

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

Criminal Revision No. 1253 of 2018 (O&M)

Date of decision : April 05, 2018

Rakesh

.....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Satinder Kumar Rana, Advocate
for the petitioner.

LISA GILL, J.

The petitioner is aggrieved of order dated 05.03.2018 vide which charge under Sections 363 read with Section 34 IPC, 366 read with Section 34 IPC, 342 read with Section 34 IPC, 376D, 323 read with Section 34 IPC, 506 read with Section 34 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 has been framed against the petitioner.

It is contended that the petitioner has been falsely implicated, in this case, as is apparent from the material on record. Learned counsel for the petitioner submits that the victim was reported to be missing from her home since 3.00 a.m. on 08.06.2016 by her father, on the basis of which FIR No. 119 dated 08.06.2016 under Section 365 IPC was registered. The victim, in this case, was recovered on 18.06.2016 itself in the evening from the house of the co-accused Rahul. Her statement under Section 161 Cr.P.C. was recorded on 09.06.2016 (Annexue P-3). The victim, it is submitted, did not raise any kind of allegations against the petitioner or even the co-accused Rahul. The victim's statement under Section 164 Cr.P.C. was also recorded

on 09.06.2016 wherein again no allegations were raised by her.

However, an application was moved on 11.06.2016 before the Superintendent of Police, Panipat by the victim stating that she was a minor, aged 13 years and 08 months, her date of birth being 14.09.2002. It is alleged that she was taken away forcibly on 07.06.2016 and rape was committed upon her by the petitioner and others. She was confined in a house situated in the village till she was recovered in the evening on 08.06.2016. It is further stated that she was threatened not to give any statement against the accused persons or they would kill her whole family. Due to said threats, she did not record the entire facts before the police and the Magistrate. However, when she was with her parents in police security, she gathered courage. It is specifically stated that the present petitioner alongwith two other co-accused committed rape upon her. The police on investigation found the petitioner innocent and placed him in column No. 2. She deposed before the learned trial Court on 29.11.2016 wherein she levelled specific allegations against the petitioner. A copy of the statement is attached as Annexure P-7. The present petitioner was summoned vide order dated 09.08.2017 (Annexure P-8).

The petitioner filed CRM-M-47945-2017 (Annexure P-9) challenging order dated 09.08.2017, summoning him under Section 319 Cr.P.C. The said petition was dismissed as withdrawn on 29.01.2018 with liberty to the petitioner to take up all these pleas before the learned trial Court at an appropriate state.

Charge against the petitioner under the provisions as detailed in the foregoing paras was framed on 05.03.2018. Aggrieved therefrom, this petition has been filed.

Learned counsel for the petitioner vehemently argues that the petitioner has been falsely implicated. He is serving in the Armed forces. The victim, in this case, did not even name the petitioner in her initial statements or even her statement under Section 164 Cr.P.C. She refused to have her medical examination conducted on 09.06.2016. The petitioner was found innocent during investigation after a detailed inquiry by the investigating agency. There is no material on record to justify framing of the charge against the petitioner. It is, thus, prayed that this petition be allowed.

I have heard learned counsel for the petitioner and have gone through the file.

It is not in dispute that the victim, in this case, submitted a specific application to the Superintendent of Police, Panipat on 11.06.2016 explaining the circumstances in which she could not reveal the entire facts. She stood by this version while testifying before the learned trial Court. At the time of framing of charge, the learned trial Court is to see whether a prima facie case against the accused is made out. It has been held by the Hon'ble Supreme Court in **State of Rajasthan versus Fatehkaran Mehdu (2017) 3 SCC 198** as under:-

“ At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with scheme of Code of Criminal Procedure.”

Reference was also made to its earlier decision in **Amit Kapoor versus Ramesh Chander and another (2012) 9 SCC 460** and the observations therein were quoted as hereunder:-

“ At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading

to injustice.

27.13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."

In view of the facts and circumstances of the case, learned counsel for the petitioner is unable to point out any illegality, infirmity and perversity in framing of the charge against the petitioner in view of the specific stand of the victim.

Consequently, this petition is dismissed. It is clarified that none of the observations in this order shall be construed to be an expression of opinion on the merits of the case and shall have no bearing on the trial.

April 05, 2018

rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No