

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

CRR-351-2021 (O&M)

Date of Decision: 25.03.2021

Mahabir

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Surender Saini, Advocate, for the petitioner.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 26.02.2021 vide which the learned trial Court, while accepting an application under Section 216 Cr.P.C. moved on behalf of the prosecution for amendment of charges, has ordered for framing of charges in respect of offences under Section 376D IPC and Section 6 of the POCSO Act.
2. As per the case of the prosecution, the FIR was lodged at the instance of Sudesh wife of Balbir, wherein she alleged that on 03.03.2018, her daughter (victim) went missing from home and although they searched for her, but she could not be found anywhere. It is further alleged that while they were searching for her daughter in neighbourhood, they received information to the effect that Rajiv had taken away her daughter. When the complainant went to look for her, she came across Mahabir and the two i.e. Rajiv and Mahabir took her on a motor-cycle and they initially went to Palri and from Palri, the complainant and Mahabir went to Dodwa while Rajiv remained at Palri. It is further alleged

that in fact Rajiv and Mahabir had misguided her and had also attempted to outrage her modesty. It is further the case of the prosecution that the victim was recovered on the same day itself and her statement in terms of Section 164 Cr.P.C. (Annexure P-3) was recorded. The relevant extract of the said statement reads as follows:

“Q. What do you want to say?

Ans. Three boys, whose names I do not remember, these three telephoned me and called me outside. Then forcibly they made me sit on the bike and took away. Out of those, two are named Deepak and Mahabir. They tried to outrage my modesty. When I tried to free myself, then they left me in a village next to Sonipat. Then I telephoned to my mother and they came there to fetch me.”

3. Learned counsel for the petitioner has submitted that upon conclusion of investigation, a challan was presented against the accused for offences under Sections 363/366-A/354/376/511/34 IPC and Section 12 of the POCSO Act and consequently charges were also framed in respect of the said offences on 29.10.2018. It has been submitted that subsequently the victim while in the witness-box made improvements in her statement and alleged that she has been raped by both the accused. It has, thus, been submitted that it is on the basis of the aforesaid improvement that the trial Court has proceeded to amend the charges and charges for offences under Section 376-D and under Section 6 of the POCSO Act have been framed.

4. Learned counsel has submitted that since neither in the FIR nor in the statement recorded in terms of Section 164 Cr.P.C., there is any

semblance of allegation pertaining to rape, the alteration of charges vide impugned order was not warranted and that as such the impugned order deserves to be set aside.

5. I have considered the aforesaid submissions made by the learned counsel for the petitioner before this Court.
6. It is no doubt correct that in the FIR and also in the statement recorded in terms of Section 164 Cr.P.C. made by the victim, she has not specifically alleged having been raped by the accused and has only stated that the accused tried to outrage her modesty without giving any specific details as to in what manner the attempt was made by the accused. In any case, the victim is aged about 17 years only and as such, she would have been in a state of shock on the day of occurrence, when her statement under Section 164 Cr.P.C. was came to be recorded. It is, however, worthwhile to mention that when the victim was medically examined, it was disclosed to the Doctor concerned that the victim had been raped, as would be evident upon perusal of the consent given by the complainant, which is annexed as Annexure P-6. Further, the report of FSL (Annexure P-7) also discloses that human semen was detected from the under-garments and from the vaginal swabs. In these circumstances, this Court does not find any infirmity in the impugned order, whereby the trial Court has proceeded to alter the charges so as to frame charges for offences under Section 376D IPC and Section 6 of the POCSO Act. Thus, finding no merit in the petition, the same is hereby dismissed.

7. Needless to mention, the prosecution would be required to establish all the charges by leading cogent and convincing evidence and the accused shall be afforded all opportunities to rebut the evidence led against him.
8. It is, however, made clear that none of the observations made above shall be taken to be an expression on merits of the main case.

25.03.2021

Vimal

**(GURVINDER SINGH GILL)
JUDGE**Whether speaking/reasoned: **Yes/No**Whether reportable: **Yes/No**