

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

275

CRM-M-23048 of 2022
Date of decision:22.08.2022

Harish Kumar alias Lokesh and others

... Petitioners

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr.Surender Pal, Advocate
for the petitioners.

Ms. Ankita Ahuja, AAG, Haryana.

Mr. Suresh Ahlawat, Advocate
for respondent No.2.

SUVIR SEHGAL J.

Instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “the Code”), seeking quashing of FIR No.0271 dated 18.07.2019 registered for offences under Section 363, 366-A of Indian Penal Code, 1860 at Police Station Civil Lines, Jind (Annexure P-1) and all subsequent proceedings arising therefrom, qua petitioners No.1 and 3 on the basis of undertaking/statement of complainant-respondent No.2.

FIR (Annexure P-1) has been registered on the basis of a complaint given by respondent No.2 on the allegation that Lokesh, petitioner No.1, has enticed his 16 year old daughter (petitioner No.2), on the pretext of marriage in the night intervening 17-18.07.2019. It has been alleged that while leaving her paternal house, victim-petitioner No.2 has also taken Rs.45,000/- with her.

Counsel for the petitioners has urged that petitioner No.1 has married petitioner No.2. By making a reference to birth certificate (Annexure P-2), he submits that a son has been born out of the wedlock.

In order to verify the assertion of the counsel, by order dated 25.05.2022, this Court issued notice to the respondents and directed the State to verify the marital status of petitioners No.1 and 2 as well as the documents appended with the petition and file an affidavit.

Status report by way of an affidavit of Deputy Superintendent of Police, Jind-Law and Order, District Jind has been filed on behalf of respondent No.1-State, which is taken on record. Perusal of the status report shows that during investigation, it transpired that on suggestion of petitioner No.3, petitioner No.1-accused, allured and eloped with victim-petitioner No.2. Petitioner No.3 made arrangements for their travel, stay and expenses. Sections 120-B and 212 IPC were added and on conclusion of investigation, final investigation report under Section 173(2) of the Code was presented qua petitioner No.3 on 19.02.2020. On 25.08.2020, mother of petitioner No.1 produced the victim- petitioner No.2 alongwith a two month old child, who was made to join the investigation and her statement was recorded under Sections 161 and 164 of the Code. Offences under Section 376(3), 376(2)(n) IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short “the POCSO Act”) were added. Victim-petitioner No.2 stated that she left the paternal home on her own and wants to reside with petitioner No.1. However, she declined to undergo internal medical examination, though she was otherwise medically examined. Petitioner No.1, who joined the investigation on 26.08.2020, in compliance

of the order dated 17.08.2020 passed by this Court in CRM-M-22242 of 2020, was arrested and ordered to be released on bail. The blood samples of petitioners No.1 and 2 as well of the child have been sent to the Forensic Science Laboratory, Madhuban for DNA analysis. Final investigation report against petitioner No.1 has been presented and charge has been framed on 19.08.2021.

The State has, however, opposed the petition on the ground that the accused-petitioner No.1 has committed penetrative sexual assault on a minor girl and has been actively involved in abducting her and sexually exploiting her. It is also submitted that petitioner No.1 could neither produce any marriage certificate in support of the marriage nor any evidence could be shown to substantiate the assertion, rather it has been submitted that petitioner no.1 had been maintaining physical relations with victim-petitioner No.2 for more than one year. State in its reply has also denied any information regarding the alleged compromise arrived at between the parties.

This Court has considered the material placed on the record. Petitioners No.1 and 3 in connivance with each other, have allured a 16 year old girl and kept her at different places for more than 13 months. Petitioner No.1 has also maintained sexual relations with her. The victim-petitioner No.2 has been produced from the custody of petitioner No.1. In these circumstances, her statements recorded before the authorities have to be looked at with suspicion. Though an undertaking has been given by complainant-respondent No.2, which is being supported by the counsel representing the complainant, yet the same would not undermine the

seriousness of offence committed against a minor.

An examination of the statement of objects and reasons behind the incorporation of the POCSO Act shows that the objective of the legislature is to ensure safety, security and protection to children from sexual abuse and exploitation.

Keeping in mind the intention and objective of the legislature which has brought out a special enactment to protect the interest of children, gravity and seriousness of the offence alleged to have been committed by petitioners No.1 and 3, this Court is not inclined to exercise the inherent powers vested in it under Section 482 of the Code to quash the offence under the POCSO Act.

The petition being devoid of any merit is hereby dismissed.

It is clarified that observations made hereinabove are for the sole purpose of the decision of the quashing petition and the Trial Court shall conduct and conclude the trial uninfluenced by anything said herein.

(SUVIR SEHGAL)
JUDGE

August 22, 2022
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes