

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : May 14, 2019

1. Criminal Misc. No. M-27024 of 2017 (O&M)

Satywan

....Petitioner

versus

State of Haryana and others

....Respondents

2. Criminal Misc. No. M-38747 of 2018 (O&M)

Rohtash

....Petitioner

versus

State of Haryana and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Sandeep S. Majithia, Advocate, for petitioner
in CRM-M-27024-2017

Mr. Susheel Gautam, Advocate, for petitioner
in CRM-M-38747-2018

Mr. Baljinder Virk, DAG, Haryana for the State
for respondents no. 1 to 3

Mr. Ramesh Sihdhar, Advocate for
respondent no. 4 in CRM-M-27024-2017

Fateh Deep Singh, J. (Oral)

The above two petitions one bearing CRM-M-27024-2017, titled Satywan vs State of Haryana and others, has been filed by petitioner seeking directions to the official respondents to conduct proper investigations in case bearing FIR No. 590 dated 3.7.2017, under Section 376 IPC and under Section 12 of the Protection of Children from Sexual Offences Act, 2012, Police Station Chandni Bagh, District Panipat, on the basis of representation of the petitioner dated 27.6.2017 Annexure P/3 (hereinafter referred to as the first petition). The second petition is by Rohtash whereby by virtue of exercise of provisions of Section 482 Cr.P.C. the petitioner has sought quashing of aforesaid FIR regarding which trial is pending in the court of learned Additional Sessions Judge, Panipat (hereinafter referred to as the second petition). Since both these petitions have come in the same very FIR and for the sake of brevity and to make the things more clear are being taken up and decided together.

Heard counsel for the respective parties and perused the records.

Before going into the relative merits of the parties to this petitions, it is very much essential to unearth the background of this lis. One Reena Sharma aged 35 years wife of Pawan Sharma who

happens to be the complainant in the FIR admittedly developed differences on account of which the complainant Reena Sharma and her husband Pawan Sharma admittedly are living separate. The complainant claims that she is running a shop and during the course of events few days prior to the registration of the present case, she received injuries in an accident and petitioner Satywan alias Bani came to her rescue and often started helping her at her shop. It is during this interaction between the two, the complainant alleges that she developed physical relations with above said Satywan. The complainant further states that the accused Satywan often used to blackmail her and while she was away and on her return her daughter who is a minor has confided in her that accused Satywan had a bad eye on her. It is during the course of events the complainant and Satywan entered into squabbles on the basis of which the FIR in question was got registered. On the other hand, it is the stand of Satywan that the complainant initially used to work at his shop and thereafter left the same in September, 2016 and one fine day had called Satywan to her house and where she forced him into physical relationship. It needs to be reiterated here that Satywan petitioner is claimed to be married with Reena Devi and it is earlier CRM-M-22338-2017 was filed by Reena Devi and Satywan against the State of Haryana and Umed Singh and his wife Nirmala

who happens to be the parents of above said Reena Devi. In the said petition, the couple had sought protection of life and personal liberty at the hands of the parents of the lady as they had entered into a wedlock against wishes of the parents of the lady. On this petition orders dated 21.6.2017 was passed by this Court. It is also there that above said Reena Devi wife of Satywan had also filed complaint against present complainant Reena Sharma on 27.6.2017 claiming that Reena Devi had entered into wedlock with Pawan Sharma on 16.6.2017 alleging that Reena Sharma present complainant had moved false complaint on 24.5.2017 whereby allegations have been levelled against husband of Reena Devi and has alleged that above said Reena Sharma had threatened both the husband and the wife to desist from getting married because of earlier amorous relationship between Satywan and Reena Sharma. Petitioner Satywan in first petition has sought proper investigations into the FIR keeping in view his representation dated 27.6.2017.

During the course of hearing in the first petition, it is argued by the learned State counsel Mr. Baljinder S. Virk that the investigations in this case have already been completed and report under Section 173 Cr.P.C. had been submitted in the Court where charges have been framed and the trial is under way. The same could not be displaced by the counsel for the petitioner and thus, in

view of the seriousness of the allegations and intricate wranglings and since the trial is under way, it would be too preposterous to seek relief of proper investigations in this case at this juncture when the trial court is seized of the matter. More-so such a prayer would also tantamount to infringing upon the jurisdiction of the trial court of any subsequent investigations and if it is legally necessitated it is within the powers of the court to order further investigations by virtue of Section 173 (3) Cr.P.C. as well as by virtue of Section 173(8) Cr.P.C. Thus, at this juncture this Court needs to refrain from taking cognizance of the averments of the petitioner to that effect.

Accused-petitioner Rohtash in his petition under Section 482 Cr.P.C. had sought quashment of the FIR on the grounds that neither any role is attributed to him in the commission of offence nor he is named in the FIR.

Appreciating submissions of Mr. Susheel Gautam, counsel for the petitioner and that of learned State counsel Mr. Baljinder S. Virk, it is categoric stand of the learned State counsel and which is well reflected in the statement under Section 164 Cr.P.C. of the minor girl aged 17 years, daughter of the present complainant recorded before the learned ACJM Panipat on 14.7.2017 that at the time when this minor girl was being abused inside the house by principal accused Satywan's Tau's son i.e. the

present petitioner was standing outside as guard so that no body comes inside and thus, the very element of complicity in this crime is prima facie shown in the investigations attributed to the petitioner Rohtash. The worth of this evidence is subject to outcome of the trial which is under way and petitioner Rohtash too is facing the trial. Keeping in view the sensitivity of the allegations and that the Court at this juncture when the trial is under way cannot comment upon the evidence that has been gathered in the investigations as it might prejudice the case of the parties. Hon'ble Supreme Court in the case of **'State of Haryana and others v. Ch.Bhajan Lal and others'** 1992 **AIR SC 604**, has made the following observations:-

- “(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
- (2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code;
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in

support of the same do not disclose 265 the commission of any offence and make out a case against the accused;

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code;

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) Where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in [the Code](#) or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Counsel for the petitioners could not convince this Court

how the case of any of these petitioners fall within these categories which could necessitate intervention by this Court. Finding no merit, both the petitions stand dismissed.

May 14, 2019
'tiwana'

(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No