

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

CRR-4454-2015

Date of decision:-17.7.2018

Smt.Bala Devi

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Lalit K.Gupta, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

Mr.Bhag Singh, Advocate
for the respondent No.2.

H.S. MADAAN, J.

This revision petition is directed against the judgment dated 20.8.2015 passed by learned Additional Sessions Judge, Ambala dismissing the appeal as well as judgment dated 27.10.2014 passed by Judicial Magistrate Ist Class, Ambala acquitting respondent No.2 of the charge framed against him.

Briefly stated, the facts of the case are that on 7.5.2010 at about 9:00 p.m., while the complainant was cleaning the utensils near door of her house and her husband was sleeping inside, then accused

Parveen Kumar came there, caught hold of the complainant from her breasts and started giving her filthy abuses. Hearing hues and cries of the complainant, her husband Amrik came to that place and on seeing him, accused ran away from the spot. The matter was reported to the police and formal FIR was registered. The case was investigated. Accused Parveen Kumar was arrested in that case. After completion of investigation and other formalities, challan against accused was prepared and filed in the Court.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Ambala, copies of documents relied upon in the challan were supplied to the accused free of cost as provided under Section 207 Cr.P.C.

Learned Judicial Magistrate Ist Class, Ambala finding that charge for offence under Section 354 IPC was disclosed against the accused, charge-sheeted the accused for the said offences, to which, he pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution had examined as many as seven witnesses, namely, PW1 Bala Devi, PW2 Amrik Singh, PW3 SI Rajpal Singh, PW4 EASI Ramesh Chander, PW5 ESI Surjit Singh, PW6 Jasmer Ram and PW7 SI Swarn Ram.

As the prosecution failed to conclude its evidence despite availing ample opportunities, the same was closed by Court order.

Statement of accused was recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against him submitted that he was innocent and had been falsely involved in the case.

Accused did not lead any evidence in defence.

After hearing arguments, the learned trial Court had acquitted the accused of the charge framed against him mainly for the following reasons:

- (i) There being delay of almost six days in reporting the matter to the police inasmuch as the incident had taken place on 7.5.2010, whereas the FIR was got registered on 13.5.2010 and there being no satisfactory explanation for the delay rendered by the prosecution.
- (ii) PW1 complainant Bala Devi stating that a Panchayat had been convened in this case but then no member of Panchayat or other respectable person from the village community stepped into the witness-box to say that.
- (iii) The parties are related *inter se* inasmuch as the complainant is aunt of the accused, whereas the accused is nephew of the complainant and there being civil litigation pending between the extended families regarding some property, which could be the motive for the complainant to file a false complaint against the accused.
- (iv) As per prosecution story, the husband of the complainant was sleeping inside the house when the incident took place and he had come out after hearing hues and cries of complainant but the complainant in her cross-examination stated that when the incident

took place, she was all alone in the house and nobody was there not even her husband. This is a great contradiction between the two versions.

(v) PW6 Jasmer Ram (independent witness) stating in his cross-examination that he had not seen the incident and whatever he had stated was on the basis of what he heard from others.

(vi) Non-joining of independent witness during investigation and trial.

(vii) The testimony of complainant suffering from inherent contradictions and lapses.

(viii) The presence at the spot of Amreek Singh, husband of complainant at the relevant time to be highly doubtful.

(ix) The prosecution being unable to prove its charge against the accused beyond all reasonable doubt.

When this judgment was challenged in appeal, learned Additional Sessions Judge, Ambala dismissed the appeal and affirmed the judgment passed by the trial Court, which left the complainant aggrieved and she has approached this Court by way of filing the present revision petition, notice of which was issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned Additional Sessions Judge, Ambala took into consideration all aspects while affirming the judgment of the trial Court and dismissing the appeal. The legal position has been kept in mind while reaching that conclusion.

The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse and not otherwise.

In view of the above, I find no illegality or infirmity in the judgments passed by the Courts below, the same are upheld and the revision is found to be without any merit and is dismissed accordingly.

Necessary information be sent to the quarter concerned.

17.7.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No