

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

CRR-409-2016(O&M)

Date of decision:-29.8.2018

Jyoti

...Petitioner

Versus

Sandeep and others

...Respondents

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

Present: Mr.R.K. Saini, Advocate
for the petitioner.

Mr.Sant Kashyap, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that the complainant (name not being mentioned to conceal her identity and referred to as '*the prosecutrix*') had filed a criminal complaint against Narender, Sandeep – sons and Saroj – wife of Dharambir as well as Dharambir and one Ashish Sharma son of Om Parkash and another unnamed persons under Sections 376, 363, 364, 452, 506, 34 IPC and Sections 3 and 4 of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act) in the Court of Judicial Magistrate Ist Class, Hisar. *Inter alia*, in the complaint, it is stated that father of the complainant was working in CMO Office, General Hospital, Bhiwani and he was allotted a quarter in the hospital premises; that since accused Narender was keeping an evil eye on her, therefore, father of the complainant got himself

transferred from Bhiwani to Hisar; that on 21.1.2011 at about 10:30 a.m. while the complainant was going to Jat College, Hisar for attending her classes, then Narender accompanied by her mother Saroj besides Ashish Sharma and an unknown person met her and made her smell something in the handkerchief, thereafter, she was put in a car forcibly; that the complainant had become unconscious; that later on she came to know that she had been forcibly confined in a room in a colony at Delhi, where Narender used to have sexual intercourse with her against her wishes holding out threats to kill her; that he put pressure upon her to marry him and on 29.1.2011 and he performed marriage with the complainant by use of force in Arya Samaj Mandir, Delhi, thereafter, she was kept at unknown place; that parents of Narender used to visit there; that Narender would have sexual intercourse with the complainant and he would give beatings to her; that she had met police on 28.2.2011 but she did not disclose the factual position for the reason of under threat by Narender. According to the complainant, she was produced in the Court and her statement was recorded but due to threat by Narender, she could not disclose the true facts; thereafter, she was taken to Bhiwani and was confined there. The complainant had alleged that on 30.6.2011, Sandeep, brother of accused Narender entered her room and raped her; that she had informed family of accused but they rather started abusing and threatening her; that the complainant became pregnant, even then she used to be beaten up and abused; that on 31.8.2011 Narender gave leg blow to the complainant in abdomen resulting in miscarriage.

That complaint was forwarded to Police Station Civil Lines,

Hisar under Section 156(3) Cr.P.C. and on the basis thereof FIR No.292 dated 26.5.2012 for the offences under Sections 376, 363, 364, 452 and 506 read with Section 34 IPC and Sections 3 and 4 of the Act was registered. The matter was investigated. However, the police filed a cancellation report in the Court of Judicial Magistrate Ist Class, Hisar having jurisdiction. On getting notice, the complainant appeared and filed a protest petition. The complainant got her own statement recorded as PW1 besides examining her father Prahlad as PW2, ASI Rajender Kumar as PW3, ASI Suresh Kumar as PW4. Thereafter, the preliminary evidence was closed by the complainant. Learned Judicial Magistrate Ist Class, Hisar vide order dated 28.4.2015 being of the opinion that there were sufficient grounds to proceed against Narender and Sandeep for the offences under Sections 376, 363, 452, 506 read with Section 34 IPC and Section 3 & 4 of the Act and to proceed against accused Saroj, Dharambir and Ashish for the offences under Sections 326, 452, 506 read with section 34 and Section 3 & 4 of the Act directed that they be summoned to face trial for the respective offences and they put in appearance. Formal charge for the offences under Sections 363, 376, 452 and 506 IPC was ordered to be framed against accused Narender only in terms of detailed order dated 21.12.2015.

The complainant felt aggrieved by the said order and has filed the instant revision petition praying that the same be accepted and the impugned order be set aside and charge be framed against all the accused.

I have heard learned counsel for the parties besides going

through the record.

Learned counsel for the respondents submitted that Narender, who had been charge-sheeted by the trial Court has since been acquitted by the trial Court vide judgment dated 5.9.2017. The complainant had filed an application under Section 378(4) Cr.P.C. for grant of leave to appeal against the said judgment, which has since been dismissed by a Division Bench of this Court vide order dated 30.7.2018 passed in CRM-A-2488-MA-2017. He has placed on file copy of the said order.

I have gone through the order passed by the Division Bench of this Court. The reasoning given for dismissal of the application seeking special leave to appeal is that when the police visited the complainant while she was with Narender at Delhi, the complainant did not state that she had been kidnapped and raped. Secondly when her appearance was caused in the Court, she did not say anything incriminating against Narender accused. She admitted in her cross-examination that when she went to her parents house, Narender had lodged FIR against her parents at Bhiwani for committing offence of kidnapping, however, she had told to the police that she had voluntarily gone to her parents. Further, when the prosecutrix was recovered on 28.2.2011, her statement was recorded under Section 164 Cr.P.C. by a Judicial Magistrate, Bhiwani, wherein she stated that she had solemnized marriage with accused Narender in Arya Samaj Mandir, Delhi and she had gone with him of her free will. The marriage certificate showing marriage with accused Narender with prosecutrix on 29.1.2011 bearing their photographs as well as their signatures being Ex.DE. The complainant admitted in her cross-

examination that two affidavits were given in Arya Samaj Mandir, Delhi at the time of their marriage. The prosecutrix stayed with accused Narender till 3.9.2011 i.e. for a little less than eight months and during that period, the prosecutrix visited the doctor for her treatment and she had also gone to the college and appeared in the examination but did not disclose the alleged act to anybody.

The Division Bench observed that the prosecutrix is aged about 27 years of age and story set up by her in the complaint is rightly disbelieved by the learned Additional Sessions Judge – cum – Judge, Special Court for Heinous Crime against Women, Hisar. The complaint was found to be groundless. As such, relief prayed for was declined to the complainant.

Chapter XVIII of the Code of Criminal Procedure contains Section 227 and Sec.228.

227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— (a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order,

transfer the case for trial to the Chief Judicial Magistrate, 1 [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report; (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused. (2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

A perusal of the impugned order goes to show that the trial Court was very well aware of the yardstick to be used for framing of charge and this has been discussed in para No.10 observing that before framing a charge in a Sessions case, Sessions Judge had to first decide whether there is sufficient ground to proceed against the accused and can discharge the accused without trial, if he is fairly certain that there is no prospect of case ending in conviction and time of the Court will be wasted in holding trial. Drawing the conclusion, the trial Court has observed that it has come on record that the prosecutrix had initially named only accused Narender in the crime but subsequently she roped in all his family members for which there is no sufficient ground to believe their involvement in the crime. Accordingly, they are discharged, whereas regarding Narender, the trial Court found that from the perusal of the

challan report and accompanied documents therein, there are grounds to presume that a case for the commission of offences punishable under Sections 363, 376, 452 and 506 IPC was made out against accused Narender only and he was ordered to be charge-sheeted accordingly.

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 the present case, I do not find any such illegality or infirmity with the impugned order much less apparent on the face of it. The order is certainly not in violation of settled principles of criminal jurisprudence. I do not see any reason to upset the impugned order.

Therefore, criminal revision petition challenging that order cannot survive and is dismissed accordingly.

29.8.2018

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No