

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

CRR-2366-2017 (O&M)

Date of decision: 19.02.2018

Najiya

...Petitioner

Versus

Subhan and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Mohammad Arshad, Advocate,
for the petitioner.

JAISHREE THAKUR, J.

Instant revision petition has been filed against the impugned order dated 08.04.2016 passed by Judicial Magistrate Ist Class, Hathin in a Criminal Complaint No. 59, instituted on 01.04.2015 titled '*Najiya vs. Subham and others*' under Sections 323, 452 and 376 read with Section 34 IPC whereby the protest petition filed has been dismissed.

In brief, the facts as alleged are that the petitioner fell in love with Rajjak who was her neighbour and she became pregnant in this relationship. The said Rajjak tried to force her to get an abortion done, however, she refused to undergo the same. Annoyed by this, Rajjak on 10.12.2012 at about 9:00 P.M. along with other persons, namely Subhan, Sheru, Iqbal and Yashin entered her house and tried to persuade her to get an abortion done and when she refused they forced themselves upon her and took turns raping her. Thereafter they left the house and threatened to kill her in case she does not undergo abortion and reveals anything about the incident to anyone. A complaint was made to the Police Station, based on

which FIR No. 410/2012 came to be registered against the accused persons. The matter was investigated and thereafter the Investigating Officer filed a cancellation report based on the statements of the witnesses and the opinion of the Doctor that the incident complained of was not true. The petitioner filed a protest petition. The petitioner complainant examined herself as CW-4 and reiterated the allegations made in the complaint. CW-1 Memudi came on record and submitted that the complainant called her on 11.12.2012 and narrated the incident and she along with the complainant went to the Police Station to file a complaint. CW-2 Usmani came on record and submitted that on 11.12.2012 at around 6:00 A.M. in the morning, she found the petitioner Najiya crying in her house and when she enquired the reason for her doing so, she was informed that she had been raped. CW-3 Dr. Santosh tendered his affidavit Ex. CW3/A and proved the MLR.

The Judicial Magistrate Ist Class dismissed the protest petition on the ground that the evidence of CW-1 and CW-2 is nothing but mere hearsay and that the said statement was not borne out by the medical report. The petitioner herein seeks to challenge the said order.

I have heard learned counsel for the petitioner and have also perused the pleadings of the revision petition.

Admittedly, there is nothing on the record by way of any medical evidence to support the complainant. The MLR placed on the record was prepared on 21.12.2012 when the incident complained of pertains to the night of 9.12.2012. In case there had been any such incident, the petitioner would have immediately got an MLR conducted. It cannot be lost sight of that she has alleged gang rape on the said night. In the MLR Doctor has clearly written that there are no marks of external injury on the

body of the complainant. The Investigating Team too came to the conclusion that the alleged incident never occurred. This was based upon the statement of the inhabitants of the village and the medical report of the complainant petitioner herein. Therefore, finding no infirmity in the order of the Judicial Magistrate Ist Class, this Court is not inclined to interfere in the matter.

Dismissed.

This revision has been filed after an inordinate delay of 365 days. Since the petition has been disposed of on merits, the delay application becomes academic.

19.02.2018

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.