

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

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CRM-M-348-2022

Decided on : 13.01.2022

Raj Kumar

..... Petitioner

Versus

State of Haryana & anr.

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

(through video conferencing)

Present : Mr. Dhruv Gupta, Advocate
for the petitioner.

Manjari Nehru Kaul, J. (Oral)

Learned counsel for the petitioner *inter alia* contends that the learned Judicial Magistrate 1st Class, Ambala (in short 'JMIC, Ambala') vide order dated 24.12.2020 (Annexure P-2) rightly dismissed an application filed by the Respondent no. 2 under section 216 Cr.P.C for addition/alteration of charges as there was no material on record to substantiate the allegations of rape/attempt to rape levelled by the complainant. Learned counsel submits that thereafter, when Respondent No. 2 preferred a criminal revision before the Court of learned Addl. Sessions Judge, Ambala (for brevity 'ASJ, Ambala') to impugn the aforementioned order dated 24.12.2020 passed by the learned JMIC, Ambala, learned ASJ, Ambala gravely erred in setting aside the order and remanding the matter back to the learned JMIC, Ambala with the directions to decide it afresh in the facts and circumstances of the case, and frame charges, if required. Learned counsel further submits that after the case was remanded back by the learned ASJ, Ambala, the court of learned JMIC passed the impugned order dated 09.12.2021, wherein, the petitioner was additionally charged under section 376 of IPC and the case was erroneously committed to the court of Sessions.

A prayer has been made that not only the order dated 09.12.2021

deserved to be set aside but also the order dated 01.10.2021, as it had been passed in a haste and against the provisions of law.

Heard and perused the material on record.

A perusal of the impugned order dated 09.12.2021 reveals that the learned JMIC has merely committed the case to the court of Sessions and not framed any charges under section 376 of IPC, as has been incorrectly submitted by the learned counsel. This court does not find any illegality much less perversity in the impugned order as it is based on sound principles of law.

It would be apposite to reproduce Section 209 of Cr.P.C., as it deals with the commitment of cases to the Court of Sessions:

“209. Commitment of case to Court of Session when offence is triable exclusively by it. When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-

- (a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;]*
- (b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;*
- (c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;*
- (d) notify the Public Prosecutor of the commitment of the case to the Court of Session.”*

A bare reading of the aforementioned Section leaves no manner of doubt that if on the basis of material before the Magistrate, it appears to him that the offence is exclusively triable by the Court of Sessions, he shall have to commit the case to the Court of Sessions. The submissions made by the learned counsel for the petitioner that there was no evidence on record to substantiate

the allegations levelled against the petitioner of having committed/attempted rape upon the complainant are inconsequential at the stage of commitment to the Court of Sessions. In the case in hand, a perusal of the allegations levelled in the FIR in question, does reveal that the complainant had alleged that the petitioner had attempted rape upon her on 01.07.2016. It needs to be observed that at the stage of commitment, the Magistrate is not required to delve into the probative value of the material on record or even delve into the veracity of the allegations levelled.

Thus, the contention of the learned counsel that no case was made out to attract the mischief of the offence of rape or attempt to rape is a matter which would be considered by the Court of Sessions and all the pleas in the said regard which are being raised by the learned counsel can always be raised before the Court of Sessions at the stage of framing of charges.

Coming to the next prayer of the petitioner for setting aside the order dated 01.10.2021 of the learned ASJ, Ambala, vide which the order dated 24.12.2020 (Annexure P-2) was set aside, this Court does not find any cogent ground to interfere, more so, when it has already been acted upon as per the provisions of Section 209 Cr.P.C., by the learned JMIC vide order impugned order dated 09.12.2021.

As a sequel to the above, no ground is made out for this Court to exercise its inherent powers under Section 482 Cr.PC. Accordingly, the present petition stands dismissed.

13.01.2022

J.Ram

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No