

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

Crl. Revision No. 3583 of 2018(O&M)

Date of Decision: 26.10.2018

Khem Singh

.. Petitioner

Vs.

State of Haryana

.. Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. Baldev Singh Dhillon, Advocate
for the petitioner.**

ANITA CHAUDHRY, J.

The petitioner has challenged the order dated 17.10.2018 vide which his application under Section 227 Cr.P.C. seeking discharge was dismissed. He was charged under Section 6 of POCSO Act and Sections 376-AB and 506 IPC.

FIR No. 83 dated 27.08.2018 was registered against the petitioner under Sections 376A and 506 IPC and Section 6 of POCSO Act on the basis of statement made by mother of the victim. She informed that her daughter was three and a half years old. On 15.08.2018 she was playing outside. The petitioner, their neighbour, took her to his house. The child came home crying and disclosed that the petitioner had removed her undergarments and kissed her and committed wrong acts with her and threatened her not to disclose anything to her family.

The petitioner was arrested on 27.08.2018. The victim as well as the petitioner were medically examined. The victim could not make the

statement under Section 164 Cr.P.C. before the Magistrate on 28.08.2019.

Her counselling was done. On 29.08.2018 her statement was recorded under Section 164 Cr.P.C.

DNA sample of the petitioner was taken. On completion of investigation, challan was filed under Sections 376-A and 506 IPC and Section 6 of POCSO Act.

The petitioner filed an application and sought his discharge from the offence under Sections 376-A and 506 IPC and Section 6 of POCSO Act on the plea that the medical report did not disclose any offence and the FIR is delayed.

The trial Court dismissed the application and framed charges against him under Section 6 of POCSO Act and Sections 376-AB and 506 IPC. Dis-satisfied therewith, the petitioner has filed the instant revision petition.

I have heard learned counsel for the petitioner and have gone through the paper-book carefully.

Learned counsel for the petitioner has referred to the MLR, Annexure P-5 and had submitted that there was no material available to show that there was any aggravated penetration and no external mark of injury was noticed and the victim and her guardian had disclosed to the doctor that no penetration was attempted. According to him, the investigating agency found that no offence under Section 376-B IPC was made out and they had filed the challan only under Section 376-A IPC. He had urged that the essential ingredients of Section 376-AB and Section 6 of POCSO Act were not made out and at the most the charge could be framed under Section 8 of POCSO Act and the trial Court has erred in framing

charges under Sections 376-AB IPC and Section 6 of POCSO Act.

He had further urged that there was an inordinate and unexplained delay of 12 days in reporting the matter to the police. The prosecutrix was tutored by her mother. She failed to give her statement on 27.08.2018 and a tutored statement was recorded on 29.08.2018.

The victim is just three and a half years old. She was too young to understand. In the FIR, the mother had mentioned that the girl had informed her that the petitioner to whom she called as “Papa” had done bad things with her. He removed her panty and kissed on the body. No doubt in the MLR no external mark of injury was noticed but the victim had disclosed to her mother that some milk of “Papa” had come out which he had wiped. She was referring to ejaculation. It is for the trial Court to decide after evidence whether there was penetration. In the opinion given by the doctor it was specifically mentioned that possibility of child sexual intercourse could not be ruled out.

It is settled that at the stage of framing of charges the probative value of the material on record cannot be gone into. In other words, it merely sifts and weighs the evidence for a limited purpose namely whether there is sufficient material to frame the charge. It is not open for the Court to analyse all the materials including pros and cons, reliability or acceptability etc. It is at the trial, the Court concerned has to appreciate their evidentiary value, credibility or otherwise of the statement, veracity of various documents and free to take a decision one way or the other. It has been reiterated time and again that while exercising powers under Section 227 Cr.P.C. the Court should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

The argument raised by the petitioner that no offence of rape is made out and that there had been delay in lodging the FIR and that the victim was tutored, will be adjudicated only on the basis of evidence led before it during trial. The case of the prosecution cannot be thrown on ground at the threshold. The FSL report is also awaited.

For the reasons above, there is no illegality or perversity in the impugned order passed by the Court below. The petition is dismissed. Nothing observed hereinabove shall however have any bearing on the merits of the case.

October 26, 2018
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No