

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

CRM-M-6780 of 2019.

Decided on:- February 13, 2019.

Rahul Kumar @ Chawla.

.....Petitioner.

Versus

Union Territory, Chandigarh and another

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Athar Ahmed, Advocate
 for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present petition under Section 482 Cr.P.C. for quashing of FIR No.73 dated 22.02.2018 under Section 376 IPC as well as Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 registered at Police Station Sector 39, Chandigarh.

Challenge has also been laid to the order dated 10.12.2018 passed by learned Additional Sessions Judge, Chandigarh, whereby a charge under Section 376(2)(1) IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 has been framed against the petitioner.

The aforesaid FIR was registered at the behest of the prosecutrix, who, as per the FIR, is aged about 13 years, has passed 6th class, but not going to school anymore and helps her mother in household work. On 22.02.2018 at

about 01.00 P.M., when she had gone to market of Sector 25, Chandigarh, the petitioner-accused met her there to whom she already knew. He said to the prosecutrix to go out somewhere for outing and took her to Sector-40, Chandigarh on his motorcycle. Thereafter, they reached in a room where the petitioner said that he would only talk. He bolted the room from inside and forcibly removed her clothes and did wrong things with her.

After investigating the matter, the police prepared Challan and presented it before the Illaqa Magistrate. After supplying the copies of Challan and other documents to the petitioner-accused, he was charge-sheeted under Section 376(2)(1) IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 vide order dated 10.12.2018 passed by learned Additional Sessions Judge, Chandigarh.

Learned counsel for the petitioner has argued that after registration of the FIR, the prosecutrix was taken for medical examination on the same day i.e. 22.02.2018, where she had refused to go for medical examination and an undertaking to that effect was taken from the medical examination card. The prosecutrix has explicitly denied that any sexual assault was committed upon her and for this reason, she refused to get a medical test done before the doctor at Government Multispecialty Hospital, Sector-16, Chandigarh. However, by overlooking the abovesaid undisputed and admitted fact, the police has submitted the Challan on 10.12.2018. Even at the time of admitting the petitioner on bail vide order dated 09.03.2018, learned Additional Sessions Judge, Chandigarh has observed that no medical was on the file. The complainant has not supported the case of prosecution in

her statement under Section 164 Cr.PC, but still charge has been framed against the petitioner.

I have heard learned counsel for the petitioner.

The prosecutrix is a girl of about 13 years of age. The allegations against the petitioner are that he had taken her to a room, bolted it from inside and had committed the offence for which he has already been charged. The plea of learned counsel for the petitioner that the prosecutrix has not opted for medical examination so as to establish sexual assault, cannot be accepted at this stage.

Therefore, this Court finds that no ground is made out for quashing of the FIR in question and to set aside the impugned order dated 10.12.2018 passed by learned trial Court.

The present petition is, accordingly, dismissed.

February 13, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No