

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

CRM-A-396-MA-2016

Decided on : 08.02.2018

Kamlesh Devi

..... Applicant

VERSUS

Nagar Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
 HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Vikram Singh, Advocate, for the applicant.

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DEEPAK SIBAL, J.

Through the instant application filed under Section 378(4) read with Section 482 of the Code of Criminal Procedure, 1973 (for short the “Cr.P.C”) the applicant seeks grant of special leave to appeal against judgment dated 02.01.2016, passed by the Additional Sessions Judge, Narnaul (for short the “trial Court”) through which the respondent has been acquitted of the charges framed against him under Sections 452, 323, 376 and 511 of the Indian Penal Code, 1860 (for short the “IPC”).

Briefly stated, the case of the prosecution is that on 08.06.2011 when the applicant was present in her house, the respondent barged into her room and raped her. On her raising hue and cry, Sanjay son of Rohtash came there and rescued her. The respondent after hurling vulgar abuses and threatening the applicant as also the aforesaid Sanjay then left the place of occurrence. It was further the case of the prosecution that the respondent had been sexually exploiting the applicant even earlier. On the complaint by the applicant FIR was registered but after investigation the police filed a

cancellation report. Upon receiving notice of the cancellation report, the applicant filed a protest petition which was tried as a complaint.

The trial Court after sifting the evidence which had come on record acquitted the respondent. It is such acquittal which is the subject matter of challenge in the present proceedings.

Learned counsel for the applicant submitted that the trial Court erred in acquitting the respondent of the charges levelled against him as there was over-whelming evidence on the record to prove his guilt and therefore, there was no reason in fact or in law with the trial Court to acquit him.

The submissions made by learned counsel for the applicant have been considered but the same do not warrant a favourable consideration.

It is not disputed that on the complaint by the applicant an FIR was registered the investigation of which led to the filing of a cancellation report as the police did not find any substance in the applicant's allegations.

While appearing before the trial Court the applicant admitted that she had been residing with the respondent since a long time and that the respondent had filed a civil suit against the applicant seeking specific performance of an agreement to sell. The record further reveals that on receiving notice of the civil suit filed by the respondent, the applicant who was earlier living with the respondent and presumably indulging in consensual sex, as a counter-blast to the filing of the civil suit, filed the present complaint. There is also found over-whelming evidence on the record with regard to the fact that the respondent was living in the house

where the applicant alleges that she was raped by him. The Hindustan Petroleum Gas connection, electric connection as also the receipts of the water charges from the Health Department with regard to the consumption of water in the house in question are found to be in the name of the respondent. The evidence on record further points out that the applicant and the respondent had purchased plots adjacent to each other and that they both had applied for loan for construction of the house. The loan application of the applicant was declined whereas that of the respondent was sanctioned who after obtaining the loan constructed the house on the plot purchased by the applicant.

The applicant had even earlier made allegations of rape against the respondent for which he was tried and acquitted. In that case the trial Court specifically recorded a finding that the status of the applicant and the respondent was akin to that of a wife and husband. Such acquittal of the respondent was challenged by way of an appeal before this Court in which this Court also opined that the applicant and the respondent had continued to have sexual relations for a period of six years and at no point of time had the applicant ever objected to such relations.

No medical record is also found on the record to have been produced by the prosecution to prove the allegations of rape.

So far as the testimony of PW-5 Sanjay Saini is concerned, PW-6 Satbir Singh admitted that Sanjay Saini was inimical towards the respondent and therefore his statement was not worthy of credence.

In view of the above, the present application is found devoid of any merit and therefore dismissed.

Leave to appeal is declined.

[T.P.S.MANN]
JUDGE

[DEEPAK SIBAL]
JUDGE

08.02.2018
shamsher

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