

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

**CRM-M No.23648 of 2017
Date of Decision : 21.07.2017**

Virender @ Kala

.....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present : Mr. Sunil K. Nehra, Advocate
for the petitioner(s).

LISA GILL, J. (ORAL)

The petitioner along with other co-accused was convicted for the offence punishable under Sections 342, 366, 376-D, 506 IPC and Section 3 of the Protection of Children from Sexual offence Act, 2012 by the learned Additional Sessions Judge, Sonapat vide judgment dated 4th June, 2014 (Annexure P-2). Vide order dated 5th June, 2014, the petitioner was sentenced to undergo rigorous imprisonment for a period of twenty years and for varying periods under other Sections.

The present petition under Section 482 Cr.P.C. has been filed by the petitioner with the following prayer :-

“It is, therefore, respectfully prayed for direction to respondent No.1 to further direct the respondent No.2 to constitute a SIT to inquire into the conduct and functioning of police officials i.e. respondents No.03 to 06 into case FIR No.151, dated 11.06.2013 registered under Sections 342, 506, 376, 365 IPC and 3 of the Protection of Children from Sexual Offence Act,

2012, at Police Station Kharkhoda, District Sonapat, after registering FIR and take departmental action against the erring officials in view of law laid down by Hon'ble the Apex Court in 'Sahabuddin & another vs. State of Assam in Criminal Appeal No.629 of 2010 decided on 13th December, 2012.'"

Learned counsel for the petitioner argues that the learned trial Court in its judgment dated 4th June, 2014 has observed in Para No.29 that the Investigating Officer in this case i.e. PW20-ASI Sanjay, did not conduct the investigations in a fair and proper manner and has concealed the fact of demarcation of the place at the instance of the prosecutrix in his own deposition. In view of this observation, the present petition has been filed seeking the direction as above.

Learned counsel for the petitioner relies upon the judgment of Hon'ble the Supreme Court of India in '**Surya Baksh Singh vs. State of Uttar Pradesh, 2013(4) R.C.R. (Criminal) 880**', to submit that power conferred under Section 482 Cr.P.C. is plenary and, therefore, the direction as sought in this petition, should be issued. Reliance is also placed on the judgments of Hon'ble the Supreme Court in '**Divine Retreat Centre Vs. State of Kerala and others**', 2008 (2) R.C.R. (Criminal) 373 as well as in case titled as '**Shahabuddin and another and State of Assam**', Criminal Appeal No.629 of 2010 decided on 13th December, 2012.

Heard learned counsel for the petitioner.

It is not in dispute that the petitioner has preferred CRA-D-1273-DB of 2014 challenging his conviction and sentence. The said appeal is pending before this Court. Reference to the observations of the learned

Trial Court in Para 29 of the judgment dated 04.06.2014 is of no avail to the petitioner. The learned trial Court further observed that it is extremely strange that the Investigating Officer was not at all cross-examined on the relevant question however, the benefit of defective investigation could not accrue to the accused.

Be that as it may, I do not find any ground whatsoever, to interfere in exercise of power under Section 482 Cr.P.C. at this stage, when the appeal preferred by the petitioner challenging his conviction and sentence is admittedly pending before this Court. The above said judgments cited by learned counsel for the petitioner have no relevance and applicability to the present facts and circumstances of the case. The arguments advanced by learned counsel for the petitioner are primarily the defence of the petitioner.

Accordingly, this petition is dismissed being devoid of any merit.

July 21, 2017
Dpr

(LISA GILL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No