

In the High Court of Punjab & Haryana at Chandigarh.

CRM-A-984-MA-2017

Date of decision: 17.07.2017

Ved Pal

..... Applicant.

VS.

State of Haryana and others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Nipun Vashist, Advocate
for the applicant.

MAHABIR SINGH SINDHU, J.

Complainant-Ved Pal has filed the present application under Section 378 (3) of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") for grant of leave to file an appeal against the judgment dated 28.02.2017 passed by learned Additional Sessions Judge, Faridabad, vide which accused/respondents No.2 to 5 have been acquitted of the charges under Sections 363/34, 366-A, 376, 368, 120-B of Indian Penal Code (for short "IPC") and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act").

Brief facts of the case are that; an FIR No. 438 dated 17.06.2015 was registered under Sections 363,366-A,368,376 and 120-B IPC, Police Station City Ballabgarh, Faridabad, on the basis of an information given by informant-Ved Pal by alleging that he is resident of H.No. 138/1, Gali No.3 and his wife has already expired. It is further alleged that his daughter, who is about 17 years of age and student of 10th

Class, has been enticed away by accused-Arun on allurement of marriage on

13.06.2015 at 3:00 P.M and said Arun is residing as a tenant in his house.

After completion of investigation, final report was submitted by police under Section 173 (3) Cr.P.C. Thereafter case was committed for trial and charges were framed by learned trial Court on 03.12.2015. Accused-Arun was charged under Section 363/34 IPC, 366A, 376, 120B IPC and Section 4 of the POCSO Act; whereas accused Amit, Kushlata and Kareshan were charge sheeted for commission of offences under Sections 368, 120-B IPC and Section 4 of the POCSO Act.

The prosecution examined 19 witnesses and after considering the entire material available on record, learned trial Court came to the conclusion that charges levelled against the accused were not proved and consequently acquitted all of them.

Learned counsel for the applicant has vehemently argued that learned trial Court has committed a grave error of law while acquitting the accused as there was sufficient material on record to prove the charges specially in view of the fact that the age of the prosecutrix was less than 18 years.

Heard learned counsel for the applicant, this Court does not find any substance in the present application in view of the following reasons:-

In the present case, the alleged occurrence has taken place on 13.06.2015 and as per the school certificate Ex. PD, the prosecutrix is less than 18 years as her date of birth has been recorded as 10.03.1998. But while appearing before the learned trial Court on 18.05.2016, she clearly stated in her cross-examination that earlier she was under the influence of

her father and deposed in the following terms:-

“I have deposed and stated till now as per instructions of my father. Today, I want to narrate real facts to the court. I had love affair with accused Arun. It is correct that I accompanied accused Arun out of my sweet-will. It is correct that I also performed marriage with accused Arun of my own. It is correct that earlier I have stated my age 19 years in my statement under Sections 164 Cr.P.C. I was a little short of 18 years as per documents. Volunteered wrong date of birth was recorded in my documents. My date of birth in document is recorded as 10.3.1998. It is correct that I and accused Arun went to Chandigarh in order to seek protection order from Hon'ble High Court. It is correct that I made wrong statement during my examination in chief at the instance of my father. I remained at Karmarth Charitable Trust, Khedipul, Faridabad for about two and half months as I refused to go to my father's home. My father was against my marriage with accused Arun. Arun never established physical relations with me against my wish and will. Accused namely Karishan, Amit, Kushlata never abetted me to flee away or perform marriage with accused Arun. My marriage was registered at Meerut and copy of marriage certificate issued by Registrar Hindu Marriages, Sub District Marriage is Ex. D1 (original seen and returned). It is correct that I myself recorded my date of birth as 16.12.1996. Voluntarily this is also recorded in my election ID, copy of the same is Mark-A. It is correct that my statement Ex. PB was not under pressure as I have stated in my examination in chief, it was my voluntarily statement. I accepted my marriage with accused Arun and further accepted him as my husband. I do not want to go back to my parental home. I wish to go to my matrimonial house with accused Arun. I do not want to pursue the present case.”

A perusal of the above statement made by the prosecutrix clearly reveals that she had performed marriage with accused-Arun without any pressure and stayed together for 2½ months at Karmarth Charitable Trust, Khedipul, Faridabad and prosecutrix refused to go to her father's home. Even, on earlier occasion the prosecutrix had approached this Court in order to seek protection from her parents and has mentioned her age as 19 years. She has also stated that accused-Arun has never established physical relation against her wishes and further stated that the other accused never abetted her to flee away or perform marriage with accused-Arun; rather the marriage was performed on account of their love affair. Prosecutrix has clearly stated that she does not want to go back to her parents' house and she has accepted her marriage with accused-Arun and both are living as husband and wife.

In view of the above, it has been clearly established that prosecutrix and accused-Arun both are living happily as husband and wife since solemnization of their marriage on 15.06.2015 which was duly registered by Registrar, Hindu Marriages Sub-District Meerut, U.P. During the course of arguments also, learned counsel for the applicant conceded that as on today both i.e. Prosecutrix and accused-Arun are residing as husband and wife. Even otherwise, in view of sub-Section 6 of Section 198 Cr.P.C. no Court shall take cognizance of an offence under Section 376 of IPC, where such offence consists of sexual inter-course by a man with his own wife and the wife being under 18 years of age, if more than one year has elapsed from the date of the commission of the offence.

Thus, in view of the facts and circumstances of the case, the argument that the prosecutrix was less than 18 years of age is of no

significance. Consequently this Court has no option but to accept the reasoning given by the learned trial Court. No ground is made out to interfere with the impugned judgment of acquittal dated 28.02.2017 passed by learned Additional Sessions Judge, Faridabad.

In view of the above, there is no merit in the application, which is, accordingly, dismissed and leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

July 17, 2017
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No