

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-1714-MA-2015 (O&M)

Date of decision: 08.02.2016

State of Haryana

..... Applicant

Versus

Joginder and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Parveen Bhadu, AAG, Haryana for the applicant.

RAMENDRA JAIN, J.

CRM-33724-2015

Sufficient grounds have been shown to condone the delay of 52 days in filing the application under Section 378(3) Cr.P.C. for seeking leave to file accompanying appeal.

Hence, the application is allowed and delay of 52 days in filing the application under Section 378(3) Cr.P.C. for seeking leave to file accompanying appeal is condoned.

CRM-A-1714-MA-2015

Applicant-State by way of present application has sought permission to file the accompanying appeal against acquittal of

respondents No. 1 to 3 vide judgment dated 30.04.2015 passed by the learned Additional Sessions Judge, Jind.

2. Briefly stated, on 16.04.2013, complainant-Sunita Devi filed an application before Nodal Cell, Jind, for taking legal action against respondents No. 1 to 3, who are none else, but her husband and parents-in-law with broad allegations that she solemnized her second marriage with respondent No. 1-Joginder, after obtaining divorce from her previous husband namely Dharambir on 12.07.2011. Her parents-in-law i.e. respondents No. 2 to 3 intended to push her into flesh trade. When the complainant complained this matter to her husband-respondent No. 1, he, instead of listening to her, gave beatings to her. When she was two months pregnant, her in-laws wanted to abort her child, but she did not permit them to do so. On her falling ill, some intoxicating medicine was administered to her by the respondents, on account of which she suffered abortion. On 14.10.2012, respondent No. 3, father-in-law of the complainant had tried to outrage her modesty. When she complained about the above conduct of respondent No. 3 to respondent No. 2-mother-in-law of the complainant, she also sided with respondent No. 3. Her husband-respondent No. 1 had also threatened to give divorce or to kill her. On the basis of above complaint, an FIR under Sections 498-A/323/313/376/511/506 of the Indian Penal Code (IPC) was registered against the respondents. Respondents were arrested. During investigation by DSP Amrik Singh, offences under Sections 376 and 511 IPC were not found to have been committed. Hence, after completion of necessary investigation, final report under Section 498-A/323/313/506

IPC was filed before the Area Magistrate.

3. Since, the offence under Section 313 IPC was triable by the Court of Session, therefore, the learned Area Magistrate committed the case for trial to the Court of Session vide order dated 04.07.2013. Consequently, the learned Additional Sessions Judge, Jind, charge-sheeted the respondents under the aforesaid sections, to which they pleaded not guilty and claimed trial.

4. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court acquitted all the respondents of the aforesaid charges framed against them by giving the benefit of doubt vide the impugned judgment.

5. Learned State counsel argued that the impugned judgment is based on surmises and conjectures. The learned trial Court has failed to appreciate the statement of the complainant in a proper prospective. She had categorically deposed about her marriage with respondent No. 1 and that her in-laws tried to indulge her in the business of prostitution and on her refusal, she was beaten up. She also categorically deposed that the respondents forcibly got aborted her child. The learned trial Court has also erred in not considering the fact that once respondent No. 3-father-in-law of the complainant had tried to commit rape with her by tearing her clothes. The above facts narrated by the complainant in her deposition were sufficient to convict the respondents.

6. We have given our thoughtful consideration to the submissions made by learned State counsel and find that the instant application is completely devoid of any merit for the reasons to follow:-

- (i) PW-7 Dr. Saroj Chaudhary, is stated to have testified that the case of complainant was of pre-mature delivery and not of abortion. When the complainant was brought in their hospital, she was in labour pains. Hence, the offence under Section 313 IPC from the own evidence of the prosecution is not made out.
- (ii) As per the complainant, her pregnancy was got aborted on 04.09.2012. In the complaint, she alleged that she left her matrimonial home on 15.10.2012 i.e. after one day when her father-in-law tried to commit rape with her. It is not explained by her that why she remained silent for more than 6 months (i.e. from 15.10.2012 to 16.04.2013) in not reporting the matter to the police, though as per her stand she was residing at the parental home. Even she did not disclose this fact to her parents. The above silence of the complainant for such a long period, requires to draw an adverse inference that the things did not happen in the manner as narrated by the prosecution. It does not lie in the mouth of complainant that she did not file complaint promptly to the police under fear of the respondents as they threatened to kill her, because as soon as she left her matrimonial home she was not under the shadow of any of the respondents and thus, the question of fear of any of the respondents in her mind does not arise at

all. Hence, delay in lodging the FIR without explanation is fatal to the case of prosecution.

- (iii) In cross-examination, the complainant as PW-3 has stated that earlier also she had moved a complaint against the respondents about two months prior to the filing of complaint Ex. PA. However, her complainant Ex. PA did not find mention this fact, thus, possibility of a concocted version in this prosecution story cannot be ruled out.
- (iv) Commission of offences under Sections 376 and 511 IPC were found false during investigation by the police and, thus, respondents were not challaned under the aforesaid sections. This fact carries much weight in our mind that the complainant was out and out to settle her scores with the respondents by levelling false allegations against them due to filing of divorce petition by respondent No. 1 against her much prior to the filing of complaint Ex. PA by the complainant. Therefore, the present complaint was nothing, but a counter-blast to the divorce petition filed by respondent No. 1 against the complainant.
- (v) As per stand of the complainant, her father-in-law/respondent No. 3 had tried to commit rape with her on 14.10.2012 and when she complained about it to her mother-in-law/respondent No. 2, she also sided

with her husband. The above story is completely unbelievable, because in the Indian Society, no wife would permit her husband to indulge in sexual activities with another woman, more particularly with his daughter-in-law.

- (vi) The complainant as PW-3 in her cross-examination had categorically admitted that she had moved an application against her previous husband, namely; Dharambir and his family members regarding harassment for dowry, but denied that she had compromised with him by taking ₹ 50,000/- from them. Copy of the criminal complaint under Sections 498-A/406/506 read with Section 34 IPC against her previous husband-Dharambir and his family members is Ex. D-2/1. Ex. D-1 is the copy of compromise in between the complainant and her previous husband. Ex. D-3 is the copy of order dated 30.05.2009, passed by the learned Sub Divisional Judicial Magistrate, Safidon, regarding withdrawal of complaint filed by the complainant as well as the copy of statement of complainant dated 29.05.2009, which shows that the complainant had withdrawn the said complaint Ex. D-2/1 in view of compromise. Her previous husband Dharambir as DW-3 testified that after the marriage, the complainant started misbehaving with

him as well as his family members. After leaving the matrimonial home, the complainant also filed a petition under Section 125 Cr.P.C. against them. He further categorically deposed that the complainant used to speak badly with him. She intended to sell his house, his land and shop. The complainant left him as she did not like him. She also insulted him before the Panchayat. The above conduct of the complainant shows that she was habitual of filing such false complaints.

- (vii) With regard to the allegation levelled by the complainant against the respondents that they wanted to push her in flesh trade, the complainant has miserably failed to bring any such single instance on record. Hence, in the absence of any specific dates or names of the persons with whom the complainant was forced to indulge in sexual activities, it can safely be said that the prosecution has failed to prove its case.
- (viii) Respondent No. 1 in his divorce petition against the complainant has specifically averred that after 3 months of their marriage, the complainant became pregnant, but she herself took some medicine and got the child aborted without his consent. He also mentioned that in the month of September, 2012, when the complainant was again pregnant she on her own

consumed some pills and got aborted the second child without his consent and thereafter, she left the matrimonial home on 14.10.2012. The above story put forth by the respondents cannot be ruled out, when the prosecution has miserably failed to prove its case.

7. No other point was urged before us.

8. From the above discussion, it can safely be said that the prosecution has failed to prove its case beyond any shadow of doubt against respondents No. 1 to 3 and they have been rightly acquitted by the learned trial Court. The instant application is completely devoid of any merit and, therefore, dismissed. Special leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

February 08, 2016

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