

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

**CRM A-1060-MA of 2018
Date of Decision : August 28, 2018**

State of HaryanaApplicant

Versus

Madhu Singh Vaidh Respondent

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present : Mr. Vikrant Pamboo, Deputy A.G., Haryana.

T.P.S.MANN, J.

The State of Haryana has filed the present application under Section 378(3) of the Code of the Criminal Procedure for grant of leave to appeal against the judgment dated 18.12.2017 passed by learned Additional Sessions Judge (Exclusive Court for Heinous Crimes Against Women), Kurukshetra to the extent of acquitting accused Madhu Singh Vaidh of the charge under Section 3 of the Protection of Children from Sexual Offences Act (hereinafter to be referred as 'the POCSO Act) punishable under Section 4 of the said Act.

According to the prosecution, on 4.9.2016, one Suresh Pal submitted a written complaint at Police Station Shahabad regarding kidnapping of his minor daughter by accused Talib Hassan. It was stated therein that on the previous night, the family had slept as usual after taking dinner and in the morning at about 5.00 a.m., when he woke up, he found his minor daughter,

aged 16 years not present in her cot. Search revealed that Talib Hassan, who was employed by Harkesh, cousin of complainant as driver of JCB machine was also not available in the village. Said Talib Hassan had borrowed a sum of Rs.5,000/- from Harkesh on the previous day. It was suspected that Talib Hassan had enticed his daughter and taken her with him. Accordingly, FIR No. 451 dated 4.9.2016 under Sections 363 and 366-A IPC was registered. During the investigation, birth certificate of the prosecutrix was obtained. She was recovered from the house of relatives of Talib Hassan in Uttar Pradesh on 29.5.2016. Statement of the prosecutrix under Section 164 Cr.P.C. was recorded. Thereafter, offence under Section 6 of the POCSO Act and Section 34 IPC were added in the FIR. The prosecutrix was medico-legally examined as she had levelled allegations of penetrative sexual assault against Talib Hassan and Madhu Singh Vaidh. Both of them were arrested.

The trial Court had acquitted accused Madhu Singh Vaidh of the charge against him. However, accused Talib Hassan was convicted under Section 3 of the POCSO Act and sentenced to undergo simple imprisonment for seven years and to pay a fine of Rs.5,000/-. He was also convicted under Section 363 IPC and sentenced to undergo imprisonment for three years and to pay a fine of Rs.3,000/-. Both the substantive sentences were ordered to run concurrently.

Having heard learned State counsel and on going through the impugned judgment to the extent of acquitting the respondent of the charge against him, this Court finds that when the prosecutrix was examined as PW2 before the trial Court, she had deposed that it was Talib Hassan who was on visiting terms to her house as he was employed as a driver by her relative and in due course, there developed a friendship between them. Talib Hassan had taken her to Banglore by train where she was kept for eight days in a room. Thereafter, he had taken her to the house of his maternal uncle in U.P., where she was kept for 10/12 days. After that, he had taken her to the house of his maternal aunt. He had committed penetrative sexual assault for about 3/4 days prior to 3.9.2016 and, thereafter, in Banglore.

As regards Madhu Singh Vaidh, she simply stated that he was having knowledge about her relations with Talib Hassan and did not like her sitting and talking with him. Talib Hassan was having an apprehension that Madhu Singh Vaidh may disclose in the family about the relations between her and Talib Hassan. Even while mentioning the persons living in the house of Talib Hassan, she did not name Madhu Singh Vaidh. She did not claim that Madhu Singh Vaidh was living in the same house or he was helping her father in his shop. Even the complainant while being cross-examined as PW3 did not level any allegation against Madhu Singh Vaidh.

In view of the above discussion, it cannot be said that accused Madhu Singh Vaidh is liable for committing offences, for which, he stood charged. The application is without any merit and, therefore, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

August 28, 2018
amit rana

(FATEH DEEP SINGH)
JUDGE

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