

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-42791-2015

Date of decision: 18.11.2016

Jagdish

... Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Harsh Garg, Advocate,
for the petitioner.

Mr. Mikhail Kad, AAG, Punjab
for respondent-State.

JAISHREE THAKUR, J. (ORAL)

1. The instant petition by the petitioner under Section 482 Cr.P.C. has been filed seeking quashing of FIR No. 101 dated 16.03.2015 under Sections 376, 420, 506, 120-B IPC, registered at Police Station Jodhewal, District Ludhiana City.

2. In brief the facts are that an FIR No. 101 dated 16.03.2015 under Sections 376, 420, 506, 120-B IPC, came to be registered at Police Station Jodhewal, District Ludhiana City at the instance of the prosecutrix making allegations against one Sonu Sharma for committing the offence of rape upon her on the pretext of a marriage proposal. The petitioner herein was not named in the FIR. On a statement recorded under Section 164 Cr.P.C. the prosecutrix mentioned the name of the petitioner and one Ravi Chadha. The petitioner and the aforesaid Ravi Chadha immediately applied for grant of anticipatory bail before Addl. Sessions Judge, Ludhiana, who rejected the same. Thereafter, the petitioner approached this Court by way of filing CRM-M-14003 of 2015 wherein the petitioner was granted the

concession of anticipatory bail by this Court. A challan came to be presented by the respondent State under Section 173 Cr.P.C. only against Sonu Sharma since the petitioner and the co-accused had been granted anticipatory bail. After the presentation of the challan, the matter was committed to the Court of Sessions and charges were framed against the main accused Sonu Sharma. During the trial, the prosecutrix appeared as PW-1 and her mother appeared as PW-2, wherein they did not support the case of the prosecution and were declared hostile. Since the prosecutrix who had initially lodged the FIR alleging rape, herself did not support the case, Sonu Sharma, the main accused stood acquitted by the trial Court vide judgment dated 04.07.2015. The instant petition has been preferred seeking quashing of the FIR on the ground that the co-accused has already been acquitted and also relying upon the fact that he were not mentioned in the FIR.

3. Per contra, reply on behalf of the respondent-State has been filed in Court which is taken on record. Learned counsel for the respondent-State submits that the challan is ready to be presented against the petitioner and it is only on account of the fact that anticipatory bail had been granted to the petitioner herein and he had been allowed to join investigation that the said challan was not presented.

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

5. A perusal of the FIR reveals that the prosecutrix and the said Sonu Sharma had developed a relationship on the pretext that he will get married to her and on coming to know that he was already married to one

Sonia Sharma from whom he had two sons during the love affair with the prosecutrix, that the said complaint came to be filed. In the said FIR there is no mention of the petitioner and it is only in a statement suffered under Section 164 Cr.P.C. that there is a vague reference to the petitioner to the effect that Jagdish (petitioner herein) fully helped him. Other than this, there is no such allegation against the petitioner that he committed any of the offences as set out in the FIR.

6. Learned Addl. Sessions Judge after recording of evidence in the aforesaid FIR held that no offence is proved to have been committed by the main accused Sonu Sharma and he was accordingly acquitted. The contention as raised by learned counsel for the respondent-State that challan was ready to be presented against the petitioner and the proceedings under the FIR should not be quashed, has no merit. The prosecutrix in the FIR had not mentioned the petitioner herein and no specific allegation had been made against the petitioner even in the statement recorded under Section 164 Cr.P.C. In her deposition before the Sessions Court, the prosecutrix and her mother both turned hostile while making a statement that no rape was committed upon her. Thus, the main accused has been acquitted and a perusal of the statements made under Section 164 Cr.P.C. do not show that petitioner can likely be held guilty or convicted. The promise of marriage was made by the main accused Sonu Sharma and not by the petitioner nor was there any relation relationship between them as is evident from the statement suffered under Section 164 Cr.P.C.

7. Learned counsel for the petitioner has referred to the judgment rendered by this Court in the case of *Gurpreet Singh alias Khinder vs.*

State of Punjab, reported as **1995(2) RCR (Criminal) 127** in which case also, the co-accused had been acquitted. The Court came to the conclusion that the petitioner should not be required to undergo the ordeal of a trial, especially, when the co-accused was acquitted. It was held in the said case that where the evidence is same, continuation of proceedings in the case of the co-accused would result in waste of court's time and unnecessary expenditure on State exchequer. The proceedings in the **Gurpreet Singh's** case (*Supra*) against the petitioner were quashed while relying on the judgment of Hon'ble the Apex Court rendered in the case titled as **Madhavrao Jiwaji Rao Scindia and another vs. Sambhajirao Chandrojirao Angre and others reported as 1988(1) RCR 565** by observing in para 4 as under :-

" The local position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are weak and, therefore, no useful purpose is likely to be served by allowing criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

8. Similarly, in the case of **Vinod Kumar alias Vinod Saddi Vs.**

State of Punjab, reported as **2011(2) R.C.R. (Criminal) 438**, a single Bench

of this Court quashed the FIR on the ground that co-accused stood acquitted

on total lack of evidence.

9. In the instant case too the main accused Sonu Sharma has been acquitted on account of the fact that the prosecutrix herself turned hostile. Even otherwise, on examination of the allegations in the present case against the petitioner, the same are not sufficient to hold that the petitioner would be convicted of the offence as complained of under the said FIR. Thus, it would not be in the interest of justice to subject the petitioner to a trial especially in the facts as narrated above.

10. Accordingly, the present petition is allowed and FIR No. 101 dated 16.03.2015 under Sections 376, 420, 506, 120-B IPC, registered at Police Station Jodhewal, District Ludhiana City and subsequent proceedings arising therefrom are hereby quashed against the present petitioner.

18.11.2016

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No.