

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

CRM-M No.25452 of 2017 (O&M)

Date of decision: 17th May, 2019

Karnail Singh

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Manjit S. Uppal, Advocate for the petitioner.

Mr. Saurav Khurana, Dy. Advocate General, Punjab
for respondents No.1 to 4/State.

FATEH DEEP SINGH, J.

Abundant reticence by senior police functionaries coupled with intentional sluggishness for a motivated cause to ensure that a legitimate right of a victim is not bestowed upon her and fades into oblivion, is in short the hallmark of this story of unfortunate father, petitioner Karnail Singh in this case.

The allegations that have come about in this petition by the aid of Section 482 Cr.P.C. are that daughter of the petitioner, an unmarried girl below 18 years, a minor by all means, was sent to the house of respondent No.10 Harbans Kaur by the petitioner's family to help at a religious ceremony on account of closeness of the families of the two sides. It was by deceit, respondent No.10, who happens to be the lady Sarpanch of the village, colluded and connived with respondent

No.9 Sukhchain Singh of her own village and managed the physical relation of petitioner's minor daughter with respondent No.9 against her wishes in the month of June 2016 and during the intervening night of 31.03.2017 and 01.04.2017, respondent No.9 on active connivance with respondent No.10, entered the room where the victim was sleeping and defiled her against her wishes and took her objectionable photographs. Thereafter, time and again both the accused i.e. respondents No.9 and 10 in connivance with each other continuously threatened the petitioner's minor daughter. Due to fear of disgrace, minor daughter of petitioner kept on tolerating their threats and physical abuse. Upon revelation, the matter was reported to the police on 01.04.2017 but as fate would have it, the surreptitious intent of the police of Police Station City Budhlada and senior police functionaries of District Mansa under the political influence of respondents No.9 and 10 swept the incident under the carpet. Thereafter, complaint was moved in writing on 04.04.2017 by adopting another recourse available to the complainant side by virtue of Section 154(3) Cr.P.C. The police having failed in its duty by mandate of Section 154 Cr.P.C. with a mala fide intention to ensure defeating initiation of action against the culprits at the instance of then Senior Superintendent of Police, Mansa, marked an inquiry and thus, entrusted the same to then Superintendent of Police (H), Mansa thereby prolonging the matter and

keeping this vital crime in limbo. This is how the very essence which have been brought about upon amendment of Section 173 Cr.P.C. with effect from 31.12.2009 whereby sub-section (1-A) an effort of the statutory legislation was frustrated and defeated, and had thrown off to the winds the very purpose and intent of bringing about such an amendment, which is reproduced below:-

“173. Report of police officer on completion of investigation-

<i>XXXX</i>	<i>XXXX</i>	<i>XXXX</i>
<i>XXXX</i>	<i>XXXX</i>	<i>XXXX</i>

(1-A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer-in-charge of the police station.”

Precisely, as is there in the allegations of the petitioner that the official respondents had failed to do their legitimate duty under the law and has also levelled accusations of bribery and falsehood to them and which led to filing of the present petition.

During the pendency of the petition, faced with innocuous situation to save their skin, as one can discern, belatedly submitted the report on 31.05.2017 and thereafter, the present case by way of FIR No.45 under Section 354-A IPC pertaining to Police Station City Budhlada, District Mansa had come about on 02.06.2017. The official

respondents in their reply had admitted the occurrence having taken place but under the guise of there being no medico-legal examination of the victim, have sought to claim that upon completion of investigations, challan under Section 354-A IPC has been filed. Thus, from this, it is quite evident that the official respondents, the police of District Mansa had shockingly hid under this façade and oblivion to the mandatory provisions of Section 21 of Protection of Children from Sexual Offences Act, 2012 and thus have not only helped the accused, frustrated their prosecution for heinous crime but were also instrumental in extensively washing off the vital and valuable evidence. Thus, by this all these police officers need to be dealt for violating the mandate of Section 21 of Protection of Children from Sexual Offences Act, 2012 besides being exposed to strict administrative action under the rules and the law. Furthermore, the provisions of Section 164-A as well as 173(8) Cr.P.C., the latter could not restrict them to holding further investigations adducing the evidence and filing fresh supplementary challan to this effect. It is nobody's case that the victim never consented to her being medically examined and rather no efforts appear to have been made to get her medically examined, apparently is a slur on the administration of justice by these police officials.

Since the main claim of the petitioner is re-investigation of the case, at this juncture it would not be too preposterous a proposition though nothing tangible would come up from a belated medico-legal examination but certainly there could be telltale signs of this defilement of a minor victim and even her testimony can be sufficient and the police is not so powerless that it cannot resort to the provisions of Section 173(8) Cr.P.C. even at this juncture. Even otherwise, a three Judge Bench of Hon'ble the Supreme Court of India in '**State of Rajasthan vs. N.K.**' **2000(2) RCR(Criminal) 471** has categorically laid down the proposition that a statement of victim of a rape stating on oath that she was forcibly subjected to sexual intercourse or that the act was done without her consent, has to be believed and accepted like any other testimony. Similar view was expressed in '**Ranjit Hazarika vs. State of Assam**' **1998(8) SCC 635** where their Lordships of Hon'ble the Apex Court have laid down that in such cases of abuse of female, inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty; and therefore, to the mind of this Court, does not warrant that there ought to be a medico-legal examination of the victim to bring about charges of rape. Furthermore, the stand of the Inspector General of

Police, Bathinda Range under which the District of Mansa falls, has cleared the air that relevant provisions of law have been put in place. In the light of what has been detailed and discussed above, it would be incumbent upon the police to have recourse to these provisions of law and file necessary further report so as to repose confidence of the people in the administration of justice.

Since as is the stand of the State that trial is underway, copy of this order be sent to the Court concerned as well as concerned Judicial Magistrate so as to ensure there is due adherence of the law of the land before pronouncement of the judgment.

A copy of this order be sent to the Director General of Police, Punjab for initiation of appropriate criminal as well as administrative action against the erring police officers/officials commensurate with their misdemeanor and misconduct, report of which be sent to this Court within one month of the receipt of copy of this order which would be served through the State counsel.

Disposed off.

(FATEH DEEP SINGH)
JUDGE

May 17, 2019

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No