

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-59-2010 (O&M)

Date of decision: 05.12.2018

Ram Swaroop

..... Petitioner

Versus

Laxmi Devi and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. NS Shekhawat, Advocate
with Sh. Rajender Kumar Banku, Advocate for the petitioner.

Ms. Gaganpreet Kaur, Advocate for
Dr. Deipa Singh, Advocate for respondent No. 1.

Mr. PK Garg, AAG, Haryana.

RAMENDRA JAIN, J. (ORAL)

Through this revision, challenge has been laid to the judgment dated 07.12.2009 of Revisional Court, whereby petitioner-Ram Swaroop, along with his co-accused was summoned to face trial under Sections 323, 376, 511, 218, 342 and 120-B IPC, setting aside order of the trial Court dated 24.11.2008 (Annexure P-2).

Briefly, around 08.00 AM, on 05.10.2006, respondent No. 1-complainant along with her daughter-in-law Geeta, came to Police Post Dahina, District Rewari and moved a written complaint against her elder brother-in-law (Jeth)-Ramanand and his two sons namely; Sudhir and Pawan (Sudhir is an Advocate, whereas Pawan is a Veterinary Compounder) levelling allegations against them that her above named Jeth, tried to commit rape with her in the presence of his sons. On the

said complaint, DDR No. 6 dated 05.10.2006, was registered at 11.15 AM, by HC Bir Singh. Simultaneously, Ramananad also went to Police Station Khol, with a complaint against respondent No. 1, her daughter-in-law-Geeta and others, that he and his sons were beaten up badly by them. Consequently, FIR No. 169 dated 05.10.2006 under Sections 323, 324 and 506 read with Section 34 IPC (Section 307 IPC added later on) was registered against respondent No. 1, her daughter-in-law and others.

After holding trial, respondent No. 1 and her daughter-in-law, were held guilty vide judgment of conviction dated 29.10.2011 in the said FIR and sentenced to undergo rigorous imprisonment for 4 years each under Section 307/34 IPC. However, DDR No. 6 dated 05.10.2006 of respondent No. 1, was found false. Therefore, the same was cancelled.

Learned counsel for the petitioner *inter alia* contends that complaint dated 15.02.2007 (Annexure P-1) of respondent No. 1, against petitioner, her Jeth Ramanand and his two sons was a counter-blast to the said FIR No. 169 dated 05.10.2006, got lodged by Ramanand and his sons against her, her daughter-in-law Geeta and others, which was moved immediately, on filing of final report in Court under Section 173(2) Cr.P.C. by the police against them. The revisional Court has wrongly set aside the well reasoned order of the trial Court dated 24.11.2008 (Annexure P-2), dismissing the complaint of respondent No. 1, qua the petitioner and illegally ordered to summon him to face trial under Sections 323, 376, 511, 218, 342 and 120-B IPC, in utter violation of Section 401(2) Cr.P.C. The revisional Court has failed to appreciate that the petitioner could not have been prosecuted without any sanction under

Section 197 Cr.P.C. Co-accused of the petitioner have been acquitted by the learned Additional Sessions Judge, Rewari, vide judgment dated 21.04.2012 (Annexure P-8), making serious observations against respondent No. 1.

On the other hand, learned counsel for respondent No. 1, vehemently opposing the submissions of learned counsel for the petitioner, pleaded the legality and validity of the impugned judgment.

Having given anxious consideration to the rival submissions of both the sides, the instant revision merits acceptance for the reasons to follow:

It is not disputed that complaint of respondent No. 1, under Sections 323, 376, 511, 218, 342 and 120-B IPC against the petitioner was dismissed, whereas Ramanand and his two sons, namely; Sudhir and Pawan, were made to face trial under Section 323/34 IPC only, vide order Annexure P-2. However, the Revisional Court, while setting aside said order Annexure P-2, directed them to face trial under Sections 323, 376, 511, 218, 342 and 120-B IPC, vide impugned judgment dated 07.12.2009.

The petitioner approached this Court, by way of instant revision, whereas co-accused of the petitioner, pursuant to the impugned order of the revisional Court, faced trial and were acquitted vide judgment dated 21.04.2012 (Annexure P-8) wherein trial Court made serious observations against the character of respondent No. 1 in the following terms:-

“(i) It is impossible for a person aged around 74

years (Ramanand) to rape his Bhabi (respondent No. 1) aged around 60 years, in the presence of his two sons in the open field;

(ii) the testimony of respondent No. 1 and PW-1 was completely un-worthy of credence as she has deposed nothing else but only and only a bundle of complete falsehood and lies;

(iii) the present private complaint in question had been preferred by respondent No. 1, just as a counter-blast to FIR No. 169 dated 05.10.2006 under Sections 323/324/307/447/506/34 IPC, Police Station Khol, got registered by Ramanand and his two sons, against her and her daughter-in-law, in which as discussed above, she and her daughter-in-law were held guilty and sentenced to undergo rigorous imprisonment for 4 years under Section 307/34 IPC;

(iv) false implication of the petitioner and his co-accused could not be ruled out, in view of previous litigation amongst co-accused of the petitioner and respondent No. 1.”

That apart, initial version Ex PW-3/C recorded by respondent No. 1 was contradictory to her allegations in the impugned complaint qua rape against co-accused of the petitioner, inasmuch as, in the initial statement Ex. PW-3/C, respondent No. 1 alleged that Ramanand and his two sons had misbehaved and scuffled with her, but

did not allege that Ramanand, her Jeth ever attempted to rape her in the presence of his sons, whereas in the impugned complaint, she altogether made specific allegations of attempt to rape against them.

Even at the time of her medical examination, respondent No. 1 narrated only about physical assault upon her by Ramanand and his two sons, contrary to her version in the impugned complaint of attempt to rape on her.

Her entire version in the complaint as PW-1 was completely contrary to her initial version got recorded by her in complaint Ex. PW-3/C and statement before the police.

More so, the allegation against the petitioner is only that he being a police official did not lodge complaint of respondent No. 1 promptly, in order to help aforesaid co-accused-Ramanand and his sons. The above story put forth by respondent No. 1 has no legs to stand, inasmuch as, when respondent No. 1 reached Police Post Dahina around 8.00/8.30 AM, petitioner was not present there. Her complaint was converted in DDR No. 6 dated 05.10.2006, at 11.15 AM by HC Bir Singh. Had the petitioner been present at that time in the said police post, he being a senior to HC Bir Singh, must have made some endorsement on the complaint Ex. PW-3/C of respondent No. 1, referring the same to Police Station Khol, under which the said police post falls. Therefore, solitary bald statement of respondent No. 1 qua petitioner about not lodging the FIR against Ramanand and his two sons, promptly on her complaint is not worthy of any credence. The same has to be outrightly ignored, more particularly, when her entire conduct has been condemned

by the trial Court, making serious observations against her in judgment Annexure P-8, while acquitting co-accused of the petitioner.

Notice of the revision was never issued by the Revisional Court to the petitioner. The same was only issued against respondents No. 1 to 3. Therefore, the petitioner could not have been ordered to face trial along with his co-accused under Sections 323/324/307/447/506/34 IPC vide impugned order by the Revisional Court, in utter violation of Section 401(2) Cr.P.C, which envisages as under:

“No order under this Section shall be made to the prejudice of the accused or other person, unless he has had an opportunity of being heard either personally or by pleader in his own defence.”

The revisional Court also failed to appreciate that at the relevant time, the petitioner was Assistant Sub Inspector. Therefore, it was mandatorily required to obtain sanction from the competent authority under Section 197 Cr.P.C., which was also never obtained by respondent No. 1.

In view of the discussion made above, the instant revision is allowed. The impugned order dated 07.12.2009, is set aside. Resultantly, the order dated 24.11.2008 (Annexure P-2) of the trial Court is upheld.

December 05, 2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No