

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-24775-2022 (O & M)

Date of decision :-02.06.2022

Vikash alias Vikash Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Jai Bhagwan, Advocate for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana
for the respondent-State.

SUVIR SEHGAL, J.

This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “the Code”) seeking quashing of FIR No.571 dated 05.10.2021 registered at Police Station Rai, District Sonapat for offence under Section 376 (2) (n), 376 (3) IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short – “the POCSO Act”), Annexure P-4, and subsequent proceedings arising out of the aforesaid FIR.

Brief facts, leading to the filing of the petition, are that FIR No.419 dated 06.11.2019 had been registered on the complaint of a father of a 13 year old girl (hereinafter referred to as – “the prosecutrix) on the allegation that when he came back from work, he found that his daughter/prosecutrix was missing and despite search he could not locate her. He doubted that an unknown person had kidnapped her. On 19.11.2019, he moved a complaint accusing Vikash, present petitioner, of kidnapping and having enticed her on the pretext of marriage. Thereupon, Section 365 IPC was deleted and Sections 363 and 366-A IPC were added. Prosecutrix was subsequently recovered on

24.02.2020. On the next day, her statement was recorded under Section 164 of the Code, she was medico legally examined and her custody was handed over to her parents. Thereafter, Section 8 of POCSO Act was invoked and present petitioner was arrested. Upon submission of final report, petitioner was charged under Sections 363, 366-A IPC and Section 12 of POCSO Act to which he pleaded innocence and claimed trial. Vide judgment dated 04.01.2022, Annexure P-1, petitioner was found guilty of offence under Section 363 of IPC and he was acquitted of offence under Section 11 of POCSO Act. He was ordered to undergo rigorous imprisonment for five years, besides, fine of Rs.10,000/- and in default of payment thereof, a further rigorous imprisonment for a period of three months. Conviction and sentence have been challenged by the petitioner before this Court in criminal appeal i.e. CRA-S-687-2022, which is pending. During the course of the trial, the prosecutrix was produced before the trial Court on 05.10.2021 for recording of her testimony, when it was found that she was pregnant. Her pregnancy test was ordered to be conducted by the trial Court and when the result was found to be positive, impugned FIR was registered.

Counsel for the petitioner has contended that the subject matter of both the FIRs is the same and mere addition of a few more offences, will not make the substratum of the FIRs different. By making a reference to Section 300 of the Code, he has contended that once the petitioner has been convicted for an offence, which conviction is in force, he cannot be tried again for the same offence or on the same facts for any other offence for a different charge. He has placed reliance upon the judgments of the Supreme Court in **Amitbhai Anilchandra Shah versus The Central Bureau of Investigation and another, 2013 (2) RCR (Criminal) 819** and **Prem Chand Singh versus State**

of Uttar Pradesh and another, 2020 (1) RCR (Criminal) 991 to urge that the second FIR is not sustainable.

Advance copy of the petition has been served upon the State. Upon instructions from SI Dilawar, State counsel has submitted that the petitioner is accused of a serious offence of sexual assault on a prosecutrix during the period when he was on bail in the first FIR. It is her categorical assertion that the prosecutrix is a minor and has delivered a child as is apparent from the birth certificate, Annexure P-8. Upon further instructions, she submits that challan has been presented and charge has been framed against the petitioner, who has approached the Court just before the prosecution evidence is to commence. She submits that the offences in both the FIRs are different and the bar under Section 300 of the Code is not attracted.

I have considered the respective submissions of the counsel for the parties.

The impugned proceedings have been initiated against the petitioner for rape and sexual assault of a minor during his temporary release from custody in the first FIR. The second offence, which is much graver and based on a different set of facts, has been committed by the petitioner during the trial of the earlier one. Insofar as the first conviction is concerned, besides Sections 363 and 366-A, the petitioner was tried for sexual harassment of the prosecutrix under Section 11/12 of POCSO Act but he was acquitted. The allegation in the second FIR is based on different facts, which constitute a different offence. The substratum of the two FIRs is not the same and the doctrine of double jeopardy as enshrined in Section 300 of the Code will have no application.

It has been held by the Supreme Court in Sangeetaben Mahendrabhai Patel versus State of Gujarat, (2012) 7 SCC 621 that in

order to attract the provision of Article 20 (2) of the Constitution or Section 300 of the Code or Section 71 IPC or Section 26 of the General Clauses Act, the ingredients of the offences in the first case as well as the latter case must be the same and not different. The test to ascertain whether the two offences are the same, is not identity of the allegations but identity of the ingredients of the offence. Motive for committing offence cannot be termed as ingredients of offences to determine the issue. The protection is not available unless the judgment in the previous case is based on the same charge. As is evident from the above, there is no allegation of sexual assault against the petitioner in the previous proceedings. Though there may be some overlapping of the facts in both the cases but the offences are entirely different. The subsequent proceeding, therefore, is not barred by Section 300 of the Code.

Judgments relied upon by the counsel do not advance his case. The factual position in the present matter is entirely different and distinguishable.

Petition being bereft of merit, is hereby dismissed.

Needless to mention, any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

02.06.2022
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No