

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

**CRR No.2536 of 2016 (O&M)
Date of decision: 18.11.2016**

Harbhajan Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. G.S. Sandhu, Advocate,
for the petitioner.

Mr. D.R. Singla, DAG, Haryana.

Ritu Bahri, J.

This petition has been filed against the order dated 20.05.2016 passed by the Additional Sessions Judge, Ambala, whereby charge under Section 328 read with Section 120-B IPC has been framed against the petitioner.

FIR No.37 dated 27.02.2016, under Section 328 read with Section 120-B IPC and Section 4 of the Protection of Children from Sexual Offences Act (Annexure P-1) was registered at Police Station, Sadar, Ambala, on the basis of statement made by Smt. Baby Bala against Krishan Pal and Harbhajan Singh (present petitioner). Case of the complainant is that on 29.11.2015, at about 8:00 P.M., Nanu called her daughter (Sonia) to his house by alluring her and served her with some liquid like water. After consuming the same, Sonia lost her consciousness. Thereafter, Nanu

committed illegal act with her against her wishes, but this was not told by Sonia to anybody being scared. Thereafter, Nanu started threatening her by saying that he had clicked her nude pictures & video and he would defame her by showing these pictures and video, otherwise she should perform marriage with him. He also told her to write a letter against her mother (Baby) and maternal grandmother (Nani) and pressurized them on the pretext that he will falsely implicate them with the help of his nephew (Harbhajan) and niece (Lakhwinder Kaur). This letter was handed over by Nanu on 20.12.2015 and thereafter, on 21.12.2015, some persons from Jan Sewa Samiti came to her house along with Harbhajan Singh and Lakhwinder Kaur and told that they were members of an NGO and would get the marriage of her daughter solemnized with Nanu. However, she should act against her mother and maternal grandmother. Upon this, Sonia did the same and thereafter, she was sent to Mercy Home, Ambala. Even in the Mercy Home, Nanu, his nephew Harbhajan Singh (present petitioner) and some boys and girls used to come and threaten her. Thereafter, her daughter was sent to Lohar Majra to her maternal aunt Manjit Kaur. But, on 07.02.2016, Nanu went to Lohar Majra and started threatening her daughter-Sonia. In this background, the FIR was registered.

Learned counsel for the petitioner has argued that vide impugned order dated 20.05.2016, the petitioner has been charge-sheeted under Section 328 read with Section 120-B IPC for making criminal conspiracy and criminal assault on the prosecutrix. He further argued that role of the present petitioner is restricted to 21.12.2015 when he had gone to the house of complainant being a member of an NGO and sent her daughter to Mercy Home, Ambala. As per allegations levelled in the FIR, offence under

Section 328 IPC is not made out against the petitioner.

Learned State counsel has argued that the order framing of charge does not require any interference as the question, “whether offence under Section 328 read with Section 120-B IPC is made out or not” will be seen after leading of evidence at the final stage of the trial.

Heard, counsel for the parties.

After going through the allegations set out in the FIR, this Court is of the view that the role of the petitioner is restricted to 21.12.2015 when he along with Lakhwinder Kaur had gone to the house of complainant being member of an NGO and thereafter, by using the letter given by Sonia, had sent her to Mercy Home, Ambala. The complainant, after taking her daughter from Mercy Home, sent her to the house of Manji Kaur at Lohar Majra. The present petitioner, at best, can be attributed the act of conspiracy in taking away the daughter of complainant from her house and by sending her to Mercy Home, Ambala. He cannot be attributed any role in administering the liquid water to Sonia on 29.11.2015, which made her dizzy and thereafter, she lost her consciousness. This act has been attributed to Nanu. Upon this, he committed wrong act with Sonia. Later on, he threatened to defame her by showing her nude pictures and video. It is not stated that the present petitioner was involved in the commission of the offence. The prosecutrix has named the petitioner on 21.12.2015 and the allegation is that he had threatened her with dire consequences. Relevant Section 328 IPC is reproduced as under:-

“328. Causing hurt by means of poison, etc., with intent to commit an offence.—Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will

thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Moreover, as per order dated 01.06.2016 (Annexure P-2) passed by the Principal Magistrate, Juvenile Justice Board, Ambala, Lakhwinder Kaur, who has been attributed same role as that of present petitioner-Harbhajan Singh, has been served notice of accusation under Section 506 IPC and she has not been attributed any role of sexual assault. The case of the present petitioner is at par with that of Lakhwinder Kaur and keeping in view the peculiar facts and circumstances of the case, he cannot be charge-sheeted under Section 328 IPC.

Resultantly, the impugned order dated 20.05.2016 is set aside and the second charge framed under Section 328 read with Section 120-B IPC is quashed qua the petitioner. At the same time, he will face trial under Section 506 IPC, as held by the Juvenile Justice Board in the case of Lakhwinder Kaur (co-accused of the petitioner) vide order dated 01.06.2016 (Annexure P-2).

Petition stands partly allowed in the aforesaid terms.

18.11.2016
ajp

(RITU BAHRI)
JUDGE

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