

CRR- 3448 of 2015

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In the High Court of Punjab and Haryana at Chandigarh

CRR-3448 of 2015

Date of Decision:24.3.2017

Bala

---Petitioner

vs.

State of Haryana and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ashwani Gaur, Advocate
for the petitioner
Ms. Dimple Jain, AAG, Haryana
Mr. Abhimanyu Singh, Advocate
for respondent Nos. 2 and 3

Rekha Mittal, J.

The petitioner/complainant has filed the present petition to express her grievance against judgment dated 9.7.2015 passed by the Additional Sessions Judge, Mewat to the extent that the accused/respondents have been released on probation for offence under Section 354 of the Indian Penal Code (in short "IPC"), proved against them.

The sole submission made by counsel for the petitioner is that in view of nature and gravity of allegations levelled against the respondents/accused proved beyond shadow of reasonable doubt, order passed by the Court of appeal extending benefit of probation under Sections 4 and 5 of the Probation of Offenders Act, 1958 (in short “the Act”) cannot stand the test of judicial scrutiny. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court of India *Ajahar Ali vs. State of West Bengal 2013(4) RCR (Criminal) 611*.

Counsel for the respondents/accused has submitted that the Court of appeal, on a detailed consideration of various judgments cited by counsel for the parties, has rightly held in favour of the respondents that they cannot be denied benefit of the Act. It is further argued that even judgment of Hon'ble the Supreme Court of India *Ajahar Ali's case (supra)* was duly considered by the court below and held that the same has no application to the facts of the present case as allegations raised in *Ajahar Ali's case (supra)* are very serious.

I have heard counsel for the parties, perused the paper book and the original records with able assistance of counsel for the parties.

Counsel for the petitioner/complainant has contested

entitlement of the accused/respondents to the benefit of being released on probation primarily by relying upon judgment in *Ajahar Ali's case (supra)*. The court of appeal in last sub para of para 16 has tried to draw a distinction between the allegations raised in the case at hand and the one levelled by the complainant in *Ajahar Ali's case (supra)*. Counsel for the petitioner has not disputed correctness of findings of the court while noticing allegations raised in the two cases. In the case at hand, the allegations are that Sajid whose age was about 18½ years at the time of alleged incident caught hold the prosecutrix aged about 40 years and tried to take her inside the field of jawar crop and when she raised alarm, he fled away from the spot. On the other hand, allegations levelled by the complainant against Ajahar Ali were that when the prosecutrix was going to attend her tuition alongwith her friend Nilufa Khatun, on the way, the appellant suddenly came, forcibly caught hold of her hair and planted a kiss, resultantly, she suffered a cut over her lower lip and started bleeding. The prosecutrix was a young unmarried girl and the accused was a juvenile. The Apex Court held that the accused has committed a heinous crime and with the social condition prevailing in the society, the modesty of a woman has to be strongly guarded and as the accused behaved like a road side Romeo, it is not a fit

case where the benefit of the Act should be given. When the facts and circumstances of the present case are examined viz-a-viz the facts of the case in *Ajahar Ali's case (supra)*, the petitioner possibly cannot draw a similarity in the two situations in order to contend that the courts below have committed an illegality by extending the benefit of probation. In this view of the matter, I do not find any error in the judgment passed by the Court of appeal allowing benefit of probation while awarding compensation of Rs. 20,000/- to be shared by both the accused.

No other point has been raised.

Dismissed.

(Rekha Mittal)
Judge

24.3.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No