

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

CRM-A-1293-MA of 2016 (O&M)

Date of decision: 12.09.2017

Alok Jain

...Applicant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Surinder Sharma, Advocate for the applicant.

Jitendra Chauhan, J. (Oral)

By filing the present petition, under Section 378(4) of the Code of Criminal Procedure (for short 'Cr.P.C.'), the applicant has assailed judgment dated 11.05.2016, passed by Addl. Sessions Judge, Jalandhar, dismissing the complaint and acquitting the accused/respondent Nos. 2 to 4 herein of the charges framed against them under Sections 363, 366-A and 120-B of the Indian Penal Code (for short 'IPC').

It is contended that the learned trial Court grossly erred in dismissing the complaint and in acquitting the accused/respondent Nos. 2 to 4 herein without appreciating the fact that the applicant had fully proved his case beyond reasonable doubt by leading cogent and convincing evidence. The date of birth was duly proved by way of birth certificate by PW-11, Charanjit Singh from the office of Sub Registrar,

Birth and Death, Municipal Corporation, Jalandhar but the trial Court has ignored the certificate by recording that name of the daughter of the petitioner was not mentioned. In fact, as per birth certificate, the prosecutrix was minor at the time of incident. He further states though the FIR was not recorded under Section 376 of IPC, however, the prosecutrix has specifically stated that respondent No.2 had committed rape against her wishes during the stay with him which has been duly corroborated by medical evidence whereby PW-8, Dr. Satwinder Kaur had stated that spermatozoa were detected in the contents of Ex.I & II, so there was possibility of sexual assault or intercourse.

Heard.

The FIR in the present case was lodged by the petitioner, the father of the prosecutrix alleging that her daughter had been kidnapped and raped by respondent No.2. To prove his case, he examined himself as PW-1 before the Court below and testified the contents of complaint. The prosecutrix, PW-3 specifically admitted that she had accompanied respondent No.2 to Delhi and thereafter to Bombay out of her own free Will and stayed with him for about one month. The factum of writing letters to accused/respondent No.2 shows her intimacy and relationship with accused/respondent No.2. Though, in her deposition she had stated that accused had committed rape upon her whereas in her statement under Section 164 Cr.P.C., she had stated that accused/respondent No.2 tried to make sexual intercourse. The prosecution has also failed to establish the exact age of the prosecutrix. The statement of prosecutrix itself belies the

version put forth by the prosecution. In view of the above facts and circumstances of the case, this Court feels that the Court below has rightly acquitted the accused/respondent Nos. 2 to 4 of the charges framed against them.

In the circumstances, the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the material on record. In fact there is no infirmity in the reasoning assigned by the trial Court for acquitting the accused/respondents. It is a settled law as has been held in C. Antony Vs. K.G. Raghavan Nair, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

Accordingly, the special leave to appeal stands declined.

Dismissed.

12.09.2017

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No