

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

CRM-M-16400-2022

Date of decision : 21.04.2022

Mandeep Singh and others

..... Petitioners

versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Ravinder Singh Bassi, Advocate
for the petitioners.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the FIR No.17 dated 01.02.2022, under Sections 376, 506 of IPC and Section 4 of POCSO Act and Section 67 of Information Technology Act, 2000, registered at Police Station City Jagraon, District Ludhiana Punjab along with subsequent proceedings arising therefrom.

As per the facts of the case, the present FIR was lodged by the mother of the victim. It was alleged that she is mother of three daughters and the elder one i.e. the victim is 15 years of age studying in 9th standard. Mandeep Singh @ Nannu i.e. the petitioner No.1 used to stalk her daughter from the last one year when she used to go to school. Thereafter, one friend of Mandeep Singh @ Nannu got a rented accommodation in their neighbourhood and Mandeep Singh @ Nannu used to live there and in her absence Mandeep Singh used to call her daughter and meet her in a rented accommodation of his friend. He used to do obscene acts with her daughter and clicked nude photos of her daughter in the washroom. He made physical relations with her daughter.

He started blackmailing her daughter on the basis of the photographs that in case she refused to make relations with her, he would viral her photographs on social media. On 31.01.2022, Mandeep Singh @ Nannu sent the nude photographs of her daughter clicked in washroom on whatsapp No.9878069531. Her daughter told the complainant that Mandeep Singh @ Nannu had raped her under threat. After having known the plight of her daughter, the present FIR was lodged to take the legal action against the culprits. The investigation thereafter commenced.

Learned counsel for the petitioners has vehemently contended that the petitioner has been falsely implicated in this case. He contends that the petitioner and the alleged victim are in live-in-relationship since long. He submitted that the age of the victim has been intentionally deposed to be less than 18 years while she is more than 18 years. He submits that the petitioner No.1 and the alleged victim approached this Hon'ble High Court for seeking the protection of their life and liberty by way of filing CRWP No.1977 of 2022 and this Court granted them protection vide its order dated 07.03.2022. He contends that the victim being major, no offence under the POCSO Act is attracted in the present case. He further submits that the relationship between the petitioner No.1 and the victim is obvious from the fact of her conversation which has been duly recorded in the pendrive produced and the same is annexed with this petition as Annexure P-3. He submits that in view of the overwhelming facts and circumstances, it is apparent that no case is made out against the petitioners and their prosecution is nothing but an abuse of the process of the Court and hence, the present FIR deserves to be quashed.

I have heard counsel for the parties and perused the records.

After hearing counsel for the petitioners and perusing the record, it is apparent that the allegations against petitioner No.1 are specific and serious. The investigation in the case is at threshold. The arguments raised by counsel for the petitioners is totally disputed question of facts which can be set at rest only after a thorough and fair investigation and by appreciation of the evidence produced by the parties before the trial Court. The present petition has been filed for invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C.

The Hon'ble the Supreme Court in Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others, 2021 SCC OnLine SC 315 has held that the High Court should exercise the power under Section 482 Cr.P.C. with great circumspection and sparingly. Invoking the powers under Section 482 Cr.P.C. is usurping the right from the prosecution to prove its case on the basis of the evidence to be led by it.

The Hon'ble Supreme Court in State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335 has held as under:-

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and

to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

- 1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- 4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- 5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- 6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- 7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously*

instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

From the reading of the allegations, no conclusion can be drawn by this Court for accepting the complicity or the innocence of the petitioners at this stage. In view of the facts and circumstances of the case and the arguments raised when examined on the anvil of the law settled by the Hon’ble Supreme Court, this Court is of the opinion that the present case do not qualify in their favour. Resultantly, petition being devoid of any merits is hereby dismissed. However, the petitioners are at liberty to avail their remedies before the trial Court. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

21.04.2022	(RAJESH BHARDWAJ)
<i>m.sharma</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No