

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

Crl. Misc. 7405 of 2017 in/and
Crl. Misc. A 438 MA of 2017 (O&M)
Date of decision: 8.2.2018

State of Haryana

...Appellant

Versus

Sandeep Nayak

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. P.P. Chahar, Deputy Advocate General, Haryana.

JAISHREE THAKUR, J.

Crl. Misc. 7405 of 2017

For the reasons stated in the application, delay in filing the application for grant of leave to appeal against the impugned judgment is condoned.

Main case

The complainant/applicant has filed the instant application under Section 378 (4) of the Code of Criminal Procedure (for short '**the Code**') for grant of leave to appeal against the judgment dated 25.5.2016 passed by the learned Additional Sessions Judge, Sirsa, vide which the respondent has been acquitted of the charges as framed against him.

The facts giving rise to the present case are that the complainant, who claimed that she has three children, one daughter and two

sons, alleged that about 3/4 years prior to the filing of the present complaint, the respondent used to harass her daughter Priyanka, when she used to go to school or for tuition. The respondent used to call on Mobile No. 93543-32690 from his mobile No. 99966-23929 and used to tease her daughter. He would utter obscene words and abuse the complainant's daughter. The brother-in-law of the complainant, namely Manoj, had gone to the house of the respondent several times and asked his parents to stop him doing all the above acts, but to no avail. It was alleged that on 2.6.2015 at about 11 p.m., the respondent knocked at the door of the house of the complainant and sat in front of the house and started abusing. When the people living in the street gathered, he fled away. On 3.6.2015 at about 1 a.m. (wee hours) when the complainant, her mother in law, her son and brother Gopal (PW4), were sleeping in Verandah, suddenly a light fell on the mouth of the complainant. She woke up and felt as if somebody was rotating his hands on her mouth. The complainant shouted loudly and saw that the accused was running towards the roof through stairs. When they followed him, then respondent jumped over the roof and threatened that he would kidnap Priyanka in future as and when he finds an opportunity and would kill her both the brothers. The explanation for delay in lodging the complaint was given that the family of the complainant remained silent fearing insult, but now they were apprehending threat from the respondent especially to the daughter and the sons. In this back ground, on 5.6.2015, the complainant got her statement (Ex. P.1) recorded to the ASI Kamlesh Rani, on the basis of which formal FIR No. 420 dated 5.6.2015 (Ex. P.9) was registered.

Thereafter, statement (Ex. P.2) under Section 164 of the complainant was recorded on 5.6.2015 itself, the slippers of the respondent were taken into custody, vide seizure memo Ex.P.3. The accused was arrested on 13.6.2015 vide arrest memo Ex.P.5. The respondent suffered a disclosure statement Ex.P.6 on 13.6.2015 and got the place of occurrence demarcated, vide memo of demarcation Ex.P.7. The complainant was medically examined and medical report was obtained. Rough site plan Ex. P.12 was prepared and crime details report is Ex.P.13. After completion of investigation, the challan was presented in the Court for putting the accused on trial.

On finding a prima facie case, the accused was charge sheeted on 3.7.2015 under Sections 354-D, 294, 451, 354-A (i) and 506 IPC and Section 12 of the Protection of Children from Sexual Offences act, 2012, to which he pleaded not guilty and claimed trial.

To prove the guilt of the accused, the prosecution examined Bimla Devi (PW-1), Priyanka (PW-2), EASI Krishan Kumar (PW-3), Gopal (P-4), EASI Rohtash (PW-5), ASI Satish Kumar (PW-6) and ASI Kamlesh Rani (PW-7).

After the close of the prosecution evidence, the accused was examined by the trial court and his statement was recorded under Section 313 of the Cr.P.C. All the incriminating circumstances appearing against him in the prosecution evidence were put to him in order to enable him to explain the same. He denied all those circumstances and pleaded his false implication.

After hearing PP for the State, learned counsel for the defence and, going through the record, the learned Additional Sessions Judge acquitted the respondent of the charges framed against him, as aforesaid.

Learned counsel for the applicant/appellant submits that the learned Additional Sessions Judge, has failed to appreciate the evidence brought on record in its correct perspective, while acquitting the respondent of the charges framed against him. The complainant's witnesses have duly supported the averments made in the complaint and the charges as framed against the respondent stand proved on record. It is submitted that from the evidence brought on record, it is clear that the respondents committed the alleged offence. It is, therefore, prayed that for the reasons stated in the grounds of appeal, this application seeking leave to appeal be allowed and leave be granted to file the appeal.

I have heard learned counsel for the applicant/appellant and have gone through the impugned judgment.

It was alleged by the complainant that on 13.6.2015 the respondent had come to their residence in the wee hour (1 a.m.) with an intention to do some wrong with her daughter Priyanka and when the complainant raised alarm, he jumped over the roof of other house, which is stated to be 15 feet high. However, no person from the vicinity was examined and further it is impossible for the respondent to jump from a 15 feet high wall. Had he jumped that wall he would have sustained injury. The allegations that the respondent used to call on Mobile No. 93543-32690 from his mobile No. 99966-23929 and used to tease the complainant's

daughter, were also not proved as call details of either of the mobile were not brought on record to ascertain whether any conversation had ever taken place. So much so, the brother-in-law of the complainant, namely Manoj, who allegedly had gone to the house of the respondent several times and asked his parents to stop him from doing the alleged act was not examined.

Furthermore, Priyanka (PW2) in her cross examination admitted that she never complained either to the Principal or the staff of the school regarding misbehaviour of the respondent and nor she had ever complained to the parents of the respondent, however, her paternal uncle (chaha) and her brother Vikas had complained to them. But none of them was examined by the prosecution. She further admitted in her cross examination that prior to this FIR, no complaint was made to the police against the respondent. Thus, the allegations of harassment and teasing, were not proved. The trial court, while acquitting the respondents observed as under:-

“...According to the complaint Ex. P.1, the accused had been harassing, teasing Priyanka (PW-2) for the last 3/4 years and on the alleged occurrence of 3.6.2015, he threatened to kidnap Priyanka, but prior to that he strangely molested Bimla Devi (PW1) by rotating his hand on her face. If the accused had actually come to the house of the complainant on the night of 3.6.2015, then he would have molested Priyanka (PW-2) and not the complainant Bimla Devi (PW-1) especially when the complainant Bimla Devi (PW-1) herself had apprehension that the accused had come to their house in order to commit some

wrong with Priyanka (PW2). Otherwise also, as per the allegations contained in the complaint Ex. P.1, four persons were sleeping in Verandah and 2/3 persons were sleeping inside the room and nobody can dare to enter in such a house to molest a girl. The complainant Bimla Devi (PW1) has stated in her cross-examination that they always sleep after closing the doors of their house and that on the night of 3.6.2015, they had slept after closing the door of their house and that she did not know as to how and from where the accused entered their house. The complainant Bimla Devi (PW1) has again stated in her cross-examination that the accused had fled away from the spot after scaling over the wall of Bhagwan Dass whereas Priyanka (PW2) has stated in her cross-examination that the accused had jumped over the roof of the house of a person of Baniya community and that she could not tell the name of the owner of the house. Therefore, the alleged occurrence of 3.6.2015 has again become doubtful .”

Thus, the findings recorded by the trial court cannot be held to be perverse or against law. Nothing has been pointed out as to which material evidence has been misread or as to which material evidence has not been considered by the trial court. Rather, perusal of the judgment shows that the findings are correct and the evidence brought on record has been considered in its correct perspective. Furthermore, there is inordinate delay in lodging the FIR. No cogent reasons is coming forth as to why the

complaint was not lodged immediately after the alleged date of occurrence. The only reason given that the matter was not reported because of the fear of insult in the society, which does not seem to be plausible. Thus, the respondent has been rightly acquitted by the trial court.

For the reasons stated above, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the application filed under Section 378 (4) of the Code seeking leave to appeal is dismissed.

8.2.2018
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No