

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 14954 of 2020 (O&M)
Date of Decision: 16.3.2021

Pritpal Kaur

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Rajesh Bhatheja, Advocate
for the petitioner.

Mr. Randhir Singh Thind, AAG, Punjab.

Ms. Shubhra Singh, Advocate and
Mr. Puru Gupta, Advocate
for respondent No. 6-CBI.

Mr. A.S.Brar, Advocate
for respondent No. 7.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

Prayer in this petition is for issuance of directions to respondents No. 1 and 2 to hand over the investigation of FIR No. 69 dated 2.6.2020 under Section 376 IPC, registered at Police Station Nihal Singh Wala, District Moga (Annexure P-3) to the Central Bureau of Investigation or to some other independent agency.

It is stated that the petitioner is working as a Nurse (ANM) in a dispensary at village Himmatpura, Tehsil Nihal Singh Wala, District Moga and accused Varun Joshi-respondent No. 7, who is an active member of the local wing of the ruling party, used to visit the said dispensary and started outraging the modesty of the petitioner. In the second week of December

2019, accused Varun Joshi approached the petitioner in her office and threatened her that he was having her nude videos with some different male persons in a compromising position and would upload the same on internet if she did not develop physical relations with him or to pay Rs. 5,00,000/- to him. The petitioner narrated the incident to her mother, who told the petitioner that in order to save her respect and dignity in the society, they would compromise with accused Varun Joshi. It is further stated that on 11.12.2019 and 12.12.2019, Jatinder Kaur, mother of the petitioner, paid Rs. 4.00 lacs to Varun Joshi at his residence in the presence of Balwinder Singh, whereupon Varun Joshi had assured to delete all objectionable videos from his mobile phone. On 25.4.2020, Varun Joshi again visited the office of the petitioner and told her that he had deleted only a few clips and there were some more video clips and if the said video clips were to be deleted, then the petitioner had to pay Rs. 3.00 lacs more to him. When the petitioner showed her inability to pay Rs. 3.00 lacs more, Varun Joshi-respondent No. 7 took her in an Innova car to an isolated place and after removing her clothes, had committed rape upon her against her wishes. The petitioner reported the matter to the police and when no action was taken, she appeared before Senior Superintendent of Police, Moga-respondent No. 3 on 22.5.2020 and got recorded her statement but instead of registering an FIR, respondent No. 3 constituted a committee of two members i.e. Deputy Superintendent of Police, Crime Against Women, Moga (respondent No. 4) and a Lady Inspector to enquire into the matter. It is further averred that Deputy Superintendent of Police-respondent No. 4 threatened the petitioner to settle the matter with Varun Joshi-respondent No. 7 as he happens to be the man of means and belonging to the ruling party.

The petitioner had approached Judicial Magistrate Ist Class, Moga and moved an application under Section 156(3) Cr.P.C. for issuing directions to SHO, Police Station Nihal Singh Wala, for registration of an FIR against Varun Joshi-respondent No. 7. Vide order dated 1.6.2020, the said application was allowed and SHO, Nihal Singh Wala was directed to investigate the matter after registration of FIR. Thus, FIR No. 69 dated 2.6.2020 under Section 376 IPC was registered.

It is further the case of the petitioner that after registration of the FIR, Varun Joshi-respondent No. 7 being an influential person, was not arrested. The petitioner was neither medically examined nor her statement under Section 164 Cr.P.C. was got recorded and instead, an enquiry was initiated on the application of Ashok Kumar, father of Varun Joshi and the petitioner had been pressurized to settle the matter.

Vide order dated 15.6.2020, a Co-ordinate Bench of this Court had issued a direction to record the statement of the petitioner under Section 164 Cr.P.C. before the Duty Magistrate concerned.

On 06.10.2020, a Co-ordinate Bench of this Court issued a direction to the Director General of Police, Punjab-respondent no. 2 to constitute a committee to be headed by Deputy Inspector General of Police and to submit the report. In compliance of the said order, status report by way of affidavit of Inspector General of Police, Faridkot Range, Faridkot dated 18.12.2020, was filed which was taken on record on 16.2.2021.

Learned counsel for the petitioner submits that accused Varun Joshi is an influential person and in order to delete the alleged video clips, had received Rs. 4.00 lacs from the mother of the petitioner and thereafter committed rape upon the petitioner without her consent. The petitioner had

approached the authorities for registration of the FIR and later, Judicial Magistrate Ist Class, Moga on the application of the petitioner, had directed the SHO to investigate the matter after registration of the FIR. He further submits that even after registration of the FIR in question, Varun Joshi-respondent No. 7 was not arrested and instead an enquiry was initiated on the application of the father of Varun Joshi-respondent No. 7.

Learned counsel for the petitioner further states that the status report filed by Inspector General of Police, Faridkot Range, Faridkot dated 18.12.2020 does not depict a clear picture, and rather the same has been prepared under the influence of Varun Joshi-respondent No. 7, who happens to be an active political worker of the ruling party. He further submits that the said report has been prepared with a bias mind ignoring the fact that the petitioner has been raped and there are specific allegations against Varun Joshi-respondent No. 7 and moreover the FIR in question has been registered on the directions issued by Judicial Magistrate Ist Class Moga vide order dated 01.6.2020. Learned counsel further submits that the police officials are helping Varun Joshi-respondent No. 7 and the acts of the investigating agency clearly show that all out efforts are being made to shelter the guilty person.

Per contra, learned State counsel submits that in compliance of the order dated 06.10.2020, the Director General of Police, Punjab constituted a Special Investigation Team consisting Dr. Kaustubh Sharma, IPS, Inspector General of Police, Faridkot Range, Faridkot, Swarandeep Singh, Senior Superintendent of Police, Faridkot and Rupinder Kaur Bhatti, PPS, Superintendent of Police, Counter Intelligence, Ludhiana to investigate the present case. Petitioner Pritpal Kaur joined the investigation

and on her stance, the place of occurrence was visited by a lady member of the SIT. He further submits that on 20.10.2020, a parcel of clothes worn by the petitioner at the time of occurrence, was sent to the Forensic Science Laboratory and the report was received on 07.11.2020.

It is further submitted that during investigation, it was found that the petitioner and Varun Joshi-respondent No. 7 had friendly relations and on coming to know about this, a dispute arose between the petitioner and her husband Pardeep Singh and on 28.4.2020. A written complaint was given by the petitioner to the Gram Panchayat of village Bilaspur regarding getting divorce from her husband Pardeep Singh and living separately from her husband, daughter and her in-laws' family.

It is still further submitted by the learned State counsel that the recommendation of the Special Investigation Team for presentation of supplementary challan by way of cancellation report, is on the basis of a thorough investigation and the final report by the SIT dated 10.12.2020, which is placed on record as Annexure R-1/T.

Learned State counsel further submits that a litigant who attempts to pollute the stream of justice or touches the pure fountain of justice with tainted hands, is not entitled to any relief. He further submits that the present petition is an abuse of process of law and an exemplary costs should be imposed upon the petitioner, for such a frivolous litigation. In support of his arguments, he has placed reliance upon ***Phool Chandra and another versus State of U.P. 2014(3) R.C.R. (Criminal) 30, Maria Margarida Sequeria Fernandes and others versus Erasmo Jack de Sequeria (dead) through LRs and others 2012(5) SCC 370 and Kishore Samrite versus State of U.P. and others 2012 (4) R.C.R. (Criminal) 775.***

I have heard the learned counsel for the petitioner as well as the learned State counsel and the learned counsel for respondent No. 7.

Petitioner-Pritpal Kaur has approached this Court to hand over the investigation of FIR No. 69 dated 2.6.2020 to some independent agency and for issuance of directions to arrest accused/respondent No. 7-Varun Joshi. As per the version of the petitioner, on 11/12.12.2019, Rs. 4.00 lacs had been paid by the mother of the petitioner to respondent No. 7 to delete all the nude videos, showing the petitioner in a compromising condition and the said amount was paid to save her respect and dignity in the society. Since some videos were deleted, respondent No. 7 again met the petitioner in her office on 25.4.2020 and demanded Rs. 3.00 lacs more to delete the remaining nude videos and when the petitioner showed her inability to pay more money, respondent No. 7 took her to an isolated place in his car and had committed rape upon her against her wishes. It is also alleged that respondent No. 7 is having strong links with the ruling party and that is the reason the local administration is not taking any action against him and he is roaming freely.

On the stand taken by the petitioner, this Court had directed the Director General of Police, Punjab to constitute an SIT. In the report of the SIT and the status report of Inspector General of Police, it has been concluded that a fake FIR was got registered by the petitioner against respondent No. 7 and has further recommended for presentation of supplementary challan/cancellation report. The allegations raised by the petitioner in the FIR are not proved as the call location of the petitioner and respondent No. 7 show different places as from the one where the alleged rape was committed. The investigation regarding the stay of the petitioner

and respondent No. 7 in Hotel Sneh Mohan, at Jagraon was conducted and the statement of the Manager was also recorded and a conclusion was drawn that the petitioner and respondent No. 7 had stayed there on different dates on friendly basis.

The SIT has also drawn a conclusion that there was a friendly relationship between the petitioner and respondent No. 7 and the dispute between them arose only when the petitioner made a written complaint to the Gram Panchayat of village Bilaspur against her husband, daughter and her in-laws' family and showed her desire to stay away from them.

It is clear that the petitioner has levelled false and frivolous allegations against respondent No. 7 and has gone to the extent of lodging the FIR in question and recording the statement before the Magistrate on 19.6.2020. The petitioner has not approached this Court with clean hands.

In ***Maria Margarida Sequeria Fernandes's case*** (supra), the Apex Court has held as under:-

84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.

85. This Court in a recent judgment in Ramrameshwari Devi and Others (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of

common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation.

The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

The Apex Court in **Phool Chandra's** case (supra) has held as

under:-

“In Mathai @ Joby v. George & Anr., (2010) 2 RCR (Civil) 495 : (2010) 4 SCC, this Court while dealing with a similar case observed that now-a-days it has become a practice of filing SLPs against all kinds of orders of the High Court or other authorities without realising the scope of Article 136. Hence, the court felt it incumbent on it to reiterate that Article 136 was never meant to be an ordinary forum of appeal at all like Section 96 or even Section 100 of the Code of Civil Procedure, 1908. Under the constitutional scheme, ordinarily the last court in the country in ordinary cases was meant to be the High Court. The Supreme Court as the Apex Court in the country was meant to deal with important issues like constitutional questions, questions of law of general importance or where grave injustice has been done to a party. If the Supreme Court entertains all and sundry kinds of cases it will soon be flooded with a huge amount of backlog and will not be able to deal with important questions relating to the Constitution or the law or where grave injustice has been

done, for which it was really meant under the Constitutional Scheme. After all, the Supreme Court has limited time at its disposal and it cannot be expected to hear every kind of dispute. The court expressed its sympathy with the judges as they struggle with an unbearable burden. The judges spend late nights trying to read briefs for a Monday or a Friday. When each of the 13 Benches have to dispose off about 60 cases in a day, the functioning of the Supreme Court of India is a far cry from what should be desiderate for disposal of cases in a calm and detached atmosphere.

All these are aberrations in the functioning of the Apex Court of any country. Of-lately, there has been an increase in the trend of litigants rushing to the courts, including this court, for all kinds of trivial and silly matters which results in wastage of public money and time. A closer scrutiny of all such matters would disclose that there was not even a remote justification for filing the case. It is a pity that the time of the Court which is becoming acutely precious because of the piling arrears has to be wasted on hearing such matters. There is an urgent need to put a check on such frivolous litigation. Perhaps many such cases can be avoided if learned counsel who are officers of the court and who are expected to assist the court tender proper advice to their clients. The Bar has to realise that the great burden upon the Bench of dispensing justice imposes a simultaneous duty upon them to share this burden and it is their duty to see that the burden should not needlessly be made unbearable. The Judges of this Nation are struggling bravely against the odds to tackle the problem of dispensing quick justice. But, without the cooperation of the gentlemen of the Bar, nothing can be done.

12. It is high time that the Courts should come down heavily upon such frivolous litigation and unless we ensure that the wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigation. In order to curb such kind of

litigation, the courts have to ensure that there is no incentive or motive which can be ensured by imposing exemplary costs upon the parties. (Vide: Varinderpal Singh v. Hon'ble Justice M.R. Sharma & Ors., 1986 Supp SCC 719; Ramrameshwari Devi & Ors. v. Nirmala Devi & Ors., 2011(3) RCR (Civil) 932 : 2011 (4) Recent Apex Judgments (R.A.J) 390: (2011) 8 SCC ; and Gurgaon Gramin Bank v. Khazani & Anr., 2012 (4) RCR (Civil) 326 : 2012 (4) Recent Apex Judgments (R.A.J.) 391 : AIR 2012 SC 2881).

As noticed above, the proceedings initiated by the petitioner are false and frivolous. From the facts and circumstances delineated above, it is clearly established that an attempt has been made to not only abuse the process of law but also overawe the authorities. Hence, keeping in view the law laid down by the Hon'ble Apex Court, it is a fit case, where an exemplary costs should be imposed upon the petitioner.

In view of the above, the present petition is dismissed with costs of Rs. 1.00 lac, to be paid and deposited by the petitioner with the Institute for the Blind, Sector-26, Chandigarh.

The trial Court shall proceed further with the case pending before it, in accordance with law.

(HARNARESH SINGH GILL)
JUDGE

March 16, 2021
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No