

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-32505 of 2019

Date of Decision: 04.09.2019

Sukhwinder Kaur

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

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

Present:- Mr. Saurav Bhatia, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

Petitioner has filed this petition under Section 482 Cr.P.C. for setting aside the order dated 24.07.2018 (Annexure P-4) passed by SDJM, Gulha in FIR No.120 dated 03.07.2018 under Sections 365 IPC and Section 376-D (added later on) registered at Police Station Gulha, Kaithal (Annexure P-1), whereby her second application for recording statement under Section 164 CrPC was dismissed.

Briefly stated, the aforesaid FIR was registered at the behest of Rajesh Kumar, who is husband of the petitioner. As per the FIR, the petitioner, who is married with Rajesh Kumar for the last about 7 years, have two sons namely Abhishek aged about 3 years and Armandeep aged about 5 years. On 30.06.2018, the family members of the petitioner were sleeping after taking their meal. When they woke up in the morning, they found that wife of the complainant (the petitioner herein) and his younger

son Abhishek were missing from home. The complainant enquired from the neighbours about the whereabouts of the petitioner and Abhishek, but did not find any clue about them. The petitioner had taken Rs.40,000/- in cash and 2½ tola jewellery with her. The complainant suspected that his wife (the petitioner) had been abducted by his neighbour Dalbir Ram son of Joginder Ram and his companions. However, after about a week, the petitioner came back and appeared before the police. Accordingly, her statement under Section 164 CrPC was recorded on 06.07.2018, wherein in response to questions nos.3 and 4, she has stated as under:-

“From last 3 years, I am married and my in-laws used to tease me a lot. They used to mentally torture me. They tease me by adding my name along with any unknown person. After getting annoyed from the atrocities of my in-laws, I went to Dukhniwaran Sahib along with my younger child on 30.06.2018. I stayed there for 5-6 days and this evening I returned back home. I am very much tensed and I am having fear from my in-laws and my parents, so should be sent to safe home of Nari Niketan.”

xx xx xx xx xx

I left the house with my own will and came back with my own will. I neither want to go to my in-laws nor my parents. I have no place else. I am having fear so I should be sent to Nari Niketan or safe home.”

The learned Magistrate while recording the statement made by the petitioner under Section 164 CrPC made it clear to her that she (petitioner) is not bound to make such statement, however, if such statement is made, the same may be used as evidence against her. The

Magistrate has further recorded that the statement so made by the petitioner was voluntary and the same was signed by the petitioner.

Counsel for the petitioner has argued that the aforesaid statement was made by the petitioner under pressure, as she was threatened by the accused that in case she (petitioner) makes any statement against the accused Dalbir Ram and Preet, who raped her (petitioner) against her will, they will kill her (Sukhwinder Kaur) and her son (Abhishek). The petitioner got afraid and therefore, started obeying them (accused). The statement made by her before the Magistrate on 06.07.2018 was under pressure and was not voluntary. On 05.07.2018, the accused Dalbir Ram and Preet had threatened the petitioner to tell the police that she had gone to Dukhniwaran Sahib Gurudwara after being harassed by her (petitioner's) family members. Due to fear, she made a statement before the police that she had gone at her own will and similarly, she had come back to her house on her own will. Thus, statements made by the petitioner before the police as well as the Magistrate were made under threat of the accused persons, who had threatened to kill her and her son. On 08.07.2018, the petitioner had called her father from Nari Niketan and had stated that she is in some problem and she be taken away to her home. Accordingly, her father moved an application before learned Magistrate for her release from the Nari Niketan and she was ordered to be released from the Nari Niketan by learned Magistrate, Gulha on 11.07.2018. Thereafter, she narrated the whole story to her father and husband. She also told them that her statement under Section 164 CrPC was made under threat and pressure of the accused persons and such statement was not voluntary.

He has further argued that since the earlier statement of the petitioner was made under threat and pressure of the accused persons, it had become necessary for her to get her second statement recorded under Section 164 CrPC. He has referred to amended provisions of Section 164(5A)(a) CrPC, which read as under:-

“164(5A)(a) – In cases punishable under Section 354, Section 354A, Section 354B, Section 354C, Section 354D, sub-section (1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860), the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police.

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be videographed.”

It has been argued that the application so moved by the petitioner to record her second statement under Section 164 CrPC has wrongly been dismissed by SDJM, Gulha. The word ‘may’ used under Section 164 is to be interpreted as ‘shall’, therefore, learned Magistrate has no other option but to record the statement of the prosecutrix under Section 164 CrPC. In case the prosecutrix makes any such request, the Magistrate is duty bound to record her statement. The impugned order is, therefore,

not sustainable in the eyes of law. He has relied upon judgment of Rajasthan High Court in the case of **Mankori Devi Vs. State of Rajasthan & others** S.B.Cr.Misc. Petition No.497 of 2017 decided on 09.02.2017 to contend that if the person making a statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement. He has also relied upon a judgment of the Apex Court in the case of **State of Karnataka by Nonavinakere Police Vs. Shivanna @ Tarkari Shivanna** 2014(2) RCR (Criminal) 713. Thus, it is stressed that second statement can be made under Section 164 CrPC, when the earlier statement was made under pressure and was not voluntary.

I have heard learned counsel for the petitioner.

Recording of statements under Section 164 CrPC is only a legal method by which the statements made by a witness at an early stage in the investigation can afterwards be proved at the trial by the prosecution. It helps to deter witnesses from changing their version subsequently and to this extent its effect is salutary. The general purpose of recording a statement of the maker under Section 164 CrPC is to fix him, particularly when it is feared that he or she may resile afterwards or the statement so made may be tempered with. Usually, the information given immediately after the occurrence or soon after the incident, would be far more truthful and trustworthy than later denials or embellishments and that is the reason why Courts usually, have not shown any distrust to such statements recorded under Section 164 CrPC. The statement recorded under Section 164 CrPC cannot be used as substantive evidence of truth of facts, but it

can merely be used for the purpose of contradiction or corroboration of the evidence of such person who has made such statement, as per the provisions of the Indian Evidence Act. Moreover, as per the information derived from the official website of the trial Court, on presentation of the challan, as provided under Section 173(8) CrPC, learned Magistrate has committed the case to the Court of learned Sessions Judge, vide order dated 03.06.2019, as the case is required to be tried by the Court of Sessions.

In the case in hand, the petitioner has already got her statement recorded under Section 164 CrPC on 06.07.2018 and pursuant to her this statement, learned Magistrate had sent her to Nari Niketan. Thereafter, on an application moved by her father, the petitioner was released from the Nari Niketan vide order dated 11.07.2018, as she had suffered a statement in the Court that she is no longer interested to stay in Nari Niketan and wanted to go to her matrimonial home along with her husband. She has further stated that she no longer apprehends any danger from her parents and in-laws. Interestingly, in the initial version, the petitioner had apprehended danger to her life and liberty not only from her in-laws, rather from her parents as well. Accordingly, she was sent to Nari Niketan, Karnal and she remained there for about 3-4 days. Thereafter, on her request, she was released from the Nari Niketan and subsequently, she moved an application for making her second statement under Section 164 CrPC. While seeking her release from the Nari Niketan, she has not made such request to get her another statement under Section 164 CrPC recorded.

In the impugned order dated 24.07.2018, learned Magistrate has noticed the demeanor of the petitioner and recorded his minute observations in para 8 of the impugned order, which read as under:-

“Today that is on 24.07.2018 the said Sukhwinder Kaur has been produced before me and after asking general questions, it appears that the said Sukhwinder Kaur is under undue influence, fear and pressure. The said fear and pressure is apparent as she is crying since the time she has been produced before the court. The manner in which the said Sukhwinder Kaur is behaving makes it clear that whatever statement she is going to give will be a tutored version/description because he has been under the care and custody of her in-laws who were after her life few days ago and against whom she apprehended danger to her life.”

Thus, once the statement of the petitioner has already been recorded under Section 164 CrPC before the Magistrate and in the light of observations made by learned Magistrate in para 8 of the impugned order, reproduced above, this Court finds that now, the petitioner intends to make different statement from her earlier statement recorded on 06.07.2018. The motive is apparent. Once she has voluntarily made a statement under Section 164 CrPC before the Magistrate and thereafter, when she had appeared before the Magistrate for her release from the Nari Niketan, she has not made any such allegation against the accused persons. Therefore, this Court finds that filing of second application to record statement of the petitioner under Section 164 CrPC is for a different purpose and under undue influence, as has been elaborated by learned Magistrate in paragraph 8 of the impugned order.

The judgment of Rajasthan High Court in the case of **Mankori Devi**, relied upon by counsel for the petitioner, has no applicability to the facts of the present case. The prosecutrix in the present case is not affected

with any such mental or physical disability. Similarly, the judgment of Apex Court in the case of **State of Karnataka by Nonavinakere Police Vs. Shivanna @ Tarkari Shivanna** (*supra*), has also no relevance to the facts of the present case. In that case, it was held that upon receipt of information regarding commission of the offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 CrPC. However, in the case in hand, statement of the prosecutrix has already been recorded under Section 164 CrPC on 06.07.2018, wherein she has rather specifically stated that she is no more interested to go either with her in-laws' or with parents, as she is afraid of them and she would rather like to go to Nari Niketan. Thus, statement of the prosecutrix has already duly been recorded under Section 164 CrPC on 06.07.2018. It is in order to give different colour, another application has been made for recording of second statement under Section 164 CrPC. Thus, the object to get second statement recorded under Section 164 CrPC is to introduce some other persons as accused in the case, which has been dealt with by learned Magistrate in para above.

Accordingly, the present petition is dismissed with costs of Rs.10,000/-, to be deposited with Haryana State Legal Services Authority, Panchkula within a period of two months from the date of receipt of a certified copy of this order.

September 04, 2019
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No