

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM No. M-29237 of 2015
Date of decision : 12.07.2016

Kanta

....Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Manoj K. Tanwar, Advocate
for the petitioner

Mr. Kuldeep Tiwari, Addl.A.G, Haryana

Mr. S.K. Yadav, Advocate
for respondent Nos. 4 to 5.

Mr. J.S. Ahlawat, Advocate
for respondent No. 6

Mr. R.A. Yadav, Advocate
for respondent No. 7

RITU BAHRI, J. (Oral)

In the present petition filed under Section 482 Cr.P.C, a direction is being sought to hand over the investigation of F.I.R No. 267 dated 27.07.2015, registered at P.S. Kanina, District Mohindergarh u/s 365/34 and Sections 376/389/120-B IPC (added lateron) to some Independent Agency or any other superior officer not below the rank of IPS of State of Haryana.

The precise grievance of the petitioner before this Court is that she had altercated with her husband and thus, approached respondent No.7 Sarpanch of the village, who assured all help and instructed the petitioner to wait at his residence. Respondent No.7 sent respondent No.6 i.e Ramesh Patwari to his house while the petitioner was all alone at the residence of respondent No.7. At the asking of respondent No.7, respondent No.6 came over their and committed rape upon the petitioner. Thereafter, the respondents have been pressurizing to compromise the

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matter and even an offer of Rs. 5 lacs has been made to compromise the matter.

The petitioner approached this Court and this Court on 31.08.2015 issued notice to the respondents. Thereafter, on 17.11.2015 this Court directed respondent No. 2 to ensure that no harm is caused to the life and liberty of the petitioner. On 30.11.2015, replies filed by the respondents were taken on record and learned State counsel informed that the investigation is still in progress. However, on 12.01.2016, learned counsel for the petitioner has informed the Court that in spite of direction issued by this Court for protecting the life and liberty of the petitioner, the petitioner has been made as an accused and was also arrested on 09.12.2015. Thereafter, this Court directed respondent No. 2 to file an affidavit in this regard explaining how the petitioner was arrested in spite of the direction issued by this Court on 17.11.2015 to ensure protection to her. Since the order of arrest of the petitioner was issued by DSP Taanya Singh, who is the investigating officer of this case, this Court further directed her to file her affidavit in this regard and was directed to remain present in the Court on the next date of hearing.

On 29.01.2016, DSP Taanya Singh filed her reply and informed this Court that some incriminating material came to knowledge against the petitioner and then only, she was arrested. She further admitted that the order passed by this Court with regard to giving protection to the petitioner was in her knowledge but it was done as there was communication gap on the part of learned State counsel.

Thereafter, this Court directed the DSP, Narnaul to file her affidavit as to why the directions issued by this Court on 17.11.2015 and 12.01.2016 have not been complied and as to why contempt of Court proceedings be not initiated against her.

DSP Narnaul on the next date of hearing on 19.02.2016 was again directed to file status report stating therein all the facts as submitted before this Court and further explain how offence under Section 376 has been deleted by

believing the statement of accused and how the petitioner has been made as an accused.

In compliance of the above said order, Ms. Taanya Singh, DSP Narnaul has filed detail status report on 28.03.2016.

A bare perusal of all the status reports, affidavits filed by the respondents shows that order dated 17.11.2015 passed by this Court has been received by Ms. Taanya Singh, DSP Narnaul on 17.12.2015 and petitioner was arrested on 09.12.2015.

It has been stated in the present petition that the petitioner had some altercation with her husband on 14.07.2015 and on the same date, she went to the house of respondent No. 7-Sarpanch of the village along with her relative Krishan Kumar and the rape was committed by respondent No. 6 on the same date. Whereas, the husband of the petitioner lodged F.I.R No. 267 u/s 365 IPC on 27.07.2015 and on 04.08.2015 (P-1) against respondent No. 7-Om Parkash and Krishan that they had kidnapped his wife. The statement of petitioner was thereafter recorded before Judicial Magistrate, Ist Class, Mohindergarh (P-2). The medical of the petitioner was conducted on 31.07.2015 after 17 days of alleged occurrence (P-3). An application dated 31.07.2015 was moved by the present petitioner to take strict action against ASI Neelam, SHO Sube Singh and Ex Sarpanch Om Parkash who are forcing the petitioner to compromise the matter with Ramesh patwari, who committed the rape upon the petitioner. This application was forwarded to Ms. Taanya Singh, DSP Narnaul who sent lady Head Constable Suman and medico legal examination of the petitioner was conducted on the same day and her statement under Section 164 Cr.P.C was recorded (R-2). Thereafter, Sections 342/376/389/120-B IPC were introduced in the present case. On 03.08.2015, accused Om Parkash was arrested who gave her disclosure statement that he along with Kanta-present petitioner and Krishan entered in a conspiracy and gave a false

application against Ramesh Patwari and received Rs.5 lacs from Vinod and Raj Singh who are the known persons of Ramesh Patwari on behalf of him and further disclosed that out of Rs.5 lacs, Rs.50000 were given to the present petitioner. Thereafter, statement under Section 164 and 161 Cr.P.C were recorded of the eye witnesses namely Abdul Satar and Imran who stated that no occurrence of rape took place at the said place, time and date and manner which is described by the complainant/petitioner. Statement of Raj Singh, Vinod and Deepchand were also recorded on 02.08.2015 and call details of all the person were obtained. ON 04.08.2015, accused Krishan was arrested who made disclosure statement on the lines of Om Parkash.

On 19.11.2015, accused Baljeet had been arrested and Section 342/376/389 IPC were deleted and Sections 388/384/506 IPC were inserted. The accused i.e Om Parkash, Baljeet were in judicial custody. During the course of investigation, DSP Taanya Singh visited the scene of alleged occurrence and verified the matter from Abdul and Imran who are residing in the adjoining room of the office of respondent No. 7 and stated that no occurrence of rape took place at the said place. Further Legal Aid Counsel Ms. Rekha Yadav and other police officials stated that an application dated 15.07.2015 was given by the petitioner to ASI Om Parkash regarding commission of rape with her. This application was reduced in to writing by respondent No. 7 himself and respondent No. 7 in his disclosure statement clearly stated that in order to take revenge from Ramesh Patwari regarding the beatings given to Krishan by him and to extort the money from Patwari, he scribed the application. Further Legal Aid Counsel stated that the petitioner had told her that no rape was committed upon her by Ramesh Patwari and she refused to give her statement and refused for medico legal examination and also does not want to take any action on the application moved by him. It came on record that on the intervening night of 14/015.07.2015, the petitioner and Krishan

Kumar were brought by Ex Sarpanch and Baljeet at the office of Ex Sarpanch and at that time Rmaesh Patwari, neighbour of Ex Sarpanch was also present. The meal was brought by Krishan and Ex Sarpanch from a hotel. Thereafter, Baljeet and Ex Sarpanch left for their village whereas Kanta and Krishan were present at the room where they consumed beer and created nuisance at the room . When Ramesh Patwari objected to this, some altercation took place between Ramesh and Krishan. This incident was brought to the knowledge of Ex Sarpanch by Kanta and in order to take revenge, the conspiracy was hatched by Ex Sarpanch, as mentioned in his disclosure statement. Rs.5 lacs were withdrawn from the bank account of Ramesh Patwari. The petitioner in her statement before ASI Neelam clearly stated that she does not want to take any legal action, which was signed by Legal Aid counsel and DDR No. 6 dated 15.07.2015 was also recorded in this regard. Many villagers of the village Sehland including husband of the petitioner were also present.

Learned State counsel, on instructions from DSP Taanya Singh has informed the Court that out of 30 witnesses, 4 have been examined.

Thus, the respondents had carried out the detailed investigation before arresting petitioner. Keeping in view the stage of the trial, at this stage, no ground is made out to hand over the investigation of the above said F.I.R to some independent agency.

Accordingly, the petition stands disposed of.

However, the petitioner is at liberty to take alternative remedy in accordance with law, if so, advised.

12.07.2016

G Arora

(RITU BAHRI)
JUDGE