

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

CRR No.48 of 2018 (O&M)

Date of Decision: November 16, 2018

Balwinder Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. P.S. Dhaliwal, Advocate
for the petitioner.

Mr. Luvinder Sofat, Asstt. AG Punjab.

Mr. Karan Garg, Advocate
for complainant/respondent No.2.

JAISHREE THAKUR, J. (Oral)

This is a criminal revision that has been filed seeking to challenge the order dated 06.11.2017 passed by the Addl. Sessions Judge, Barnala whereby, the application filed by the petitioner for issuance of direction to the IO/SHO Police Station Dhanaula to obtain the blood samples of the petitioner and get the same compared from the concerned chemical examiner with the vaginal swabs of the prosecutrix has been dismissed.

In brief, the facts leading to the instant criminal revision are that the complainant got the FIR No.42 dated 15.05.2017 registered under Sections 376, 450 of Indian Penal Code at Police Station Dhanaula on the allegations that when she was alone at home, the petitioner herein came to

her house and committed rape with her without her consent. After the registration of the said FIR, the petitioner herein was arrested and after due investigation, the challan was presented against the petitioner along with the report of the FSL that there was human semen detected on the vaginal swabs of the prosecutrix. Thereafter, an application was filed before the trial court seeking to obtain the blood samples of the petitioner and get the same compared with the vaginal swabs of the prosecutrix, however, the said application came to be dismissed. Aggrieved against the said order, the instant criminal revision has been filed.

Mr. P.S. Dhaliwal, learned counsel appearing on behalf of the petitioner contends that by the Amendment Act 2005, Section 53-A has been added to the Code of Criminal Procedure, which provides for examination of person accused of rape by medical practitioner, when a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, then it shall be lawful to make such an examination of the arrested person. It is argued that the petitioner was in custody and it was the duty of the respondent-State to comply with the provisions of Section 53-A Cr.P.C. It is submitted that immediately after the registration of the FIR, the petitioner was arrested on 18.05.2017 and was in custody and thereafter, the challan was presented on 05.08.2017. It was on this point, that the petitioner came to know that human semen has been detected from the vaginal swabs of the prosecutrix and immediately, he preferred an application to get his blood samples compared with the vaginal swabs of the

prosecutrix, which application was dismissed.

Per contra, learned counsel appearing on behalf of the respondent-State as well as complainant-respondent No.2 submit that no purpose would be achieved, at the present moment, to obtain the blood samples of the petitioner and get the same compared with the vaginal swabs of the prosecutrix since, the Forensic Science Laboratory, Punjab was not able to retain the said sample taken of the prosecutrix, as it was consumed during examination.

I have heard learned counsel for the parties and have also taken note of the letter received from the Forensic Science Laboratory Punjab, wherein it has been stated that the vaginal swabs of the prosecutrix sent for semen detection were consumed during examination and currently, they do not have any sample left, which could be used for comparison with the blood sample of the petitioner herein. Under these circumstances, it is not possible to get the body fluid of the petitioner compared with the vaginal swabs of the prosecutrix.

In view of the above, the instant criminal revision is being dismissed, leaving it open to the petitioner to take all the pleas taken in this criminal revision before the trial court at the time of final arguments and the trial court shall deal with the same, in accordance with law.

Dismissed accordingly.

November 16, 2018

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No