

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

CRR-3775-2017 (O&M)

Date of Decision: 23.03.2018

Dheeraj

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Deepa Jain, Advocate
for the petitioner.

Ms. Mahima Yashpal, A.A.G., Haryana.

ANITA CHAUDHRY, J

The petitioner has challenged the order vide which the trial Court has altered the charge and has framed fresh charge under Section 376-D of IPC and Section 6 of POCSO Act.

I have heard both the sides.

Learned counsel for the petitioner contends that a missing report was lodged by the mother and the girl was recovered on the next day and her statement under Section 164 Cr.P.C. was recorded wherein no allegations of rape had been made but when the victim stepped into the witness box, she made allegations of rape and the trial Court without affording any opportunity of cross-examination has framed the charge under Section 376-D. The counsel urges that the copy of the MLR report is

available on record which would show that there was no penetration and it was a case of consent and the girl had been traveling with the accused to Lucknow & Raebareli and came back to Delhi and she had gone with the accused on her own.

Learned State counsel urges that the MLR would show that hymen was torn and it could be that the girl was coming from the custody of accused that she did not speak about rape at that time and the girl was a minor and the question of consent would not arise and all questions raised by the petitioner are to be decided by the trial Court.

The First Information Report was registered on the statement made by the mother since her daughter was missing. The girl was minor. She was recovered after 4 days from the custody of Dheeraj, one of the accused. In the statement recorded under Section 164 Cr.P.C. the girl did not make a statement regarding rape but when the prosecutrix stepped into the witness box she had stated that she was raped. After the examination-in-chief, the State counsel moved an application seeking amendment in the charge. The trial Court after hearing both the sides amended the charge. So far as the cross-examination is concerned that opportunity would be given after the charge is amended and the victim's examination-in-chief is completed. The rest of the issues raised by the petitioner are to be examined by the trial Court at the appropriate stage.

I find no infirmity in the order.

The petition is dismissed.

March 23, 2018

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**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No