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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 953 of 2014 (O/M)

Date of decision : 10.5.2016

Ajit Singh Bains and another Petitioners

Versus

Central Bureau of Investigation, New Delhi, and another
..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.S. Bains, Advocate, for the petitioners.

Mr. Sukhdeep S. Sandhu, Senior Standing counsel
for CBI-respondent No. 1.

Mr. Naveen Sharma, Advocate,
respondents No. 2 to 12.

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

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KULDIP SINGH J. (ORAL)

Challenged in the present revision is the judgment dated 29.7.2013, passed by the learned Special Judge CBI, Punjab, Patiala (Additional Sessions Judge, Patiala), whereby the accused/private respondents were acquitted of the charges framed against them under Sections 376 and 376 IPC read with Section 109 IPC.

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The short facts, which are required to be noticed for the purpose of disposal of the present revision, are that a complaint was made by Mr. Justice A.S. Bains (Retd.), Chairman, Punjab Human Rights Organization, against the present accused/private respondents on the allegations of extortion from the Cable Operators of Amritsar and sexual exploitation of women employees. Initially, the case was investigated by the Punjab Police, but later in view of order passed by this Court on 30.5.2003 in CWP No. 8521 of 2003, the matter was entrusted to the Central Bureau of Investigation.

During the course of investigation, three prosecutrix (names withheld) were examined before the different learned Judicial Magistrates 1st Class, under Section 164 Cr.P.C.

Prosecutrix-I was examined before Ms. Jaswinder Kaur, the learned Judicial Magistrate 1st Class, Amritsar, and her statement was recorded under Section 164 Cr.P.C. on 29.5.2003, wherein she levelled the allegations of rape by accused Sarabjit Singh alias Raju in his office and in Neem Chameli Hotel. Similar allegations were also levelled against Hari Om Dhankua, Ganesh Poddar, Madan Lal Vij, Subhash Chander Sharma, Ex-Mayor and J.S. Arora.

Prosecutrix-II was examined and her statement was recorded under Section 164 Cr.P.C. before Shri Kishore Kumar, the learned Additional Chief Judicial Magistrate, Amritsar, on 29.5.2003, wherein she levelled allegations of rape against Sarabjit Singh alias

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Raju in his office. She also levelled allegations against Dimpy alias Gurinder Pal Singh that they had exploited her in Neem Chameli Hotel. She also levelled allegations of sexual exploitation by J.S. Arora, J.S. Kataria alias Sanju, Baland Iqbal Singh, Sanjeev Kumar alias Bobby and one lawyer Rajwinder Singh alias Raja.

Prosecutrix-III, in her statement recorded under Section 164 Cr.P.C. before Ms. Harpreet Kaur, the learned Chief Judicial Magistrate, Amritsar, on 29.5.2003, levelled the allegations of rape against accused Sarabjit Singh alias Raju in his office and in Maya Hotel, Jalandhar. After the investigation, the challan was presented in the Court. It also comes out that the trial continued from the year 2006 to year 2013. As a result of the said trial, all the accused were acquitted.

I have heard the learned counsel for the petitioners, the learned Senior Standing Counsel for Central Bureau of Investigation, the learned counsel for accused/respondents and have also carefully gone through the case file.

The perusal of the lower Court judgment shows that all the three prosecutrix turned hostile and they did not state that they were raped by accused, named by them in their statements recorded under Section 164 Cr.P.C. They did not say that they were either forced and threatened by the accused and that alleged sexual intercourse was without their consent. They were the pillars of the

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case and once the pillars collapsed, the case built on the said pillars also collapse.

The learned counsel for the petitioners has argued that in this case, the prosecutrix were threatened. The trial continued for seven years. The prosecutrix being the poor ladies could not withstand the pressure put forth by the accused, who are influential persons. Therefore, it has resulted in mis-trial. A request has been made for re-trial of the case.

I am of the view that in the present case, the re-trial cannot be ordered. In this case, the prosecutrix being victim have not come to this Court to state that they were threatened and that due to threat given by the accused, they could not make correct statement before the lower Court. Rather, it comes out that the proceedings for perjury are pending against them (prosecutrix) before the lower Court and even in that case also, they did not claim that they were threatened and that is why, they resiled from their previous statements. The present petitioners are complainant. They are otherwise not the victim. Therefore, in this case, the evidence of rape is missing on account of the fact that the prosecutrix had turned hostile. The parameters for interference in the judgment of acquittal are well defined. The Court can interfere in the judgment of acquittal only when it is found that it is perverse or illegal and that the evidence has been mis-read and mis-interpreted. Since in this case,

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all the three prosecutrix had turned hostile, the lower Court was left with no option, but to hold that the charges under Sections 376 and 376/109 IPC are not proved. It being so, I do not find any illegality or infirmity in the impugned judgment. Accordingly, the present revision is dismissed.

(KULDIP SINGH)
JUDGE

10.5.2016
sjks