

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No.2735 of 2016 (O&M)
Date of Decision: 02.05.2017

Jasvir Kaur

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Rahul Rampal, Advocate, for the petitioner.

Mr.A.P.S.Gill, AAG, Punjab.

RITU BAHRI, J. (ORAL)

The petitioner has come up in revision against the order dated 11.07.2016 passed by the learned Additional Sessions Judge, Bathinda, whereby, petitioner was summoned to face trial under Section 319 Cr.P.C. as an additional accused in FIR No.141 dated 26.08.2013 under Section 376/363/366 IPC.

The brief facts of the case are that an FIR No.141 dated 26.08.2013 was registered against the Gurbhej Singh. Before the registration of FIR, one DDR No.18 dated 26.08.2013 was recorded at Police Station Patran, mentioning that Sukhjeet Kaur had left the house with her own free will as she was having an affair with Gurbhej Singh and subsequently, her statement under Section 164 Cr.P.C. was recorded on 17.09.2014 where, she gave the name of present petitioner after more than one year. Even as per the statement under Section 164 Cr.P.C. (Annexure P-3), no offence under Sections 4 of POCSO Act, 2012 was made out against the petitioner. Sukhjit Kaur had made a statement (Annexure P-3) on 17.09.2014 that her date of birth is 10.10.1997 and she has one brother and three sisters. Sisters are younger to her. She was studying in 11th class at Government School Bangi Kalan. She goes to Gurudawara of her village, alongwith her mother Gurmit Kaur, Aunt/Taaee Jasbir Kaur and her daughter namely Nitu Kaur @ Neha who was studying with her in 10th

Class. Granthi Gurbhej Singh had generally talked with her at the time of serving at Gurudwara. During her examination, she said that her *Taaee* generally kept her in her house, so that she and her daughter Nitu could study together. In that time, *Taaee* of the complainant was generally called Gurbhej Singh (Granthi) in her house and she said to the prosecutrix-Sukhjeet Kaur that she would marry her with this Granthi but she did not like him and clearly refused to marry with him. One day at about 3:00 p.m., Gurbhej Singh-Granthi visited the house of the complainant and told that her *Taaee* Jasbir Kaur had sent him to her house. Thereafter, he took her in the room and committed rape with her repeatedly without her consent and said that he would marry her. After committing rape, he gave her one tablet and fled from spot. Thereafter, *Taaee* of the prosecutrix-Sukhjeet Kaur visited the house of complainant told her that she will definitely marry her with Gurbhej Singh (Granthi). One day when the prosecutrix-Sukhjeet Kaur visited the Gurudwara, he took her in his room and committed rape upon the complainant.

The role attributed in the present petition according to the statement of prosecutrix (Annexure P-3) that Gurbhej Singh-Granthi had committed rape upon her. Thereafter, the statement of prosecutrix-Sukhjeet Kaur under Section 161 Cr.P.C. was made on 06.10.2014 (Annexure P-4) where, she has reiterated the same version and on the basis of two statements i.e. Annexure P-3 and P-4, the *Taaee* of the complainant was named in the FIR. The petitioner was released on bail vide order dated vide order dated 01.12.2014 (Annexure P-5) and inquiry was conducted and the allegation against the petitioner was found to be false and she was kept in column No.2 as per inquiry report (Annexure P-6).

Learned counsel for the petitioner while referring to the deposition of PW-6, Sukhjeet Kaur (Annexure P-7) contends that apart from the fact that the present petitioner was known to Gurbhej Singh (Granthi) the prosecutrix has not stated anything which could bring out that she had enticed or encouraged Gurbhej Singh to commit rape upon her. He further submits that DDR No.18 dated 26.08.2013 (Annexure P-2) which was got registered by the complainant-Gurlabh Singh on 25.08.2013, reveal that when daughter of the complainant-Sukhjitr Kaur, who was studying in

Class-11 did not come back from tuition then he filed complaint regarding lost of his daughter and requested to take action against Gurbhej Singh. Thereafter, police officials went to house of Gurbhej Singh at Village Guljarapura Tharuya to conduct investigation regarding the complaint, where, Sukhjit Kaur-prosecutrix was present with the mother of Gurbhej Singh i.e. Vir Kaur wife Heera Singh. Where Ex-Sarpanch Hardeep Singh, Bhajan Singh, member Panchayat were called upon for inquiry. In the presence of these persons, Sukhjeet Kaur-prosecutrix told that she came here with her own consent and no body brought her there forcibly and nor anybody instigated her to left her own house. She had love relation with Gurbhej Singh for the past 5/6 months. Due to this reason Gurbhej Singh who was the Granthi of her village, after leaving the job from Gurdawara, had come to the village of prosecutrix and she had gone with him upon her own free will. Thereafter, after being recovered, she returned to her house with her father Gurlabh Singh. This statement has been made by Sukhjit Kaur-prosecutrix on 12.12.2013. As such, once the prosecutrix had admitted that she had gone to the village of Gurbhej Singh with her own free will, the role cannot be attributed to the present petitioner.

This Court is of the view that as per statement (Annexure P-3), prosecutrix-Sukhjit Kaur, during the examination she had stayed in the house of her *Taaee* so that she could study along with her daughter Nitu. She used to visit Gurdwara to prepare *prasad (deg)* with the petitioner and Gurbhej Singh had been on talking terms with her. Actually, he had come to the house of Sukhjit Kaur-prosecutrix and said that her Taaee had sent him and thereafter, he committed wrong acts with Sukhjit Kaur, as such, petitioner was named in the FIR. However, this fact, has also been reiterated in the statements before the Court vide Annexures P-4 and P-6.

Keeping in view the initial statement made by Sukhjit Kaur in her statement (Annexure P-2), petitioner had rightly been kept in column number II of the challan. Moreover, the statement (Annexure P-2) was made in the presence of Gurbhej Singh and his mother Vir Kaur, Ex-Sarpanch Hardeep Singh, Bhajan Singh-Member Panchayat that she had left her house with her own consent to see Gurbhej Singh as she was having love affair with Gurbhej Singh for past 5/6 months and petitioner used to take

Sukhjit Kaur to Gurdwara cannot be a ground to summon the petitioner under Section 319 Cr.P.C. as additional accused. Hence, the impugned order dated 11.07.2016 is set aside and the present revision petition is allowed accordingly.

(RITU BAHRI)

JUDGE

02.05.2017

anil

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