

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 1984 of 2018 (O&M)

Date of decision : 10.8.2018

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Ravinder

.....Petitioner

vs.

State of Haryana and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Ankur Lal, Advocate
for the petitioner.

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H. S. Madaan, J.

Feeling aggrieved by the order dated 2.5.2018, passed by Additional District Judge-I, Bhiwani, allowing the application under Section 216 Cr.P.C. filed by respondent No.2 – complainant in case FIR No. 85 dated 24.10.2017, under Sections 341, 354 -A(2), 451 IPC and Section 12 of POCSO Act, 2012 and Section 3 (2) (v) of SC& ST Act, 1989, for adding Section 376 IPC by alteration in the charge sheet without there being any sufficient material to support that, the accused has brought the instant revision petition challenging the said order.

The grouse of the revisionist accused Ravinder is that in the FIR no allegations of rape are there. Similarly when the statement of

prosecutrix was recorded under Section 164 Cr.P.C., she did not make any such allegations. During investigation no such offence was found to have been committed. It was only during the trial, that prosecutrix stated that the accused had committed rape on her, as such on an application having been moved by the prosecution, charge was amended and charge for offence under Section 376 IPC was framed against the accused. Therefore the order is not sustainable and it be set aside.

I have heard learned counsel for the petitioner, besides going through the record.

The first and foremost thing to be seen is as to whether the accused can take advantage of the fact that neither in FIR there are allegations of rape nor such allegations are there in the statement of the prosecutrix, got recorded by the police or under Section 164 Cr.P.C. got recorded from the Magistrate and simply by her saying in her statement during the trial, that accused has committed rape upon her, the charge for said offence could not be framed against the accused. The answer has to be in negative.

We are to take into view the fact that prosecutrix victim in this case is a 14 years old school going girl, who as per prosecution story had tried to commit suicide out of fear of the accused. Therefore, such type of girl initially hesitant in disclosing that the accused had committed rape upon her, however during the trial stated so, is not something which should be rejected out rightly. A girl of young age coming from rural background disclosing the factum of accused raping her, in the Court, while her statement was being

recorded and not making any mention thereof in her earlier statements, does not go to show that her such piece of deposition is not credit worthy. The accused has been already facing trial before the Court of Sessions. During trial while getting her statement recorded as PW-1 the prosecutrix has stated that accused had committed rape upon her. On an application by the Public Prosecutor, the charge was accordingly amended so that accused be informed as regards the allegations against him, so that he may not be taken by surprise later on. Framing of charge serves that much purpose. The accused would get an opportunity to cross examine the prosecution witnesses including the prosecutrix and lead the evidence in defence. Though PW-1 prosecutrix is not shown to have been cross examined but then for the purpose of amending the charge, her making mention of rape at the hands of the accused is sufficient material to enable the Court concerned to frame charge for offence under Section 376 IPC against him.

Counsel for the petitioner has referred to the authority **C.B.I. vs. Karimullah Osan Khan 2014 (11) SCC 538**, by the Apex Court, wherein while dealing with Section 216 Cr.P.C., as regards addition and alteration of charge, it was observed that Section 216 Cr.P.C. confers jurisdiction on all Court, including the designated Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced when there exists some material before the Court. It was further observed that alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the Court.

There cannot be any dispute with such proposition of law laid down by the Apex Court. The trial Court has taken into consideration the statement of the prosecutrix recorded in the Court. That statement in the form of her examination-in-chief is part of the record, which constituted material, which the Court can certainly look into to see whether any addition or alteration in the charge already framed is called for. I do not find anything wrong with the order under revision.

The revision petition stands dismissed.

10.8.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No