

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

**CRR-2338-2018 (O&M)
Decided on : 28.01.2020**

Mukesh

. . . Petitioner(s)

Versus

Annu and others

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Vikas Lochab, Advocate
for the petitioner(s).

Mr. Atul Partap Dhankhar, Advocate for
Mr. Bijender Dhankhar, Advocate
for respondents No.1 & 2.

Mr. Shivam Grover, Advocate
for respondents No.3 & 4.

Mr. Ashish Sanghi, DAG, Haryana.

MANJARI NEHRU KAUL, J. (Oral)

Instant revision petition has been filed against the order dated 28th May, 2018, passed by the learned Additional Sessions Judge, Sonapat (in short 'learned trial Court'), vide which the application moved by the complainant/prosecution for amendment of charge, was dismissed.

It has been urged that the Court below failed to appreciate the evidence led in the right perspective and thus erred in dismissing the application under Section 216 Cr.P.C. for alteration of charge against the respondents.

Learned counsel for the petitioner contended that the accused Ankit @ Rahul had committed rape upon his daughter i.e. the prosecutrix, who was a minor at the time of offence and the same stood proved by way

of his supplementary statement Ex.PW5/C, recorded on 29th January, 2018. Not only this, the prosecutrix had supported and corroborated the case of the prosecution *qua* both the respondent-accused, who allegedly committed rape upon her one after another. It was thus urged that in the given facts and circumstances of the case, the respondents-accused should have been charged under Sections 376D IPC and Section 6 of the POCSO Act, 2012.

Learned counsel for the respondents while opposing the submissions of the counsel for the petitioner submitted that the investigating agency rightly did not challan the respondent-accused under Section 376D IPC or under Section 4 of the POCSO Act, 2012, as no such material had come across during the investigation. It was urged that the complainant, in fact, had weaved a false story against the respondents accused, so as to attract the mischief of Section 376D IPC and Section 4 of the POCSO Act. Not only this, even from perusal of her statement under Section 164 Cr.P.C. recorded before the learned Magistrate, no offence under Section 376 G IPC and Section 4 of the POCSO Act, could be made out against the accused-persons. During the course of the evidence the prosecutrix made material improvements from which it was easily discernible that a false version had been fabricated.

I have heard learned counsel for the parties and have gone through the impugned order as well as other material on record.

On 22nd February, 2016, a written complaint was filed by the complainant i.e. Father of the prosecutrix, alleging that on 17th February, 2016 at about 05:00 A.M., his daughter i.e. the prosecutrix aged 18 years and 02 months had gone out side the house to answer the call of nature. Since she did not return he suspected that she may have been confined at

some unknown place by some unknown person with an intention to commit some offence.

Subsequently, the prosecutrix was recovered and she made a statement to the effect that she wanted to get married to respondent-accused Rahul. However, as Rahul was below 21 years of age, a case under Sections 9/10 of the Prohibition of Child Marriage Act was registered against him and a cancellation report was prepared in the instant case. The complainant thereafter, produced the birth certificate of the prosecutrix and another application was moved by him, wherein, he alleged that the respondent-accused Rahul had lured his daughter away and had forcibly confined her. It was also alleged in the application moved by the complainant that the prosecutrix had telephonically informed him about the accused-respondent Rahul, harassing and committing rape upon her. It was on the basis of this second application that Section 346 IPC was deleted and Sections 363, 366-A, 120-B IPC were added in the FIR in question.

It would be pertinent to notice that when the first statement was given by the complainant *qua* his daughter i.e. the prosecutrix going missing, he had specifically mentioned the age of his daughter to be 18 years and 02 months and even the prosecutrix in her statement recorded under Section 164 Cr.P.C. before the Court, disclosed her age as 19 years. Not only this, in her statement under Sections 164 Cr.P.C. before the Court categorically, the prosecutrix stated that she had a love affair with the accused-respondent Rahul for the last many years and both she and respondent-accused had performed marriage in a Court in Delhi of their own accord. She had further gone to state in her statement under Section 164 Cr.P.C. that she wanted to accompany the respondent-accused Rahul

and she did not want to live with her parents. In the light of her statement under Sections 164 Cr.P.C., both the prosecutrix and respondent-accused Rahul were sent to Safe house, as per the orders of the Superintendent of Police, vide Rapat Roznamcha dated 25.02.2016. It transpires that thereafter respondent-accused Rahul was released on bail in the case under Sections 9/10 of the Prohibition of Child Marriage Act and the prosecutrix was handed over to respondent-accused Rahul and Ankit. It was on 08.02.2016 i.e. after almost 10 months, another application for recording her statement under Sections 164 Cr.P.C. was moved, which was declined by the Magistrate on the ground that an earlier statement under Sections 164 Cr.P.C. already stood recorded on 25.02.2016. Despite this, her statement was again recorded, wherein, the prosecutrix again stated that she was 19 years of age and did not want to go to the house of her father, as she apprehended torture from them. In view of her statement given, she was sent to Balgram, Rai by the learned Magistrate.

It cannot be overemphasized that the objection of Section 216 Cr.P.C. is to ensure a fair trial and the Courts' power to alter or add any charge is unrestrained. However, on a perusal of the case in hand, it comes across that the prosecutrix was not even impleaded as a witness by the prosecution and had been impleaded as a witness on an application, which was moved by the Public Prosecutor under Section 311 Cr.P.C. It transpires that the evidence of almost all the 24 prosecution witnesses cited, has been completed and when the application under Section 216 Cr.P.C. was made before the Court below, the cross-examination of the prosecutrix was underway. It is a matter of record that the charges were framed in the instant case on 10.10.2016, under Sections 363, 366 read with Section 120-

B and Section 366-A IPC. Thereafter, supplementary challan was filed against the co-accused and vide order dated 23.05.2017, the charges under Sections 363, 366-A, 120-B IPC were framed. The prosecution did not at any stage agitated nor challenge the charges framed firstly on 10.10.2016 and thereafter, on 23.05.2017 for the aforesaid sections. It goes without saying that when the charges were framed, they were on the basis of the documents available on record as well as the report under Section 173 Cr.P.C.

In view of the above, I do not find any impropriety or illegality, which would warrant interference by this Court in its revisional jurisdiction. The trial Court has passed the impugned order dated 28th May, 2018 on sound legal grounds.

Consequently, the present revision petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

January 28, 2020

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*