

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

**CRM-M-8566-2018
Date of decision: 28.02.2018**

Shilpa Arya

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ranjit Saini, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

1. The Petitioner herein seeks to challenge the order dated 01.02.2018 passed by the Judicial Magistrate 1st Class, Yamuna Nagar by which he has declined to alter charges on an application filed on behalf of the petitioner - complainant under Section 216 Cr.P.C. and frame charges under section 354A IPC against the father-in-law Randhir Singh (respondent No. 3 herein) and charge under Section 307 IPC against the mother-in-law Omwati wife of Randhir Singh, i.e respondent No. 4 .

2. In brief, the facts are that on the statement of petitioner FIR No. 0149 dated 27.04.2016 was registered against the husband and his parents at Police Station Farakpur District Yamuna Nagar under Sections 323, 354, 406, 498A and 506 of the IPC. Since charges under 354A IPC and Section 307 had not been framed against accused No. 3 and 4, respectively, an application was preferred under Section 216 Cr.P.C. for alteration of charge. The same came to be dismissed leading to the filing of the instant criminal miscellaneous petition under Section 482 Cr.P.C.

3. Learned counsel appearing on behalf of the petitioner-complainant submits that it had been specifically mentioned in the complaint that on 23.01.2016 accused persons had beaten her and mother-in-law Omwati had tried to commit murder of the complainant by pressing her neck and strangulating her while arguing that in her statement dated 30.4.2016 she had specifically stated “*that my father-in-law Randhir Singh in the absence of his son Karan Singh while keeping bad intention under the influence of liquor touching me inappropriately on my shoulder.*” In the FIR in para 13, it was stated by the complainant that “*on 03.12.2015, her father-in-law and mother-in-law were going in car to attend Lady Sangeet and marriage. The car was being driven by maternal uncle of accused No. 1 namely Ravinder. At that time, the accused No. 1 was under the influence of liquor and while on the way in the car he indulged in obscene acts and time and again he put his hands on the shoulders of the complainant.*” It is argued that the JMIC has erred in holding that no offence can be made out against accused No. 1, the husband, on these allegations. It is argued that in fact it was on account of typographical error that it was mentioned ‘*the accused No. 1 was under the influence of liquor and while on the way in the car he indulged in obscene acts and time ended again he put his hands on the shoulders of the complainant.*’- Whereas it should have been mentioned against accused No. 2, the father-in-law. Moreover the mother-in-law did try to strangle and, therefore, offence under section 307 is also made out.

4. Heard the counsel for the petitioner and perused the order so passed. Section 354A IPC is reproduced as under :-

Section 354A:- Sexual harassment and punishment for sexual harassment:

1. A man committing any of the following acts— (i)

physical contact and advances involving unwelcome and explicit sexual overtures; or (ii) a demand or request for sexual favours; or (iii) showing pornography against the will of a woman; or (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

2. Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

3. Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

5. From reading of the section, it is clear that if a man establishes physical contact and makes advances which are unwelcome and illicit sexual overtures, or demands or request for sexual favours, or makes sexually coloured remarks, shall be guilty of offence of sexual harassment and shall be punished with rigorous imprisonment for a term which may extend to 03 years. There is nothing in the complaint or the statement of the complainant that there were any sexual favours asked for. The physical contact has to be in relation to unwelcome advances and explicit sexual overtures or demand for favours. There is no such allegation against the father-in-law. The argument raised that inadvertently it could not have been mentioned that it is accused No. 2 Randhir Singh who had behaved inappropriately, is an argument which is not sustainable since the entire FIR is a detailed one.

6. The JMIC has also rightly declined to add Section 307 IPC against the mother-in-law on the ground that there is no material evidence available other than the bald statement. There is no MLR on the record to

show any injury sustained. It has rightly been held that there should be some material available on the case to establish that ingredients of Section 307 IPC are made out.

7. Finding no infirmity in the impugned order, this criminal miscellaneous petition is hereby dismissed.

28.02.2018

Waseem Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No