IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-36484-2017 (O&M)
Date of decision: 25.07.2019

Vinod Kumar

….Petitioner

Versus

U.T. Chandigarh and others

….Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Amrita Garg, Advocate for
Mr. Arjun Sheoran, Advocate
for the petitioner.

Mr. Rajiv Sharma, Addl. PP, U.T. Chandigarh.

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ARVIND SINGH SANGWAN, J.

Prayer in this petition is for issuance of directions to the respondents to register an FIR under Section 154 of the Code of Criminal Procedure (for short 'Cr.P.C.') against the accused persons.

Learned counsel for the petitioner submits that the petitioner is a victim of exploitation by the police administration and his cousin sister was allegedly raped by five Constables of Chandigarh Police and thereafter, the petitioner and his cousin sister lodged FIR No.507 dated 19.12.2013 under Sections 34, 341, 354, 376, 376-D IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012, at Police Station Sector-11,

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Chandigarh. It is further submitted that thereafter, the petitioner and other held demonstrations in this regard but the petitioner, who was working as Teacher on contract basis, was terminated from the service under the influence of the police officials.

Learned counsel for the petitioner has submitted that the police officials, who are accused in the FIR, are threatening the petitioner and therefore, he has shifted to Mumbai. Learned counsel has laid emphasis on an incident of 06th July, 2014, in which the petitioner was riding a scooter and when reached at the roundabout/crossing of Sector-44, Chandigarh, he was stopped by four policemen and he was physically assaulted. They caught him hold with his neck, hips and even touched his private parts in a sexually explicit manner. Thereafter, the petitioner was dragged in a police van and was given beatings.

This petition is pending since 2017 and reply by way of affidavit of SHO, Police Station Sector-34, Chandigarh dated 29.01.2018 is on record, in which it is stated that the police has conducted an inquiry but the petitioner never came to join the inquiry, despite giving him notices and calling him on his mobile No.9888270253. Later on, even the Senior Superintendent of Police, U.T. Chandigarh looked into the allegations levelled by the petitioner. In response to some proceedings before the National Human Rights Commission, an inquiry was conducted by the Inspector General of Police, U.T. Chandigarh and vide memo dated 05.12.2014, it was informed to the National Human Rights Commission, New Delhi, as under: -

"... In the instant complaint Sh. Vinod Kumar r/o #2512/1,

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Sector-49/C Chandigarh has alleged that he was coming back home on his scooter from Khuda Lahora. He was signalled by two boys for lift. He dropped one of them in Sector-44, Chandigarh and other one in Sector-45, Chandigarh. He further alleged that he was stopped in Sector-45 by cops and asked him about his credentials. One of the cop recognized him as the cousin of the victim of Khuda Lahora rape case, after which they started abusing and thrashed him. Further, he alleged that police personnel took him to forest area where they removed his clothes and made attempt to sexually harass him. When he objected, the alleged took him to the Police Station Sector-34 and said that he was brought there for the offence of triple riding and not carrying a valid licence. He further alleged that a woman cop present at the Police Station spit on his face before thrashing him. He was left off late night.

The matter has been looked into by ASP/South, who has reported that from the perusal of statements as well as documents taken on record, it revealed that Sh. Vinod Kumar and his friend were wandering in Park, Sector-33, Chandigarh under suspicious circumstances. On noticing this, ASI Avtar Singh intercepted them and asked about their credentials but they could not give satisfactory reply with regard to their presence in the park at late hours and even not produced documents of Activa Scooter and showed desperate attitude

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against ASI Avtar Singh. Nothing wrong, as alleged in the complaint, noticed during enquiry and it is found to be baseless and concocted. Moreover, the complainant was duly challaned by the local police for not carrying the documents of his vehicle and he was also contacted on his mobile No.98882720253 thrice and asked to join enquiry of the complaint but he did not turn up.

Under the circumstances, explained above, neither any lapse on the part of police officials noticed nor any action against police officials is warranted at this stage."

Learned counsel for U.T. Chandigarh has submitted that during the enquiry, the allegations levelled by the petitioner regarding the incident of 06th July, 2014 were found to be false, as no such incident took place. Learned counsel has placed on record copy of the judgment dated 11.11.2014 and the same is taken on record as Mark 'A'. As per this judgment, the accused persons (who are also named in the present complaint), after facing the full length trial in aforesaid FIR No.507, were acquitted by the Additional Sessions Judge-cum-Judge, Special Court, Chandigarh. The trial Court has recorded a finding that though it is alleged in the FIR that the prosecutrix was a minor but she was found above 18 years of age.

Learned counsel for U.T. Chandigarh has argued that petitioner Vinod Kumar has appeared as PW15, during the trial in FIR No.507 and after discussing the entire evidence, the trial Court recorded the following findings: -

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".....Coming to the case in hand, I find that the testimony of the prosecutrix does not inspire confidence. She has come forward with different versions at different times. In her complaint Ex.P.8 she stated that Some police personnels molested her. They also threatened to eliminate her and her parents. They were five in number out of which two of them committed rape on her. The other police personnel asked her to keep physical relations with her for six months otherwise he will harass her daily. He continued frightening her to kill her. The rest of the three police personnel intercepted her way and they tried to blackmail her. However, she would manage to escape from them. They also threatened her that nobody could do any harm to them. They forcibly made her sit in a vehicle and took her to an isolated place. They committed rape on her. When she tried to escape from them before committing rape on her, he thrashed her and pointed his revolver to her head. The three police personnels also teased her. The police personnels of the PCR chased her and administered some drug to her after the rape. Whenever she refused to take the drug, they would threaten to eliminate her. However, when she appeared in the witness box as PW-5 She deposed on oath that she was in 10th standard. She appeared for her final examination for class 10th in March 2014. She only wants to say that she had love affair with Akshay only. She had no relation with other accused persons. She had all relations

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with accused Akshay. By relations she means every relation including rape. The prosecutrix pointed towards one of the accused present in the court stating that accused who is wearing blue T-shirt is Akshay and she identified him. She does not know other accused present in the court. She does not identify other accused present in the court. She only identifies accused Akshay present in the court. She wants to marry accused Akshay and he is also ready to perform marriage with her. The other four accused did not commit anything wrong with her. She had relations with only accused Akshay. She only wishes that her marriage be solemnized with accused Akshay. She deposed that accused Akshay never made physical relations with her forcibly and he never committed rape with her. As her parents came to know about their relations therefore, some problem occurred in their relations.

At this stage on the request of learned Special Public Prosecutor, the prosecutrix was declared hostile and was allowed to be cross-examined by Learned Special Public Prosecutor.

In her cross-examination by learned Special Public Prosecutor for the State she deposed that her date of Birth is 29 March 1996. She was studying in GMSSS, Khuda Lahora. She denied the suggestion that her date of birth recorded in the school record as 30 August 1996 is correct. She denied the

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suggestion that her date of birth is 30.8.1996. She denied the suggestion that her date of birth is not 29.3.1996. She has her vaccination card where her date of birth is written as 29.3.1996. She had made a complaint to the police. She deposed that she had given complaint but her complaint was not regarding commission of rape by accused. She was confronted with her statement Ex.P.8 but she denied the contents of the same. She deposed that anybody who is forced by police or anyone else can write anything, however, she does not know what is written in Ex.P8.

In her cross-examination by learned counsel for the accused she admitted that she does not know and cannot identify any one among the accused present inside the court except Akshay. She admitted that none of the accused had committed any sort of wrong act with her. She cannot deny or admit that she was born on 29.3.1995 but not on 29.3.1996. She admitted that she has seen the 4 other accused except Akshay for the first time today in the court. She admitted that she had gone to police to complain that she had love affair with Akshay as such she wants to marry him. She admitted that this fact came in the knowledge of her parents and thereafter, hue and cry started in the society. She admitted that she was pressurized by the public to narrate and write the facts which never happened with her and accordingly she was forced to write the complaint and was

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also compelled to make a false statement before the Magistrate. She admitted that when she was brought to District Court premises to get her statement recorded before the Magistrate, thousands of people along with various political parties with banners were agitating outside the court room and were directing her to spell out before the Magistrate whatever they have told to her and accordingly she suffered a false statement under their pressure. At the time when she was medico legally examined, she was escorted by a councilor. She admitted that many political parties were mounting pressure upon her to name the persons as per their dictates in this case. She admitted that the so-called political leaders, social workers and the media mounted pressure upon her to make out a big issue and to level serious allegation whereas the things were not in the way and shape as it has been projected in her false statements. She admitted that even baba Ramdev had also approached her family. She deposed that on account of the persistent interference of the above mentioned organizations, a very serious impact was there on her reputation and the reputation of her family. Many used to come to her house inquiring about the matter. The people started saying that it is the same house where a girl who was gang raped by 5 persons due to this reason her grandfather sold that house. Nobody was giving the house to them on rent due to the aforesaid reason. Even in the school

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eyebrows were raised upon her. In fact the issue was of a love affair which was given a different colour for their selfish interests. She admitted that whatever she was made to write by the people and police on the back of photograph, the same was written by her on their dictates.

So far as she understands and recollects her date of birth might be 29.3.1995. She was having physical relation with accused Akshay but the same was not forcible rather the same was consensual. The prosecutrix occupies the place of paramount importance in the realm of prosecution witnesses but on perusal of her statement I find that she did not utter even a single word against the accused. A perusal of her statement reveals that she has given a clean chit to the accused and has not at all supported the prosecution version. She was confronted with her respective statements but she denied the same. In these circumstances, there is no cogent and convincing evidence on record to connect the accused with the alleged offences. Needless to say that it was only prosecutrix who could have substantiated the prosecution version but she has failed to do so. In these circumstances, it would neither be safe nor in the interest of justice to hold the accused guilty.

Thus from the bare perusal of the statement of prosecutrix, it seems that she is not clear about her stand so her statement is held to be untrustworthy, not reliable, incredible and

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unconvincing and its benefit goes to the accused.

There is no medical evidence on record to prove the fact that the accused has sexually assaulted the prosecutrix forcibly. It has come in evidence of PW-24 Dr. Aasha Kiran that no external mark of fresh injury seen on the person of the prosecutrix. CFSL report Ex.123 is also not helpful to the prosecution to prove the charges against the accused. I am of the considered view that ingredients of Sections 120-B, 376(2) read with section 120-B, 341 read with section 120-B, 354-A read with section 120-B, 354-D, read with section 120-B, 506 read with section 120-B IPC and section 6 & 12 of POCSO Act read with section 120-B IPC are not proved against the accused.

Remaining witnesses as discussed above are formal in nature who have not deposed anything incriminatory against the accused. The statement of PW-15 Vinod Kumar is hearsay evidence so, the accused cannot be held guilty and convicted on the basis of the same.

Now the most crucial aspect of the case of the prosecution is age of the prosecutrix. As per complaint Ex.P.8 at the time of commission of the aforesaid offence the prosecutrix was 17 years old only. In order to prove the age of the prosecutrix the prosecution has examined PW-1 Jagdish Kaur, Lecturer, Govt. Senior Secondary School, Khudda Lahora, Chandigarh, PW-5 prosecutrix herself, PW-22 Dr. Ruby Oberoi and PW-26 Dr.

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Surinder Verma. PW-1 Jagdish Kaur has deposed on oath that as per the school record the date of birth of prosecutrix is 30.8.1996. She proved the relevant entry of admission and withdrawal register as Ex.P.1 and the corresponding certificate as Ex.P.2 on file. PW-5 prosecutrix has deposed on oath that she is 17 years old and her date of birth is 29.3.1996. She denied that her date of birth recorded in the school record as 30.8.1996 is correct. She deposed that she cannot deny or admit that she was born on 29.3.1995 but not on 29.3.1996. She deposed that so far as she understands and recollects her date of birth might be 29.3.1995. PW-22 Dr. Ruby Oberoi, Medical Officer, Radiology, GMSH, Sector-16, Chandigarh has deposed on oath that the radiological bone age of prosecutrix was approximately 15-16 ½ years as per galstaun study. She proved her report as Ex.P.79 on file. In her cross-examination she deposed that variation of two years of age on either side of 15-16 ½ years cannot be ruled out. PW-26 Dr. Surinder Verma, MDS, Dental Surgeon, GMSH, Sector16, Chandigarh has deposed on oath that on examination in his opinion the dental age of the prosecutrix was approximately 14- 16 years. He proved his report Ex.P.120 on file. As per settled proposition of law, the benefit of age on higher side should go to the accused and thus as per medical opinion also the prosecutrix was 16 ½ years of age at the time of alleged occurrence. Even in her statement

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under section 164 Cr.P.C Ex.P.4 before the magistrate she disclosed her age as 17 years at the time of the occurrence. The testimony of PW-1 Jagdish Kaur and PW-5 prosecutrix shows that there is contradiction regarding the age recorded in the school record as well as own deposition of the prosecutrix. This goes to show that prosecution has not been able to conclusively prove the age of the prosecutrix on the date of the occurrence and it is settled preposition of law that when there is diversion of age the benefit of doubt should go to the accused. Hence keeping in view the ossification test report Ex.P.79 and the dental age of the prosecutrix as per report Ex.P.120 coupled with the oral statement of PW-22 Dr. Ruby Oberoi and PW-26 Dr. Surinder Verma the benefit of variation of age on the higher side is given in favour of the accused and this court has no hesitation to hold that the prosecutrix was more than 18 years of age at the time of incident and was not minor.

As a result of aforesaid discussion, it is held that the prosecution has utterly failed to prove the charges against the accused. Resultantly, the accused are acquitted of the charges framed against them. The case property, if any be dealt with in accordance with the provisions of law. File be consigned to the record room after due compliance."

Learned counsel for U.T. Chandigarh has further argued that not only the version of the prosecutrix was disbelieved but with reference to

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statement of the petitioner/PW15, it was held that his statement is only a hearsay.

After hearing learned counsel for the parties, I find no ground to issue any direction in the case.

(a) It is apparent that the petitioner has filed the present petition on the pretext that his cousin sister is prosecutrix in FIR No.507 registered against five police personnel, who are harassing the petitioner. A perusal of judgment in above FIR shows that while passing the judgment of acquittal, the trial Court recorded a finding that the prosecutrix wanted to marry one of the accused Akshay. It is also recorded in the judgment that the prosecutrix was a declared hostile witness and was later on cross-examined by the counsel for the accused persons and stated that she wanted to marry Akshay and other four accused did not commit any wrong with her.

(b) This petition was filed in September, 2017 and petitioner intentionally concealed the judgment of acquittal dated 11.11.2014 from this Court.

In view of the above, it is apparent that the petitioner knew since the time of registration of FIR that other four accused, except Akshay, have been falsely named by the prosecutrix and the petitioner and therefore, in order to cover up his case, he has filed the present petition by citing an incident, dated 06.07.2014 that he was physically assaulted by these police officials.

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(c) Even the complaints/representation given by the petitioner are duly enquired and replied vide report dated 05.12.2014 from the office of Senior Superintendent of Police, U.T. Chandigarh (Annexure R-2). A perusal of the report submitted by the Inspector General of Police, U.T. Chandigarh, as noticed above, shows that on a thorough enquiry, it was found that no such incident had happened.

(d) The present petition has been filed by creating a false incident and in that process, the petitioner, by levelling false allegations against the police officials, has forced the senior police officials to conduct an enquiry, in which no evidence was found to support the version of the petitioner, especially in view of the judgment of acquittal dated 11.11.2014 passed by the Addl. Sessions Judge-cum-Judge, Special Court, Chandigarh, which has been deliberately concealed, while filing the present petition on 15.09.2017.

In view of the above, I find that the present petition is nothing but misuse of process of law and the same is accordingly dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No

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