

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Criminal Revision No.1882 of 2017(O&M)

Date of Decision: July 28 , 2017.

Harun and another PETITIONER (s)

Versus

State of Punjab RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Monisha Lamba, Advocate
for the petitioner.

LISA GILL, J.

Petitioners are aggrieved of order dated 30.03.2017 passed by the learned Additional Sessions Judge, Palwal vide which charge for the commission of offences punishable under Sections 120B/363/366A/368/302/ 201 IPC was framed against both the petitioners. Additionally, charge for the offence punishable under Sections 5/6 of the Protection of Children from Sexual Offences Act, 2012 (for short, the 'POCSO Act') has been framed against petitioner No.1

It is to be noted that FIR No.300 dated 21.12.2016 was initially registered under Section 346 IPC on the basis of an application submitted by the complainant (father of the victim) that his daughter aged eight years was found missing since the evening of 20.12.2016 (The victim was found dead at the residence of the co-accused).

The complainant on 22.12.2016 got suspicious of the present petitioners, keeping in view their conduct in attempting to leave the village alongwith their family. The Sarpanch of the village was called. The Sarpanch alongwith other villagers thereafter discovered the complainant's daughter lying dead on a bed in the house of the co-accused Junaid i.e., the son of the petitioners. The police was telephonically informed and the statement of the complainant in this respect was recorded on 22.12.2016. The complainant while revealing the facts as aforementioned stated that the petitioners alongwith other co-accused murdered his daughter mercilessly.

As per the post-mortem report, cause of death was asphyxia as a result of anti-mortem strangulation. As many as ten injuries were found on the person of the deceased victim. It is specifically stated that possibility of sexual assault can not be ruled out.

Investigating Agency on completion of investigation opined that the petitioners were not involved in the murder of the victim. She was in fact murdered by accused Junaid (son of the petitioners). The present petitioners alongwith one Mumtaj merely helped the said Junaid in hiding the body of the victim. It is to be noted that the said conclusion has been arrived at by the police merely on the basis of a confessional statement by the accused Junaid.

The learned Additional Sessions Judge, Palwal vide impugned order dated 30.3.2017 directed that charge under Sections 120B/363/366A/368/302/201 IPC and Sections 5/6 of the POCSO Act be framed against petitioner No.1 and co-accused Junaid and charge under Sections 120B/363/366A/368/302/201 IPC be framed against petitioner No.2. Accordingly, charge was framed

under the aforementioned Sections against the petitioners.

Learned counsel for the petitioners vehemently argues that once the Investigating Agency has found that the petitioners are not involved in the murder of the victim, charge has been wrongly framed against them by the learned Additional Sessions Judge, Palwal. There is nothing on record to suggest the commission of the offence punishable under Sections 5/6 of the POCSO Act against petitioner No.1. It is submitted that at best the petitioners, on the basis of the evidence on record, can only be proceeded against for the offence punishable under Section 201 IPC.

Having heard learned counsel for the petitioner and going through the file, I do not find any ground, whatsoever, to interfere in the impugned order dated 30.03.2017 in exercise of revisional jurisdiction. The learned trial court has rightly observed as under:-

“I have duly considered the arguments advanced on behalf of the accused and perused the final report submitted by the police along with other documents including confessional statement of accused Junaid. Firstly; the Court is not bound to concur with the conclusions arrived at by the police and the Court has power and discretion to take cognizance against any other person either u/s 193 Cr.P.C. or could summon any other person as an accused u/s 319 Cr.P.C. if complicity of the same is made out from the evidence adduced at trial. Be it as it may be.

Complainant Taslim has categorically mentioned in his application dated 23.12.2016 that on 22.12.2016, he noticed that Deenu s/o Moji and Harun s/o Moji along with their families were leaving the village and that aroused his suspicion. The complainant called the Sarpanch and other respected persons of the village and

got the house of Junaid s/o Harun opened and then he found dead body of his daughter lying on bed and on the basis thereof, he suspected accused Harun, Junnaid and Rashidan and others responsible for causing death of his minor daughter. Surprisingly, the police ignored and excluded the statement of the complainant and others and simply relied on confessional statement of accused Junaid which was made while he was in police custody.

Section 228 Cr.P.C. says that at the stage of consideration on charge if the Judge is of opinion that there is ground for presuming that the accused has committed an offence then he shall frame in writing a charge against the accused. In nutshell, detailed order at the stage of framing of charge is not to be passed and the charge could be framed even on the basis of presumption.”

Learned counsel for the petitioner is unable to point out any illegality, infirmity or error apparent on record in the impugned order dated 30.03.2017 passed by the learned Additional Sessions Judge, Palwal which calls for interference by this Court in exercise of revisional jurisdiction.

Consequently, this petition is dismissed.

It is clarified that none of the observations made hereinabove shall be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition.

July 28 , 2017.
'om'

(LISA GILL)
JUDGE

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