

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

CRR No.1615 of 2017 (O&M)
Date of decision: 26.09.2017

Harpreet Kaur

...Petitioner

Versus

Shashi Kant @ Babli and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. G.S. Sandhu, Advocate for the petitioner.

Jitendra Chauhan, J. (Oral)

By filing the present criminal revision, the petitioner has assailed the order dated 26.10.2016, passed by Judicial Magistrate 1st Class, Patiala dismissing the complaint filed by the petitioner for summoning respondents.

It is contended that the learned trial Court has erred in dismissing the complaint filed by the petitioner by ignoring the sufficient material on record against the respondents. The learned trial Court has ignored the fact that in a writ petition, respondent No.1 has admitted that respondent No.2 eloped with the petitioner. The contents of the complaint has been duly reiterated by the petitioner while she was appearing as CW-1 and the same were also corroborated by her husband. The trial Court has overlooked the medical evidence produced by the petitioner.

Heard.

Indeed, petitioner eloped with respondent No.2 Varinder

Kumar on 24.12.2013 when all the family members of the petitioner went to langar at bus stop Vajidpur. As per version of the petitioner, respondent No.2 in connivance with respondent No.1 raped her by offering her cold drink and the petitioner/complainant after consuming the same lost her consciousness meaning thereby respondent No.2 raped her and respondent No.1 made a video of the act committed by respondent No.2. Thereafter, both the respondents started black mailing the petitioner on the pretext that they will upload the video clip on social media and demanded money from her. As per petitioner, she had given Rs.10,000/-, Rs.30,000/- and Rs.70,000/- to respondent Nos. 1 & 2 on various occasions. It is also the stand of the petitioner that she was confined at various places by respondent No.2 for about three months. The petitioner has to prove her case by corroborating the entire version by way of convincing evidence, which in the present case is missing. The sequence of the story as projected by the petitioner seems to be improbable. Firstly, she alleged that she was raped by respondent No.2 and remained confined for about three months at different places i.e. Allahabad, Fatehpur, District Ropar, Vaishno Devi and Baba Vadbhag Singh Dera. Had there been any confinement, she would definitely made hue and cry to save herself as she was taken from one place to other by travelling through public places and public transport. The petitioner has failed to give the date of occurrence when she was subjected to sexual act or failed to bring on record the mode of payment or source of payment which she had given to respondent Nos. 1 and 2. There is no corroboration to the

statement of the petitioner to prove the case.

In ***State of Rajasthan vs Shera Ram @ Vishnu Dutta, (2012) 1 SCC 602***, Hon'ble the Supreme Court has held as under:-

“13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the

judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal jurisprudence.”

The view taken by Court below is correct and in the facts and circumstances of the case, no other view is possible. There is no reason to interfere in the well reasoned order dated 26.10.2016, passed by JMIC, Patiala. Moreover, there is a delay of 29 days in filing the present petition, however, no sufficient reasons has come to condone the delay. Therefore, the present revision petition being devoid of any force is hereby dismissed on merits as well as on account of delay.

26.09.2017

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes No

Whether Reportable: Yes No