

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Crl. Misc. M 41924 of 2018 (O&M)

Date of decision: 5.2.2020

Pushvinder Kaur Malhan @ Rikky

...Petitioner

Versus

Harvinder Singh Mahlan @ Sonu and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. B.S. Saroha, Advocate
for the petitioner.

Mr. Suresh K. Jindal, Advocate,
for respondent No.1.

Mr. Tanuj Sharma, AAG, Haryana.

JAISHREE THAKUR, J.

1. The petitioner herein seeks to challenge the impugned order dated 23.8.2018 whereby the prayer for framing of charge under Section 354-A IPC has been declined.

2. In fact, an FIR 26 dated 14.4.2017 under Sections 323, 354-B, 452 and 506 IPC was registered at Police Station Women, Panipat, at the instance of the petitioner herein. On investigation, a final report was presented before the trial court, however, charges were framed under Sections 323, 294 and 506 IPC. Aggrieved against the order of framing of charges, a revision was filed before the Additional Sessions Judge, Panipat, which was partly allowed. It was ordered that the trial court is required to pass a fresh order regarding framing of charge under Section 452 IPC, but

plea in respect of addition of Section 354-A IPC was dismissed. Aggrieved against the said order, the instant petition has been filed.

3. The petitioner herein seeks addition of Section 354-A IPC by arguing that the accused respondent had forcibly entered into her house, manhandled her, caused injuries and also did wrong act with her and therefore, offence under Section 354-A IPC was made out.

4. Per contra, learned counsel appearing on behalf of the accused-respondent would contend that there was no infirmity in the order as passed declining addition of Section 354-A IPC. It is argued that the FIR is nothing but a sheer abuse of process of law as there was inter-se dispute between the parties pertaining to the property and the complainant wants addition of Section 354-A IPC with the sole object to harass and humiliate the petitioner. It is further argued that the petitioner has not disclosed the relationship between the parties. In fact, the petitioner is none other than the wife of the respondent's brother and, therefore, the question of molesting her would not arise.

5. I have heard learned counsel for the parties and with their assistance have perused the FIR as well as the impugned order.

6. In order to appreciate, whether or not an offence under Section 354-A IPC is made out, in view of the arguments as raised by the learned counsel for the parties, it would be appropriate to reproduce Section 354-A IPC, which reads as under:-

“354A. Sexual harassment and punishment for sexual harassment.— (1) A man committing any of the following acts

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or*
- (ii) a demand or request for sexual favours; or*
- (iii) showing pornography against the will of a woman; or*
- (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.*
- (2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.*
- (3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”*

7. A reading of the FIR reveals that there is a categorical assertion that on 12.4.2017 in the afternoon at around 1 p.m., the complainant was at her home alone, as her husband had gone out. At that time Harvinder Singh @ Sonu came to her house, caught hold of her arms and twisted the same, while inflicting injuries to her body. While holding her, he stated that he would do objectionable act with her and then started doing wrong act forcefully.

8. In the opinion of the Court, charge under Section 354-A IPC would clearly be made out, in view of the contents of the FIR as there was a physical contact between the respondent—accused and the petitioner along with unwelcome advances. It would be worthwhile to note that apart from FIR that was registered there was statement under Section 164 of the Code of Criminal Procedure dated 15.4.2012 made before the Judicial Magistrate Ist Class, which are on the similar lines and would also constitute a

commission of offence under the said section. The impugned order is wrong to the extent that the accused only went to the house of the complainant and caused simple hurt to her and threatened her but the intention of outraging the modesty is missing. The statement of the petitioner is available on the record which would reflect that respondent No.1 herein had threatened her and had also started doing objectionable acts with her which cannot be construed other than having an intention of outraging her modesty.

9. For the reasons afore-stated, this petition is allowed, impugned order dated 23.8.2018 passed by the Additional Sessions Judge, Panipat, is set aside to the extent it did not order framing of charge under Section 354-A IPC. The trial court is directed to frame charge under Section 354-A IPC.

5.2.2020
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No