

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR No. 3571 of 2016

Date of decision : 25th April, 2017

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Vinod Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Rajesh Malik, Advocate for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

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RITU BAHRI, J.

The petitioner has filed the present revision petition against the order dated 18.7.2016 passed by the Additional Sessions Judge, Yamuna Nagar at Jagadhari whereby, the petitioner has been charge sheeted under Sections 323, 452, 506 of IPC & Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POSCO Act').

FIR No.92 dated 17.5.2016 (Annexure P-2) was registered against the petitioner under Section 323, 452, 506 IPC & Section 4 of the Protection of Children from Sexual Offences Act, 2012 at Police Station Bilsaspur, Yamuna Nagar on statement made by Manish Kumar. As per the statement of complainant Manish Kumar, his father had died seven years

back and his mother was blind. He had one younger brother and one younger sister who was minor and her date of birth was 14-09-1998. The petitioner belonged to a landlord family and was married. On 4.5.2016, at about 6:00 p.m, the petitioner came to his house and said that he wants to lift the fodder from his field. On the request of the petitioner, Manish Kumar along with his brother Satish Kumar and neighbours Vijay Pal, Pritpal and Vikas went to the field of petitioner for lifting fodder. The petitioner was aware that his sister Monika was sleeping alone in her room and her mother is blind and the wife of the complainant is sleeping in another room. In the night at about 2 'O' clock, he entered the house of the complainant and after finding the prosecutrix sleeping alone in her room started molesting her. When she shouted, he closed her mouth forcibly and raped her. After hearing the noise, her sister-in-law and her mother came there and many other persons also gathered there. The petitioner ran away from the spot while threatening all the family members that in case they told about this incident to anybody, he would kill them. When the complainant and his neighbors came back to the village after loading fodder, they came to know that the petitioner had committed rape upon the sister of the complainant. Prosecutrix gave the details of the incident and thereafter, the Sarpanch of the village was informed about the said incident. In respect of the said occurrence, a panchayat took place on 7.5.2016, but there was no effective outcome of the said panchayat. Medical examination of the girl could not be conducted. The FIR was got registered as per the medical report MLR (Ex. P-1). As per the MLR 17.5.2016 (Annexure P-1), the possibility of sexual intercourse could not be ruled out. The MLR was conducted on 17.5.2016 at 11:35 p.m.

Counsel for the petitioner has vehemently argued that initially the petitioner was chargesheeted under Sections 323, 452, 506 of IPC & Section 4 of the POSCO Act. However, by a separate order, the offence under Section 376 IPC has been added. However, once a charge under Sections 323, 452, 506 of IPC & 4 of the POSCO Act was framed, the initial charge of Section 376 IPC was not required to be framed. As per Section 4 of the POSCO Act, the allegation to make out the offence under Section 4, the accused should have committed penetrative sexual criminal assault on the victim. In the present case, as per the MLR, prima facie offence under Section 4 of the POSCO Act is made out. No injuries were found on the person of the victim. In the present case, the date of birth is 14.9.1998 and at the time of incident, she was only 16 years of age and as per the MLR (Annexure P-1) her hymen was torn and in this manner, the possibility of sexual intercourse cannot be ruled out. In view of the MLR, there was prima facie evidence to frame charge under Section 376 IPC which in the present case has been done apart from chargesheeting the petitioner under Sections 323, 452, 506 of IPC & 4 of the POSCO Act.

In view of all that has been discussed above, there is no ground to interfere in the order passed by the Court below. Present revision petition is dismissed.

25.4.2017*ritu***(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No