assured them that they will engaged them in some job in Gorakhpur. She along with victim 'Y' came to Mahesh Bari where she accompanied with victim 'Z' daughter of Gopi who is also the sister in law of her sister. All the three went with Nitesh and Rajan by jeep. She denied that Nitesh and Rajan teased her. In her statement recorded under Section 164 Cr.P.C the victim 'Y' stated that Rajan promised her to marry and he enticed her and took her to Maheshbhari on foot and from Maheshbhari they brought her to Balrampur bus stop and threatened them by knife. She for the first time introduced the name of one Anil and for the first time she stated that the accused committed rape upon her and left her at railway Station Badni. The victim 'Z' in her statement recorded under Section 161 Cr.P.C stated that she is 13 years old. The victim "x and y" called her near sewer, Rajan and Nitesh were also present there. Accused Rajan and Nitesh induced her to accompany them to Balrampur. She refused and she insisted upon to return her home. She had no money with her and she asked money from them so that she could return to her home, but accused refused to give her money. She, therefore, accompanied all of them, she also stated that they dropped her at Badni railway station and thereafter all three victims went to Gorakhpur by train. The statements of all the three were

recorded under Section 164 Cr.P.C they denied sexual harassment or eve teasing by accused.

On the basis of statement of victim recorded under Sections 161 and 164 Cr.P.C the investigating officer found that name of Anil was introduced for the first time by the victim 'z'. On the basis of documents provided by the father of the accused Nitish the presence of accused was not found at the place of occurrence. Hence final report was submitted by investigating office against the accused under Section 363, 366A, 354 IPC, 17/11 POCSO Act and 3(2) (v) of SC/ST Act.

Trial court directed for reinvestigation and reinvestigation was conducted by Varun Mishra Circle Officer. He recorded the statement of villagers, witnesses and victim by online audio recording. In their statement victim stated that they voluntarily accompanied the accused. No one enticed them away. Two witnesses inform through telephonic communication from Gorakhpur that the victim came to his namkeen factory for job. On the basis of the statement of victim and witnesses, the investigating officer found that all the three victims were roaming voluntarily, hence, FR was submitted by investigating officer vide order dated 05.01.2020.

Learned trial court found that there is contradiction regarding number of accused. Accused Anil was introduced on a later stage. There is no allegation of rape or sexual harassment in the statement recorded under Section 161 Cr.P.C. Victim improved their case during the statement recorded under Section 164 Cr.P.C. It is for the first time that victim alleged against the accused for sexual harassment. There is concurrent finding of court on the FR

and final report filed by two different investigating officer at Circle Officer level.

Learned counsel for the revisionist submitted that the trial court did not consider the fact that all the three victim are minor. From the perusal of impugned order it is apparent that this fact was not discussed in the order but learned trial court did not hold them major too. Learned trial court rejected the protest application on the ground that apparently on the basis of evidence collected by investigation officer, no offence under Section 363, 366A, 354 IPC is made out and the final report submitted by the investigating officer is submitted on the basis of evidence. Moreover it is also evident from the record that according to the prosecution case, they were dropped in bus headed to Gorakhpur. The victim had opportunity to return to their home but she opted to remain with the accused and did not return home. At the Mahesh Bhari place also accused seated the victim in jeep but they did not raised any alarm. Brother of Ram Nareh is said to have seen the accused taking away the victim with them but he did not raise any alarm nor he informed the incident to Ram Naresh the father of the victim. The victim herself carried jewellery and cash with her from her home which further goes to show that she herself went with the accused. There is no allegation of sexual assault against any of the accused in the statement of victim recorded under Section 161 Cr.P.C.

From the medical examination of the victim "x" she was found major girl aged about 19 years. The medical examination was conducted by medical board. She did not disclose any type of sexual assault to doctor at the time of medical examination.

In view of the above discussions, this Court does not find any illegality or irregularity in the impugned order warranting interference.

The revision lacks merits and is accordingly **dismissed**.

(Renu Agarwal, J.)

Order Date :- 25.01.2024
Nadeem