

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-36861 of 2017 (O&M)

Date of Decision: 26.02.2019

Gurbhej Singh

...Petitioner(s)

Versus

State of Punjab & another

...Respondent(s)

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

Present:- Mr. K.B. Raheja, Advocate
for the petitioners.

Mr. Rana Harjasdeep Singh, DAG, Punjab.

Mr. Nakul Sharma, Advocate
for respondent no.2.

HARI PAL VERMA, J. (Oral)

Criminal Misc. No.43948-2018:

The application is allowed subject to all just exceptions. FIR
Annexure R-1 is taken on record.

Criminal Misc. No.M-36861 of 2017:

Prayer in the present petition filed under Section 482 of the
Code of Criminal Procedure, 1973 is for quashing of FIR No.182 dated
02.09.2017 under Section 376 IPC registered at Police Station Ghal Khurd,
District Ferozepur.

The aforesaid FIR was registered at the behest of respondent no.2-complainant. As per the FIR, respondent no.2 was in friendship with the petitioner-accused for the last about 5-6 years. The petitioner committed rape upon her on the pretext of solemnising marriage with her. The complainant had also registered FIR No.109 dated 05.08.2016 under Section 376 IPC Police Station Ghal Khurd against the petitioner and in the said case, the petitioner was arrested and faced trial. However, the petitioner prevailed upon the complainant in persuading her and had stated that in case he would come out of the prison, he will solemnise marriage with the complainant. Therefore, the complainant did not support the case of the prosecution and was accordingly, declared hostile, which led to acquittal of the petitioner vide judgment dated 06.03.2017 passed by learned Sessions Judge, Ferozepur.

Learned counsel for the petitioner has agued that once the petitioner has been acquitted for similar allegations in FIR No.109 dated 05.08.2016 under Section 376 IPC Police Station Ghal Khurd, the present FIR is liable to be quashed, as the allegations against the petitioner in the present case are more or less similar in nature. In that case, the complainant has not supported the case of the prosecution and therefore, he has rightly been acquitted by learned Sessions Judge Ferozepur vide judgment dated 06.03.2017. Therefore, the present FIR is liable to be quashed.

Learned counsel for the respondent-complainant has argued that in FIR No.109 dated 05.08.2016 under Section 376 IPC Police Station Ghal Khurd, the petitioner has been acquitted for the reason that while the petitioner was in jail, he contacted the complainant and had assured her that

the moment he comes out of the jail, he will solemnise marriage with her. However, after coming out of jail, he again physically exploited the complainant and committed rape upon her on the pretext of marrying her. Petitioner started making phone calls on her mobile phone No.87270-16405 from his mobile phone no.88721-10242. On 16.03.2017, the petitioner took her from her village to Moga on the pretext of solemnising marriage with her, but on reaching there, he took her to a hotel and stated that as the priest of the Gurudwara has gone out, they cannot marry on that day. He again made physical relations with her in the hotel despite her refusal. Similarly, on 19.04.2017, the petitioner took her to Gill Lottery Hotel, Moga and forcibly committed rape upon her, despite her refusal. Learned counsel for the respondent submits that it is on different facts and occurrences, the present FIR in question has been lodged.

On the other hand, learned State counsel, on instructions from SI Pritam Singh, submits that vide order dated 10.10.2017, the proceedings in the present FIR in question were stayed, as the police could not investigate the matter. In case the aforesaid order is vacated, the police would investigate the matter thoroughly and necessary follow up action would be taken accordingly.

Having heard learned counsel for the parties and considering the fact that the petitioner was acquitted in FIR No.109 dated 05.08.2016 under Section 376 IPC Police Station Ghal Khurd on account of the incidents occurred prior to registration of that FIR, and the present FIR i.e. FIR No.182 dated 02.09.2017 under Section 376 IPC registered at Police Station Ghal Khurd relates to subsequent events, which need to be gone

into by the police, therefore, this Court finds that the matter requires investigation by the police. It has also come on record that another FIR i.e. FIR No.231 dated 06.10.2018 under Sections 341/506 IPC registered at Police Station City Faridkot, District Faridkot has also been registered at the behest of the respondent-complainant with the allegations that the petitioner has extended threats to the complainant to withdraw her complainant. But this Court is not inclined to make any observation in the said FIR, as the limited prayer in this petition is for quashing of FIR No.182 dated 02.09.2017 under Section 376 IPC registered at Police Station Ghal Khurd.

At this stage, counsel for the petitioner seeks withdrawal of the present petition and undertakes that the petitioner shall join the investigation.

Dismissed as withdrawn with a direction that the petitioner shall cooperate in the investigation and the police shall make an endeavour to conclude the investigation within a period of six months.

However, it is made clear that the observations made hereinabove shall be confined to the present petition only and the same shall not be construed as any expression on the merits of the case.

February 26, 2019
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No