

117.

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

**CRM-11640-2021 IN/AND
CRM-M-24319-2016**

Date of Decision: 01.09.2021

(Heard through VC)

SOHAN LAL AND ANR

.... Petitioners

Versus

STATE OF PUNJAB AND ORS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Amit Jaiswal, Advocate, for the petitioners.

Mr. A.S. Gill, Senior DAG, Punjab, for respondent No.1.

None for respondent No.2.

JAISHREE THAKUR.J (Oral)

CRM-11640-2021

Prayer in this application filed under Section 482 Cr.P.C. by the petitioners is for issuance of appropriate direction to the Illaqa Magistrate to pass appropriate order in case FIR No.38, dated 03.05.2015, under Section 376D of IPC and Section 4 of POCSO Act, 2012, Police Station Mullanpur Garibdass, District S.A.S. Nagar, in view of untrace report having been filed by the State-respondent No.1.

With the consent of counsel for the parties, the hearing of the main case is preponed from 02.12.2021 and the same is taken on board for final hearing today itself.

CRM-M-24319-2016

This petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of FIR No.38 dated 03.05.2015 registered under Section 376D of IPC and Section 4 of the POCSO Act, 2012 at Police Station Mullanpur Garibdass, District SAS Nagar.

Learned counsel for the petitioners, at the very outset, would submit that Section 4 of the POCSO Act has been deleted and the only section surviving under the aforesaid FIR is Section 376D IPC. It is argued that the matter was investigated by the police and they discovered that the present petitioners are innocent under the said FIR, consequent to which, an untrace report was filed before the learned Illaqa Magistrate on 11.01.2016. The untrace report was filed on the basis of a statement given by the prosecutrix under Section 164 Cr.P.C. that both the petitioners herein were not the persons who had committed the offence of rape upon her.

Today, an application has been filed seeking issuance of appropriate direction to the Illaqa Magistrate to pass appropriate orders upon the untrace report submitted by the State-respondent No.1. It is argued that a perusal of the zimini orders of the trial Court would reflect that the Illaqa Magistrate is adjourning the case time and again awaiting the orders to be passed by the High Court. By an order dated 07.03.2020, the Illaqa Magistrate had adjourned the matter sine die and had directed the Alhmad to put the case as and when the challan is presented. It is submitted that there is no stay or preventive order in the petition pending before this Court and, therefore, there is no hindrance for the Illaqa Magistrate to pass appropriate orders as per the report i.e. untrace report submitted by the respondent-State.

It is also submitted that in the instant case as there is an untrace report, challan is not to be presented.

Learned State counsel in all fairness would submit that the untrace report has already been filed as far back in 11.01.2016 and in such a situation, no challan will be presented against the petitioners herein. It is for the Illaqa Magistrate to deal with the issue pending before it.

I have heard learned counsel for the parties and with their assistance, perused the pleadings and the zimini orders that have been passed by the trial Court from 03.02.2018 onwards.

A perusal of the zimini orders would reflect that the JMIC, Kharar has been adjourning the matter awaiting the orders by the High Court in CRM-M-24319-2016 i.e. the orders in the instant petition. It is worthwhile to note that when notice of motion was issued, there was no stay of proceedings before the trial Court. Only notice of motion was issued to the State and respondent No.2. State has filed reply, whereas no one has put in appearance on behalf of respondent No.2 despite being served. As per the reply filed, the State admits the filing of untrace report based on the statement given by respondent No.2 under Section 164 Cr.P.C. before the Judicial Magistrate at Kharar wherein she has categorically stated that the present petitioners are not the persons who had committed the offence upon her, consequent to which, the petitioners herein were declared innocent by an order dated 01.07.2015. Since the limited prayer in this petition is for a direction to the JMIC to pass appropriate order on the untrace report filed, this Court proposes to dispose of this petition giving a direction to that effect. It is worthwhile to note that this petition is pending since the year

2016 and the JMIC has been adjourning the case only on the pretext of awaiting orders from the High Court. Since there was no interim stay, the JMIC ought to have proceeded with the said matter.

This petition is thus disposed of by giving direction to the JMIC to pass appropriate order on the untrace report as expeditiously as possible preferably within a period of 6 weeks from the date of receipt of a certified copy of this order.

(JAISHREE THAKUR)
JUDGE

01.09.2021

sanjeev

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