

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

118

CRM-M-11235 of 2020 (O&M)
Date of decision:14.10.2022

Jagdish

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. P.S.Sullar, Advocate
for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana.

SUVIR SEHGAL J.

CRM No.37959-2022

Noticing the prayer made in the application, it is allowed and the date of hearing of the main petition is ordered to be preponed from 15.05.2023 to today and it is ordered to be taken up on Board.

CRM-M-11235 of 2020

Instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “the Code”) seeking quashing of impugned FIR No.244 dated 13.08.2019 lodged for offences under Sections 34, 376, 506 of Indian Penal Code, 1860 (for short “IPC”) and Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC/ST Act”) at Police Station Nangal Chaudhary, District Mahendergarh (Annexure P-1) and all consequential proceedings arising therefrom as well as challan (Annexure P-2) presented under Sections 376,

228A(1), 506, 34 IPC and Section 3 of SC/ST Act.

Version of the prosecution is that FIR, Annexure P-1, has been lodged on the complaint given by a married lady (hereinafter referred to as “the prosecutrix”) on the allegation that she falls in “Below Poverty Line” and has a yellow card. She had applied for the construction of a residential house. Jagdish (present petitioner) representative of Sarpanch, called her to his house on the pretext that a cheque of Rs.2.50 lacs for construction of her house had been received and that she should come and collect it. He made her enter his house from the rear side and raped her. He threatened that he would tarnish her image in case she revealed the incident to anyone and so she remained silent. The next day, Jagdish sent his daughter-in-law, Radha Bai, who is the Sarpanch and his wife, Kaushalaya, to her home. Prosecutrix confided in them whereupon they physically assaulted her and threatened that they will eliminate her family if she did not remain silent. They kept a watch over her house and her movements, but a few days later on the day of Raksha Bandhan, she managed to come out and lodged the complaint.

Counsel for the petitioner has argued that no time or date of the alleged incident has been mentioned in the FIR. He submits that in her statement recorded under Section 164 of the Code, Annexure P-3, the prosecutrix has made changes in her version. By referring to the challan, Annexure P-2, he urges that except for the mobile call details, the prosecution does not possess any incriminating material against the petitioner as no semen was detected and both the co-accused, Kaushalya and

Radha Bai have been found to be innocent. Reliance has been placed by him upon the judgement of the Supreme Court in **Vineet Kumar and others Vs. State of U.P. and Another 2017(2) RCR (Criminal) 497** to contend that as the allegation levelled against the petitioner is false, the impugned FIR deserves to be quashed.

Advanced copy of the petition has been served upon the State.

Upon instruction from ASI Kuldeep, State counsel has resisted the petition and has argued that there are specific allegations against the petitioner in the FIR, which have been supported by the prosecutrix in the statement under Section 164 of the Code. She submits that investigation has been concluded and on the basis of the final report submitted under Section 173 of the Code, charge-sheet has been drawn and prosecution witnesses have been summoned.

I have considered the submissions made by counsel for the parties and examined the documents appended with the paper book with their able assistance.

There are specific allegations against the petitioner, who has been named, of sexually assaulting the prosecutrix. Allegations have been supported by the prosecutrix in her statement recorded before the Magistrate under Section 164 of the Code, wherein she has stated that she was raped by the petitioner at his house at 8:30 a.m. in the morning on 07.07.2019. Mere fact that date and time of the alleged incident is not mentioned in the FIR or that there is some delay in the lodging of the complaint, which has been

duly explained, would not cast a doubt on the accusation levelled against the petitioner. The prosecutrix has been subjected to medical examination on 16.08.2019, although due to time lag, no semen was detected. Matter has been duly investigated and in the final report, Annexure P-2, submitted by the investigating agency, it has been found that the petitioner is involved in the horrendous incident. The investigating agency has come to the conclusion that the complaint given by the prosecutrix was circulated in the social media by the co-accused. Recommendation has been made for proceeding against them also.

The statement of the prosecutrix under Section 164 of the Code before the Magistrate stands on a higher pedestal and its sanctity cannot be undermined. There is no doubt left that the allegations levelled in the FIR against the petitioner are very specific and pertain to a heinous offence having been committed against the prosecutrix, who is a member of SC/ST. It is a well settled law that where the allegations disclose commission of cognizable offences, the High Court should exercise restraint in quashing the criminal proceedings, more so, when the charge has been framed and the trial is in progress.

Insofar as the judgement relied upon by the counsel for the petitioner in **Vineet Kumar's case** (supra) is concerned, it is of no help to him. A perusal of the facts shows that there was a financial dispute between the parties and a complaint under Section 138 of the Negotiable Instruments Act, 1881 was pending on account of a dishonor of a cheque given to the

accused by the complainant and her husband. The Supreme Court in **Vineet Kumar’s case**, came to a conclusion that no damning material had been found by the investigating agency and the allegations levelled against the petitioner are false. However, the position in the instant case is entirely different and there is sufficient incriminating material to proceed further in the matter.

In view of the above discussion, this Court is of the view that the petition is meritless and is hereby dismissed.

It is clarified that any observation made hereinabove shall not be construed to be an expression on the merits of the case and the trial Court shall proceed in accordance with law without being influenced by any observation made hereinabove.

October 14, 2022

savita

(SUVIR SEHGAL)
JUDGE

<i>Whether Speaking/Reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>