

Crl. Misc. No.M-18384 of 2015 (O&M).

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

**Crl. Misc. No.M-18384 of 2015 (O&M)
Date of decision : 09.05.2018**

Tajinder Kaur and ors.

.....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Argued by: Mr. IPS Kohli, Advocate
for the petitioners.

Mr. K.S. Aulakh, DAG, Punjab.

Mr. Anil Lakhanpal, Senior Advocate with
Mr. R.S. Chahal, Advocate
for respondent no.2.

ANITA CHAUDHRY, J.

The petitioners are seeking quashing of the complaint filed by respondent no.2 and the subsequent proceedings.

Briefly detailing the facts as disclosed in the complaint first. The complainant is married and was 33 years when the complaint was filed. She lives in the same neighbourhood as petitioners no.1 to 4. The allegations are that petitioners no.1 to 4 came to her house on 11.06.2000 at 2:00 PM when she was alone and lured her for a job. The complainant was taken away by petitioners no.1 to 4 in a car to a place near House No. 93 in Mohali, there she was served with tea. She went into a state of trance and in

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that condition petitioner no.5 and two other persons committed rape upon her. It was further alleged that petitioners no.3 to 5 along with other persons committed rape upon her even on the next day. The complainant was confined in the house for 12 days and was repeatedly molested by petitioners no.3 to 5 along with some other persons. Twelve days later she was shifted to a house in Sector 37, Chandigarh where again she was violated against her wishes by petitioners no.3 to 5.

The complainant had further alleged that one of the accused namely Paramjit Kaur in order to confuse the family met the husband of the complainant and asked him whether the complainant had left for Rajpura so that he may not take any action the next day. It was further alleged that Paramjit Kaur informed one of the neighbours of the complainant that complainant had died at Rajpura. When this news reached her in-laws, they immediately contacted her parents and were informed that the complainant had not reached Rajpura.

It was also pleaded that the complainant's husband tried his best to get a report lodged at P.S. Mullanpur but the police did not register the case but a DDR was registered on 17.06.2000. Balbir Singh, husband of the complainant approached the higher officers but still nothing was done. He made representations and the matter was reported in Chandigarh Bhaskar on 6.7.2000. The allegations are that when the police was tightening the noose, they produced the complainant before SHO P.S. Mullanpur and she was produced before SDM, Kharar on the next day and the complainant suffered a statement under threat that she had gone on her own. It was

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pleaded that even after two days of release, the complainant was not in a condition to recognize her husband and children and gave a representation on 10.07.2000. It was pleaded that they had filed Civil Misc. Petition in the High Court, which was disposed of on 22.02.2001. It was pleaded that directions had been issued to SSP, Ropar to look into the representation.

The complainant further pleaded that they had filed another Civil Misc. Petition in 2001 bearing No.17980 seeking investigation by the Crime Branch, which was disposed of on 19.03.2002. It was pleaded that when no action was taken, the complainant filed Criminal Misc. No.3089 of 2002, which was disposed of. The complainant filed another Criminal Misc. No. 42438 of 2002, which they had withdrawn on 09.09.2008 as they wanted to file a complaint.

The Judicial Magistrate recorded preliminary evidence, which consists of the statement of the complainant, her husband and one Gurmail Singh, Sarpanch and Sohan Singh. All the accused were summoned to face trial.

Petitioners have pleaded that they were innocent. It was pleaded that in the DDR lodged by the husband it was stated that the complainant had left alone on 11.06.2000 and when she was half a kilometer from their village, Balbir's father-in-law (complainant's father) and one Amrik Singh met the complainant and Karnail Singh father of the complainant made her sit on the scooter and they were coming to his house but when they reached near the village, the complainant got down from the scooter saying that it would not be proper to sit with two men on a scooter. Balbir Singh had

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stated in the report that Karnail Singh reached his house but Paramjit Kaur did not come and they did not suspect anyone as she had gone on her own. It was pleaded that on 05.07.2000 the police recovered the complainant from Sector- 20 market, Chandigarh in the presence of her husband Balbir Singh, her father and the Sarpanch. She was taken to the police station in Sector-19, Chandigarh and DDR No. 15 was recorded and the complainant was produced before the Executive Magistrate, Kharar on 06.07.2000, where she had stated that she had gone on her own and did not make allegations of rape. It was pleaded that her statement was recorded by the Executive Magistrate. It was pleaded that the complainant had approached the High Court and had filed different petitions and directions were issued to the Crime Branch and a detailed inquiry was conducted and no truth was found in the allegations and no criminal action was initiated. It was pleaded that the complainant filed the second petition in 2002, which was disposed of and the third petition was dismissed as withdrawn on 9.9.2008. The petitioners had also appended the copies Annexure P-8 & P-9. It was pleaded that the complainant had had left on her own to go to her parent's house. It was pleaded that the complainant did not get her medical examination and she was trying to falsely implicate them.

Respondent no.2 filed reply and pleaded that she had made the statement before the SDM, Kharar under threat of elimination and the SHO of P.S. Mullanpur had insulted her as well as her husband. It was pleaded that since the police did not take any action, therefore, the complaint was filed and the petitioners were rightly summoned and charge had also been

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framed. The complainant had also appended the statement made by her, her husband, Balbir Singh and Karnail Singh.

I have heard counsel of both the sides.

The submission on behalf of the petitioners was that the complainant had left the house on her own and as per the first version given by the husband the complainant met her father-in-law and she joined him who was coming to her house but got down on the way but the complainant did not return and the family also not suspect anything and the DDR was entered six days later saying that they did not suspect anyone. It was urged that at that point the husband of the complainant did not mention the fact that Paramjit Kaur had come to their house or asked about the complainant or that she had tried to confuse the family or that some information was given by her to the neighbours and the story has been cooked up later. It was urged that the complainant was recovered by the police from Sector 20 Market in Chandigarh and she was produced before the Executive Magistrate who recorded her statement on 06.07.2000 and that statement was given in the presence of the husband and the Sarpanch Gurmail Singh and it is the same person namely Gurmail Singh who makes up a different story when he appears before the Court but he does say that they had received information from Chandigarh Police and they had gone to the light point of Sector 21 - 22 and the complainant was standing with one ASI of Chandigarh Police but the police officer did not allow them to speak to her as they wanted to produce her before the SDM, Kharar and their attempt to speak to Paramjit Kaur failed and she was not in a position to recognize

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them and she appeared to be under the influence of intoxication. It was urged that Gurmail Singh stated that the recovery was before the police and she was produced before the SDM and the statement given by Gurmail Singh and Paramjit Kaur complainant are available on record and there is no such story that she had been enticed or confined in the house. It was urged that the statement of the husband had also been taken and later they have made up totally different statements and there is no medical evidence. It was urged that Karnail Singh father of the complainant had also made a statement before the Executive Magistrate and he was also present when the missing report was lodged by the husband. The counsel further urges that the complainant had approached the High Court and had given representations and her petitions were disposed of and the last petition was filed in 2002 was withdrawn in 2008 and the complaint was thereafter filed in 2009. It was urged that the proceedings are an abuse of the process of law and the Courts and it was a fit case where the proceedings should be quashed.

On the other hand, the submission on behalf of the complainant is that charge had been framed and the Court cannot look into documents filed by the accused and since the Magistrate had taken cognizance and had issued process, therefore, the proceedings cannot be quashed. It was urged that the Court is not required to appreciate the evidence to conclude whether the material was sufficient or not and the inherent power should not be exercised to stifle a legitimate prosecution. Reliance was placed upon ***Hem Chand Vs. State of Jharkhand 2008 AIR (SCW) 2132, B. Jagdish & Anr.***

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Vs. State of A.P. & Anr. 2011 AIR (SC) (Cri) 1831, State of Orissa and another Vs. Saroj Kumar Sahoo 2006(1) RCR (Criminal) 324 and Jarnail Singh and another Vs. State of Punjab 2006(4) RCR (Criminal) 712.

It is necessary to detail the facts which emerge from the complaint, the DDR and the statement given by the complainant and her family members. It is not in dispute that the complainant had approached the High Court seeking directions to the police to register the FIR. Those petitions were disposed of and directions were given to SSP, Ropar to inquire into the complaint. In CRM-M-23320-2000, the DSP, Kharar had filed his reply and had given the same facts which were disclosed in the DDR. Information was provided by Balbir Singh that her wife had left the house and then she met his father-in-law and thereafter she did not reach home and went on her own. It also discloses that a lady with the description of the complainant was seen by the police in Sector 20 Chandigarh and an entry was made in the DDR and they proceeded to the spot and the husband, father and Sarpanch of the village were informed and the complainant was recovered from the light point of Sector 20 – 21 and DDR was again recorded. The State in their reply had pleaded that the recovery was in the presence of husband, Sarpanch, Gurmail Singh and her father and a lady constable and thereafter, the complainant was produced before the Executive Magistrate where she did not make any allegations of rape or involvement of any other person. The police had also appended the copy of the report alongwith their reply. The petition was disposed of on 02.02.2001.

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The complainant filed another petition bearing CRM-M-42438-2002 and State in its reply had pleaded that an inquiry was conducted by DSP, Crime and it was found that the allegations levelled by the complainant were false and there was a dispute with regard to Shamlat land between the relatives of Paramjit Kaur and Gurbachan Singh. They had filed the inquiry report but a perusal of the record reveals that unfortunately the inquiry report had been destroyed during the weeding process in the High Court. It is also necessary to note here that after the reply was filed, there was no appearance on behalf of the petitioner in April 2003 and even when the matter was taken up in May 2004. The State counsel had stated then that no offence was made out then the counsel for the complainant sought time and thereafter no-one appeared for three years and the matter was taken up lastly on 09.09.2008 and the following order was passed:-

“This petition has been filed under Section 482 Cr.P.C. seeking directions to respondents 2 & 3 to register FIR under Sections 366/368/376-G/120-B against respondents 4 to 10.

I find that the petitioner had earlier approached this Court by way of filing Crl. Misc. 23230-M of 2000 for same relief. The matter was disposed of vide order dated 22.02.2001 with a direction to SSP, Ropar, to conduct enquiry. It appears that enquiry was conducted and it was concluded that no offence has been committed. FIR was not lodged.

Petitioner again approached this Court by way of filing Crl. Misc. 17980-M of 2001. The matter was disposed of vide order dated 19.03.2002. No direction for registration of FIR was given. However, Crime Branch was directed to look into the matter and take appropriate action.

Reply has been filed and it has been stated that no offence is made out in view of various material collected during enquiry.

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Learned counsel for the petitioner prays for withdrawal of the petition to enable the petitioner to file a complaint.

Dismissed as withdrawn with liberty as prayed for.”

The above would show that the High Court had not issued any direction for registration of the FIR but had directed the Crime Branch to look into the matter. The State had conducted an inquiry and had found that the allegations were false and at that stage the counsel for the complainant/petitioner prayed for withdrawal of petition as they wanted to file a complaint.

It would be seen that the husband of the complainant lodged a missing report only on 17.06.2000 and did not doubt any person and had stated that she had gone on her own. He had given a detailed narration of the fact that his wife had met her father on the way and she sat with them on the two-wheeler but got down on the way. Consequent upon the recovery, the police entered a DDR and called up the husband and in the presence of the husband, father and the Sarpanch the statements were recorded by the Executive Magistrate. Even at that point there were no accusations of rape. No medical was got done. The police had carried out a thorough investigation and did not find it a fit case to lodge the FIR. In the reply submitted in the earlier petitions it was reported that they had found the allegations to be false and there was a dispute regarding Shamlat land between relatives of Paramjit Kaur and Gurbachan Singh. Another striking fact is that when the reply was filed by the State in CRM-M-42438-2002, for three years no-one appeared for the petitioner. Sensing that the petition

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would be dismissed, the petition was withdrawn in September 2008 and it is thereafter, that the complaint was filed. The statements given by the husband and the Sarpanch before the Executive Magistrate are contrary to the statement made before the Magistrate. The complainant and her family members have completely changed the version and had cooked up a story to implicate the petitioners. It is a fit case where the extra ordinary powers under Section 482 Cr.P.C. should be exercised as the complaint and the proceedings thereafter are an abuse of the process of law.

The instant petition is allowed. The aforesaid complaint and all subsequent proceedings conducted on the basis thereof are quashed.

09.05.2018
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No