

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

CRM-M-40386 of 2015.

Decided on:- August 28, 2019.

Amarjot.

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

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

Present:- Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. Sukhbeer Singh, A.A.G., Punjab.

HARI PAL VERMA, J. (Oral)

The petitioner has filed present petition under Section 482 Cr.P.C. impugning the order dated 10.08.2015 passed by learned Additional Sessions Judge, Amritsar, whereby the revision petition filed by the petitioner against the order dated 19.08.2014 passed by learned Sub-Divisional Judicial Magistrate, Ajnala, was dismissed.

Learned counsel for the petitioner has argued that there are serious allegations against respondent No.2-accused of having committed the offence of cheating and rape upon the petitioner. Similarly, the respondent No.3, who is wife of respondent No.2 was involved with him in criminal conspiracy against the petitioner for which both the accused were required to be summoned to face trial under Section 376 IPC as well. However, the Courts below have not considered the evidence produced by the petitioner regarding commission of offence under Section 376 IPC.

He has further argued that the Courts below have not considered the medico-legal report (MLR) of the petitioner-complainant, wherein the doctor has opined that the possibility of sexual intercourse cannot be ruled out, but the final opinion will be given on receipt of the report of chemical examiner. On the basis of MLR, there was sufficient material available with the Courts below to summon the respondents-accused to face trial for offence under Section 376 IPC. He has referred to the complaint filed by the petitioner under Sections 376, 420 and 120-B IPC to contend that the accused has been sexually exploiting the complainant.

Having heard learned counsel for the parties and perusing the paper book, this Court finds that the complainant has failed to prove that she was raped by respondent No.2-accused, as in the complaint, no such date, month and year of the incident has been mentioned. Moreover, in the cancellation report submitted by the prosecution on 06.08.2014, the allegation of rape is badly missing. In this regard, the relevant paragraph No.9 of the order dated 19.08.2014 passed by learned Sub-Divisional Judicial Magistrate, Ajnala is reproduced as under:

“9. After going through the first statement of complainant Amarjot Kaur, enquiry report dated 04.01.2014, copy of enquiry report dated 23.12.2013, copy of enquiry report dated 17.12.2013 copy of agreement dated 09.11.2012 executed by accused Hardeep Kaur, copy of agreement to sell dated 10.01.2012 executed by complainant Amarjot Kaur in favour of one Gurwinder Kaur and the evidence led in complaint case, this Court is of the view that complainant has failed to prove prima-facie that she was raped by accused Jaswinderjit Singh because

no date, month and year of the same is mentioned and complainant has not alleged the commission of rape by accused Jaswinderjit Singh in the earlier complaint moved by her & the medical evidence also does not prove the same, but the above documents and the evidence led on file by the complainant prove prima-facie that accused Jaswinderjit Singh and Hardeep Kaur have taken Rs.10 lacs from the complainant to send her abroad and copy of agreement executed by Hardeep Kaur proves prima-facie that she had agreed to repay Rs.9,75,600/- to complainant i.e. Rs.2 lac on 20.11.2012 and Rs.7,75,600 on 10.05.2013, but there is no proof regarding repayment of the above amount, meaning thereby, there is sufficient evidence to prove prima-facie that accused have cheated the complainant by taking Rs. 10 lacs from her on the pretext of sending her abroad with criminal conspiracy of each other, therefore, this Court by taking cognizance hereby summons accused Jaswinderjit Singh and Hardeep Kaur to face trial under Sections 420 read with Section 120-B of IPC. It be registered as State case.

In view of above observations, the present cancellation report is disposed off with finding that no commission of offence under Section 376 of IPC is made out against accused no.1 Jaswinderjit Singh. Hence, both the accused namely Jaswinderjit Singh and Hardeep Kaur are ordered to be summoned to face trial under Section 420 read with Section 120-B of IPC.”

Moreover, while dismissing the revision petition of the petitioner-complainant, learned Additional Sessions Judge, Amritsar vide impugned order dated 10.08.2015 has observed in paragraph No.7 of the order that even otherwise, the complaint is pending before the trial Court and the complainant-revisionist would get ample opportunity to prove her case by

leading cogent and convincing evidence. However, if the complainant will adduce evidence in the trial court as per provisions of Cr.P.C and on adducing such evidence, the Court can consider the fact whether evidence is sufficient to convict accused under Section 376 IPC and the Court will take appropriate action in accordance with law.

Therefore, this Court finds that the Courts below have rightly rejected the prayer of the petitioner to summon the respondents No.2 and 3 to face trial under Section 376 IPC as well.

Accordingly, the present petition, being devoid of any merit, is dismissed.

August 28, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No