

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-10303-2017

Date of Decision:- 27.03.2017

Isab

....Petitioner

Versus

Jamshed and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Mohammad Arshad, Advocate, for the petitioner.

RITU BAHRI, J. (Oral)

Present petition is against order dated 21.11.2016, passed by learned Additional Sessions Judge, Nuh, Mewat, whereby revision petition filed by him against order dated 27.07.2015, passed by learned Judicial Magistrate 1st Class, Nuh, has been dismissed.

Briefly, the case of complainant-petitioner is that on 30.04.2013 son of complainant Aasin went to Bihar and his minor sons and daughters were sleeping in the house. At about 11.30 PM accused entered in the house of the complainant where grand-daughter of the complainant named Najma was sleeping. The accused committed rape upon the minor grand-daughter of the complainant forcibly and threatened her that she would be killed if she disclosed anything about the alleged incident to any person and put ₹200/- in her hand forcibly. In the morning of next day, the minor grand-daughter of the complainant disclosed about the incident of rape to his son's wife, on which, a panchayat was convened consisting of

respectable persons named Samsu, Jahid Sarpanch, Usman, Asru etc. Since the accused belonged to the complainant's family, therefore, it was advised by the members of the panchayat to the complainant that he should wait his son for 4-5 days. On 02.05.2013, when the wife of the complainant was working in the plot, wife of accused came there and started abusing his wife. On 03.05.2013, accused with bad intention gave injection of abortion to his wife and got admitted her in Medical College, Nalhar. When the complainant came to know about the illness of wife of the accused, he along with his family members visited the hospital to see her. On 06.05.2013, son of the complainant found that the statement has been given by the accused to the police against the complainant and his other family members, thereafter, the complainant moved an application to Superintendent of Police, Mewat and DLSA, Nuh. The medical examination of the minor grand-daughter was conducted on 15.05.2013 at G.H. Mandikhera and thereafter, the case was registered by the police of P.S. Rozka Meo. The cancellation report was filed by the police on 15.10.2013, before the learned trial Court. Being dissatisfied with the cancellation report filed by the police, the complainant-petitioner has preferred the protest petition.

In order to substantiate his case, the complainant-petitioner has examined himself as CW1, victim as CW2, Usman as CW3, Constable Manish Kumar as CW4 and Dr. Poonam Lata as CW5. Thereafter, the preliminary evidence was closed by the complainant, vide his separate statement recorded on 31.03.2015.

As is evident from the record that learned Additional Sessions Judge, Nuh, after taking into consideration the facts and all the contentions pertaining to appreciation of evidence, has declined to summon accused-

respondent No.1, by virtue of order dated 21.11.2016, which in substance is as under: -

“In the case-in-hand, as per version of the complainant, the alleged incident of rape was taken place on 30.4.2013, but no action was taken by the complainant against the accused for the reasons that he was waiting for the father of the victim. When the case was registered against the complainant and his family members, they filed an application to the police and since then, the father of victim did not come to his wife. Perusal of record of learned trial Court shows that a detailed investigation was carried out by the police in case bearing FIR No.62 dated 16.5.2013 and thereafter, a cancellation report has been filed by the police on the ground that as per version of victim Najma, she was sleeping with her sibling and at about 12.00 in the night, the accused entered the house and committed rape upon her forcibly. However, other family members were also sleeping in the room, but they did not hear any noise. Further as per version of complainant, he filed an application against the accused only after registration of case against him (complainant) on the statement of the accused.

13. Perusal of preliminary evidence adduced by the revisionist before learned trial Court shows that the complainant himself reaffirmed the version of his complaint and CW2 Najma & CW3 Usman, who are related to the complainant, are hearsay evidence as both these witnesses are not the spot witnesses and as such their statements are not relevant. It is settled law that corroboration as a condition for judicial reliance on the testimony of a prosecutrix is not a matter of law, but a guidance of prudence under given circumstances. Further testimony of victim cannot be rejected unless there are very strong circumstances mitigating against its veracity. Moreover, CW4 while appearing before the learned trial Court, deposed regarding registration of FIR no.62/2013 against the accused on the statement of victim Najma, for the commission of offence Act. However, perusal of cancellation report submitted by the police before learned trial Court, shows that the aforesaid FIR was cancelled after conducting the investigation properly and further as per affidavits placed on the cancellation report by the police, no fact of incident of rape was found. Further CW5 Dr. Poonam Lata while appearing before learned trial Court deposed that she medico-legally examined victim Najma and stated that there is gap of 15 days to the alleged incident of rape and no sample was taken from the cloth of grand daughter of the complainant. Such statement of CW5 is also not corroborated the fact with respect of committing rape upon the victim by the accused. Further in the present case it is apparent on record that during investigation the victim was medicolegally examined and semen was not detected on her cloths as per the FSL report. A bare perusal of the FIR report reflects that it was opined that “*semen could not be detected on Ex.1a (slides) and Ex.1b (vaginal swab)*”. Suffice to say that Ex.1a and 1b belongs to the victim. Needless to say that

during investigation DNA profiling of accused namely Jamshed was also sent for comparison but in view of the fact that human semen was not detected '*positive*' therefore, the DNA test also could not be conducted. Hence, in these circumstances, the plea that victim was sexually assaulted by accused is devoid of merit.
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14. But there is no gain saying that sexual intercourse with the victim by accused is not proved in the present case in view of the FSL report placed on record. Hence, in view of the same, the learned lower Court has rightly declined the summoning of respondent-accused. Hence, no illegality or infirmity is found in the order under challenge dated 27.7.2015 passed by learned lower Court and the same is hereby upheld.”

Meaning thereby, the learned Additional Sessions Judge, Nuh, has examined the matter in right perspective, recorded the cogent grounds and correctly dismissed the revision petition filed by the petitioner.

Learned counsel for the petitioner did not point out any material/reasons, much less cogent, so as to warrant any interference in the impugned orders. .

Such orders, containing valid reasons, cannot possibly be interfered with by this Court, unless and until, the same is illegal, perverse and without jurisdiction. Since, no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioner, so, the impugned orders deserve to be and are hereby maintained in the obtaining circumstances of the case.

In the light of aforesaid reasons, as there is no merit, therefore, the instant petition is hereby dismissed as such.

March 27, 2017
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No