

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

(1) CRR-4052-2017

Shabnam alias Reeta

...Petitioner

Versus

State of Haryana and another

...Respondents

(2) CRR-1125-2018(O&M)

Moin Khan

...Petitioner

Versus

State of Haryana and another

...Respondents

Date of Decision:-5.9.2018

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

Present: Mr.D.S. Virk, Advocate
for the petitioners.

Mr.Deepak Sabharwal, Addl. A.G., Haryana.

H.S. MADAAN, J.

By this order, I shall dispose of two criminal revisions i.e.

CRR-4052-2017 filed by petitioner Shabnam alias Reeta and CRR-1125-

2018(O&M) filed by petitioner Moin Khan, both of them being aggrieved

with order dated 18.9.2017 passed by learned Additional Sessions Judge – cum- Judge, Special Court for Heinous Crime against Women, Hisar.

CRM-10874-2018 IN
CRR-1125-2018(O&M)

This is an application for condonation of delay of 93 days in filing CRR-1125-2018 filed by petitioner Moin Khan.

Heard.

For the reasons mentioned in the application, the same stands allowed and delay of 93 days in filing CRR-1125-2018 stands condoned.

MAIN PETITIONS

By way of filing the petitions, the revisionists pray for setting aside of order dated 18.9.2017 passed by learned Additional Sessions Judge – cum- Judge, Special Court for Heinous Crime against Women, Hisar vide which petitioner Shabnam alias Reeta has been charge-sheeted for the offence under Section 120-B IPC, whereas petitioner Moin Khan has been charge-sheeted for the offences under Sections 376-D, 376(2)(n), 506 IPC and 6 of POCSO Act.

Briefly stated, facts of the case as per the prosecution story are that after death of her great grandmother, the prosecutrix went into depression. To bring her out of depression, the father of the prosecutrix called Ahmad Baksh, Maulvi, accused, who started visiting house of complainant from 5.6.2011 onwards. The Maulvi would take the prosecutrix to a separate room for the purpose of treatment. He would go there on weekly basis. Thereafter, Ahmad Baksh started misbehaving with the prosecutrix and when she offered resistance, he threatened to kill her.

On 14.8.2011, Ahmad Baksh and his wife Shabnam went to the house of the prosecutrix for her treatment and stated that they would stay in her house for the night. After getting a treatment, the prosecutrix went to a room on first floor. She was being accompanied by Shabnam @ Reeta at that time, whereas other family members of the prosecutrix were sleeping on the ground floor. Before going to sleep, Shabnam @ Reeta gave some *PARSHAD* to the prosecutrix and after consuming the same, the prosecutrix became unconscious and when she gained consciousness, she found that Ahmad Baksh was lying naked with her and there was no cloth on her body also. When the prosecutrix tried to raise alarm, then Ahmad Baksh gagged her mouth, whereas Shabnam @ Reeta caught hold of her hands. Both of them threatened to upload her obscene video on the internet. The said obscene video was also shown to her on phone. According to the complainant, she did not tell anybody regarding the incident out of fear. Thereafter, Ahmad Baksh @ Radhey Shyam, Sher Khan @ Moin Khan used to take her to Ajmer, Salasar and Sirsa on the pretext of her treatment and used to ravish her forcibly. Such persons obtained signatures of the prosecutrix on certain papers. Ahmad Baksh would visit the house of prosecutrix and had forcible sexual intercourse with her. On 1.2.2015, Ahmad Baksh again called her outside the house saying that it would be their last meeting. Then Ahmad Baksh along with three other persons forcibly made her sit in a Bolero vehicle. Then Sher Khan put handkerchief on her mouth, due to which she became unconscious and when she regained consciousness, she found herself to be in the house of Babu Lal. Ahmad Baksh asked her to follow him.

Thereafter, they got signed some documents from her before an Advocate at District Court, Sirsa. She made her statement before the Court under pressure and was put in Protection House, where Ahmad Baksh used to have sexual intercourse with her and he would give some medicines to her to eat. Then Ahmad and Mahavir kept her at Babu Lal's house. Then they kept her at one rented house, which was arranged by Moin Khan. On 13.5.2015, Moin Khan and Sher Khan came there and raped her turn by turn. When she resisted, they stated that Ahmad Baksh had taken money from them for having sexual intercourse with her. For about four months, Moin Khan, Sher Khan and Ahmad Baksh used to visit her in that room and would have sexual intercourse with her. Finally, when Ahmad Baksh was confined in jail in some other case, then she gathered courage and called her father telephonically, returning to her parental home.

After registration of the formal FIR, accused Ahmad Baksh @ Radhey Shyam, Babu Lal, Mahabir, Sher Khan @ Rakmudeen were challaned. However, vide judgment dated 22.1.2018, they had been acquitted of the charge framed against them by the Court of learned Additional Sessions Judge – cum – Special Court for Heinous Crime Against Women, Hisar. Learned State counsel has submitted that the said judgment of acquittal has since been challenged by the State before this Court.

The grouse of petitioner Shabnam alias Reeta is that she has been involved in this case due to extraneous reasons inasmuch as she is first wife of co-accused Ahmad Baksh; that Ahmad Baksh had got married with the present complainant on 1.2.2015; that both of them had

filed a Protection petition before learned Sessions Judge, Sirsa, thereafter, statements were suffered by the parents as well as grandfather of the victim to the effect that the victim had solemnized marriage with Ahmad Baksh and they had no concern with them and there was no threat to the life and liberty of Ahmad Baksh and their granddaughter at their hands. Thereafter, FIR No.672 dated 31.8.2015 under Sections 363, 366-A IPC (later on added Section 376(2), 344, 328, 506 IPC and Section 8 of POCSO Act was registered as it happened to be inter religious marriage.

Whereas, the grouse of petitioner Moin Khan is that he is innocent and has been unnecessarily dragged in the present litigation.

As far as petitioner Shabnam @ Reeta is concerned, who is first wife of Ahmad Baksh, she had not been challaned earlier. However, a supplementary challan was filed against her and she has been charge-sheeted for the offence under Section 120-B IPC. The charge framed against her is as under:

That on 14.8.2011, in the area falling under the jurisdiction of women police station, Hisar, Ahmad Baksh alias Radhey Sham committed rape upon the prosecutrix, minor daughter of Raj Kumar aged 17 years, 11 months in conspiracy with you and thus thereby you committed an offence punishable under Section 120-B of Indian Penal Code and within the cognizance of this Court.

However, the main accused have since been acquitted of the charge. It being so, the charge framed against Shabnam @ Reeta cannot be sustained and deserves to be quashed.

Whereas, it is not so as regards petitioner Moin Khan against whom there are clear and specific allegations of committing rape upon the prosecutrix. A perusal of the file goes to show that charge has been framed against him for the offences under Sections 376-D, 376(2)(n), 506 IPC and 6 of POCSO Act. The allegations against him are quite serious and grave. The trial Court has framed formal charge against him.

Chapter XVIII of the Code of Criminal Procedure contains Section 227 and Sec.228 relating to trial before a Court of Sessions.

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.

Here the trial Judge after finding sufficient material has charge-sheeted Moin Khan. His guilt shall be determined during the trial. However, at this stage no ground for quashing of charge against Moin Khan is made out.

Therefore, **CRR-4052-2017 filed by petitioner Shabnam @ Reeta stands allowed**, whereas **CRR-1125-2018 filed by petitioner Moin Khan stands dismissed**.

5.9.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No