

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

(112-1)

**CRR-471-2021
DATE OF DECISION: 07.09.2022**

PAWAN

...PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

(112-2)

**CRR-789-2021
DATE OF DECISION: 07.09.2022**

RAJNI

...PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Keshav Pratap Singh, Advocate
for the petitioner in CRR-471-2021.

Mr. Kartik, Advocate for
Mr. Baljeet Beniwal, Advocate
for the petitioner in CRR-789-2021.

Ms. Mahima Yashpal, DAG, Haryana
for State-respondent No.1 (in both cases).

Mr. Abhishek Arora, Advocate, Legal Aid Counsel,
for the complainant-respondent No.2 (in both cases).

SUVIR SEHGAL, J. (*Oral*)

This order shall dispose of both the above mentioned revision petitions, which have been filed by the accused-petitioners challenging order dated 27.01.2021, whereby they have been charge-sheeted for offence under Section 212 of the Indian Penal Code (for short

“IPC”) by learned Additional Sessions Judge, Fast Track Court, Faridabad.

For the sake of convenience, facts are being taken from CRR-471-2021.

Facts, in brief, are that FIR, Annexure P-1, has been registered on the statement of a 15 year old school going girl (for short “the complainant”) on the allegation that her parents iron clothes in Greenfield Colony and she goes to the ironing shop of her parents after school. She used to go to Kothi No.1802, Greenfield Colony for returning the ironed clothes and for drinking water, where Kanwar Pal lived alone. About 3-4 months ago, when she went to his house, he called her inside, bolted the door and raped her. He threatened that in case she discloses the incident to anyone, she will be eliminated. She suppressed the incident. She was raped and threatened again when she went to deliver the clothes. When her health started deteriorating, she confided in her mother, who brought her to the Police Station and lodged the complaint. FIR No.114 dated 12.07.2019 for offences under Section 6 of Protection of Children from Sexual Offences Act, 2012 and Section 506, IPC was registered at Police Station Women NIT, Faridabad, Annexure P-1.

The matter was investigated and the statement of the complainant was recorded under Section 164 of the Code of Criminal Procedure, 1973 (for short “the Code”). During investigation, statements of four witnesses were recorded under Section 161 of the Code, Annexures P-3 to P-6, to the effect that Pawan and his wife, Rajni, have given shelter to Kanwar Pal. On the basis of the investigation, final report

has been submitted against Pawan and Rajni. It has also been mentioned in the final report that both, Pawan and Rajni, have been arrested and ordered to be released on bail, whereas Kanwar Pal has not joined the investigation despite the order passed by the Supreme Court, he has not surrendered and has been declared as a proclaimed offender.

While making a reference to the statements, Annexures P-3 to P-6, counsel for the petitioner(s) has urged that the statements were recorded on 22.11.2020 and when the petitioners were arrested in December, 2019 and February, 2020, there was no material against the petitioners. In other words, it is their argument that the incident of harbouring, as alleged never took place and the petitioners have been falsely embroiled as the authorities have failed to arrest the main accused. Counsel further submits that the petitioners were forced to sign on blank papers and no recovery was made from them. Counsel urges that no offence under Section 212, IPC is made out against the petitioners.

Opposing the petition, learned State counsel, who is assisted by counsel for the complainant, has submitted that Rajni is the daughter and Pawan is the son-in-law of the main accused. She has made a detailed reference to the status report filed by way of an affidavit of Assistant Commissioner of Police, Women Safety, Faridabad and has submitted that there has been a mistake in mentioning the year on the statements, Annexure P-3 to P-6. Still further, it is her argument that the prosecution possesses sufficient evidence to show that the petitioners gave shelter to the main accused, Kanwar Pal, and helped him escape. It has also been submitted that the main accused, Kanwar Pal, had approached this Court by way of a petition under Section 438 seeking

grant of anticipatory bail, which was declined on 06.02.2020 and SLP(Crl.)-3464-2020 was dismissed by the Supreme Court vide order dated 07.08.2020 with a direction to him to surrender before the Trial Court within a period of eight weeks. It has been pointed that the main accused did not surrender. Rather, he filed an application seeking extension of time to surrender, which was declined by the Supreme Court by order passed on 08.10.2020 and he continues to be a P.O., though proceedings are continuing under Section 83 of the Code and FIR under Section 174-A, IPC has been registered against him. State counsel further submits that the complainant has delivered a child on 24.12.2019.

Counsel for the parties have been heard and the documents appended with the paper-book have been examined with their able assistance.

Before proceeding further, status report filed by the State deserves to be noticed and its relevant extract is as under:-

“7. That during the course of investigation statements under Section 161 Cr.P.C. of witnesses, namely, Raj Kumar son of Sita Ram, Veena wife of Raj Kumar, Sushil Kumar Ghosh son of R.K. Ghosh, Ram Kishan son of Malkhan Singh, who witnessed the incident while the petitioner was taking away the main accused, Kanwar Pal, were recorded. (Copy of these statements are annexed as Annexures P-3 to P-6). The statements of the above witnesses were recorded on 22.11.2019. It is pertinent to mention here that the date mentioned in the above statements is as 22.11.2020, which was written mistakenly by the Investigating Officer. The actual date of recording the statements is 22.11.2019. The above mistake is regretted. The statement of petitioner under Section 161 Cr.P.C. was not recorded ever. The petitioner joined the investigation on the directions of the Court on 22.08.2020. The petitioner recorded his disclosure statement on 22.08.2020. He demarcated the spot from where he lifted the main accused and sheltered him. The car bearing No.HR-51-BL-3208,

which was used in commission of offence, was also recovered from the petitioner. After that the petitioner was released on bail.”

From the above, it is evident that the argument addressed by the counsel for the petitioner(s) that there was no material with the Investigating Agency to implicate them, falls flat.

The settled legal position is that at the time of framing of charges, only *prima-facie* case is to be seen and the defence of the accused is not to be considered. The Court has to see if there is sufficient ground for proceeding against the accused, then the charge is to be framed. A mini trial is not permissible at this stage. While evaluating the material, strict standard of proof is not required nor is the Court required to record a detailed reason for the framing of the charge. It has been held by the Supreme Court in **State of Tamilnadu by Ins. of Police Vigilance and Anti Corruption Versus N. Suresh Rajan and others (2014) 11 SCC 709** as under:-

“29..... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

A perusal of the report submitted under Section 173 of the Code, clearly makes out a case for framing of charge against the petitioners under Section 212, IPC as the petitioners are alleged to have

harboured the main accused and helped him escaped from the clutches of law. The circumstances alleged by the prosecution indicate that there are sufficient grounds for proceedings against the accused and the Trial Court has rightly framed the charge under the provision as noticed above. No fault can be found with the order passed by the Trial Court framing charge against the accused-petitioners.

There is no illegality or irregularity in the exercise of jurisdiction by the Trial Court. This Court is not inclined to exercise its revisional jurisdiction to set aside the impugned order. Accordingly, both the revision petitions are dismissed.

Needless to mention, any observation made hereinabove shall not tantamount to be an expression of opinion on the merits of the case and the Trial Court shall proceed with the trial uninfluenced by any observation made hereinabove.

(SUVIR SEHGAL)
JUDGE

07.09.2022
Kamal

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