

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(135)

CRM-M-33794-2022
Date of Decision: 23.11.2022

Suman Kumari

--Petitioner

Versus

Ravi @ Ravi Kumar & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Ashok Kumar Sharma (Bhana),
Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 482 Cr.P.C praying for impugning the order dated 17.11.2021 (Annexure P-1), whereby the complaint no.133 of 2020 dated 9.12.2020 filed by the petitioner has been dismissed by learned JMIC, Hoshiarpur as also for setting aside the order dated 11.3.2022 (Annexure P-7) passed by the learned Addl. Sessions Judge, Hoshiarpur whereby the revision filed by the petitioner has been dismissed.

As per the brief facts of case on 8.11.2020 Sandeep Kumar along with the present petitioner was going to pay obeisance to the place of Baba Sidh Channoji. On their way Ravi and Sonu i.e. the respondents molested the complainant/petitioner. She told the same to her husband and they manhandled them. On 8.11.2020 in the evening at about 5.45 PM Ravi (respondent no.1) armed with Kirpan and Gurmail Singh along with his son Sonu (respondent no.2) armed with Danda and Kirpan attacked Budh Dayal. Thereafter, Harbhajan Singh, Ravi's father and brother Raju also arrived there and all of them gave beatings to Budh Dayal. The police came to the place of occurrence and inspected the site. They registered G.D.

No.45 dated 11.11.2020 under a non-cognizable offence. Aggrieved by the same, petitioner filed representation dated 21.11.2020 to S.S.P., Hoshiarpur, however, no action was taken on the same. Finding that the police has not taken any action on the representation filed, the petitioner filed the complaint in question dated 9.12.2020 before the learned JMIC, Hoshiarpur. The petitioner examined the witnesses in preliminary evidence, however, learned JMIC, Hoshiarpur dismissed the complaint vide impugned order dated 17.11.2021. The petitioner assailed the same by filing a revision petition before the learned Addl. Sessions Judge, Hoshiarpur, who again failed to appreciate the same and dismissed the revision vide impugned order dated 11.3.2022.

Learned counsel for the petitioner submits that both the courts below have fallen in error in rejecting the complaint filed by the petitioner against the respondents/accused and thus the impugned orders deserve to be set aside. He contends that from the allegations made in the complaint the offence under section 354 IPC is clearly made out. He submits that the reasoning given by the courts below that the petitioner did not raise any objection to the alleged molestation is no ground to reject the complaint. He submits that in the facts and circumstances of the case a clear case is made out for summoning the accused and hence both the impugned orders deserve to be set aside and the respondents may be summoned to face the trial.

I have heard learned counsel for the petitioner at length and have gone through the record carefully.

The case in hand pertains to the eye witness account of complainant/petitioner. As per allegations the occurrence had taken place at about 6.30 PM. Allegedly both the respondents namely Ravi and Sonu caught hold the complainant/prosecutrix and molested her. Admittedly, she was going with her husband. On the basis of allegations the police registered G.D. No.45 dated 11.11.2020 under section 323 IPC. Later on respondents Ravi and Gurmail Singh, father of accused Sonu lodged FIR No.154 dated 18.11.2020 under sections 323, 325, 506, 148, 149 IPC registered at Police Station, Chabbewal, District Hoshiarpur against the husband of the complainant namely Sandeep Kumar and others. In the preliminary evidence the complainant/petitioner herself stepped into the witness box as CW-1. She further examined CW-2 Sandeep Kumar and ASI Amarjit Singh as CW-3. Thereafter, preliminary evidence was closed by the complainant on 29.9.2021. It was alleged that on 8.11.2021 she was going along with her husband to the place of Baba Sidh Channo to pay obeisance. At about 6.30 PM when they reached near the house of Om Parkash, the accused persons caught hold her and molested her. Though, admittedly husband of the complainant/petitioner was with her, however, there was no resistance or any hue and cry on the part of the complainant. She told her husband about this after reaching house. She had chosen not to disclose these facts to her husband at the spot and there is nothing on record to show the reason as to why she kept mum at the relevant time when the incident occurred. Besides this, no independent witness of the occurrence has been examined in support of the allegations of the complainant.

This court has placed reliance upon the judicial precedents in cases of *Hardeep Singh Vs. State of Punjab and others (2014) 3 SCC 92* and *Naveen Vs. State of Haryana, 2022(4) RCR (Criminal) 953*, wherein it has been held that power under Section 319 Cr.P.C is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where circumstances of case so warrant and crucial test has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to extent that evidence, if goes un rebutted would lead to conviction.

Both the courts below have appreciated and re-appreciated the evidence on record and thus the case put forward by the complainant did not inspire any confidence and hence there is a concurrent finding against the petitioner/complaint.

Keeping in view the facts and circumstances of the case and the law settled, this court does not find any infirmity in the impugned orders passed by the learned courts below. The petition being devoid of any merit is, accordingly, dismissed.

(RAJESH BHARDWAJ)
JUDGE

23.11.2022

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