

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

208

CRM-A-974-2019

Date of Decision: 15.12.2022

Sumitra

..... Applicant

Versus

Ram Chander and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. S.K.Yadav, Advocate
for the appellant.

JAGMOHAN BANSAL, J. (Oral)

1. The applicant through instant applicatin under Section 378 (4) of Cr.P.C. is seeking special leave to appeal against order dated 08.10.2018 whereby learned JMIC, Narnaul has dismissed the complaint of the applicant.

2. The brief facts emerging from the record are that on 11.02.2016, the applicant approached police alleging that respondent has committed rape upon her on 07.01.2016 and 10.02.2016. The police registered FIR No.14 dated 11.02.2016. However, police in investigation found no substance in the allegations and accordingly no report under Section 173 Cr.P.C. was filed. The police opted to file cancellation report and applicant did not file protest petition. The applicant availed remedy of complaint before trial Court.

3. The complaint was filed under Section 376, 452, 506, 166, 167 of IPC and Section 12 of PC Act against Ram Chander who allegedly committed rape as well as 04 other police officials which included two

female police officers and two Deputy Superintendent. The complaint came up for consideration before learned JMIC, Narnaul who vide order dated 08.10.2018 found that there is no ground to summon the alleged accused and accordingly dismissed the complaint. The findings recorded by the learned trial Court read as :

“After hearing the arguments, taking into the consideration the facts & circumstances as well as complainant's evidence and MLR report dated 11.02.2016 this court finds striking differences between complainant's version and MLR but at this stage court has to see is whether or not there is sufficient ground for proceeding against respondent. In this case, the magistrate is not to weigh the evidence meticulously as a trial court. The standard adopted magistrate in scrutinising evidence is not the same as the one which is to be In view at the stage of framing charges. The standard for ascertaining whether or not the evidence collected in the preliminary enquiry discloses sufficient grounds for proceeding against the respondent is lower than the one to be adopted at the stage of framing charges. Reliance placed upon Kewal Krishan Vs Suraj Bhan and another. AIR 1980 Supreme Court 1780.

Evidence on record has been adduced by which prima facie it can not be established that the respondent Ramchander has committed rape and complainant Sumitra. Complainant stated that she has been raped by the respondent on 2 different occasions dated 07/01/2016 and 10/02/2016 at 5 AM on both the occasions at the same place. In MLR it was also mentioned that after these

incidents she had intercourse with her husband also. Urine and stool has been passed after the incident and apart from that patient had taken the bath and changed the clothes including the undergarments/underwear. During the medical examination Dr specifically mentioned that there was no external mark of injury over the body of complainant, there was no redness or tenderness and any part of body of complainant. Apart from this police has also filed the investigating report in a FIR No. 14 dated 11/02/2016 and specifically mentioned that all the allegations made by complainant against the respondent Ramchander were found false. It is also important to mention that in her complaint to police and 11/02/2016 she mentioned that the respondent has already raped her 273 times.

Complainant has not explained why she took bath and changed her underwear and clothes after the rape. There was no external mark or injury, even redness or abrasion on the body of complainant. All this shows that the complainant failed to establish prima-facie her allegations against the respondent Ramchander. The allegations against the other respondents were not made out in any form so the complaint in hand stands dismissed and disposed of. File be consigned to record room after due compliance.”

4. Learned counsel for the appellant strenuously contended that the trial Court has failed to consider evidence led by appellant and complaint has been mechanically dismissed.

5. I have scrutinised the record and heard arguments of learned counsel for the appellant. The present application seeking special leave to

appeal is bereft of merit and deserves to be dismissed.

6. The applicant is seeking special leave to appeal against order whereby trial court has dismissed complaint of the applicant. It is settled law that granting of special leave to appeal against acquittal is a discretionary power. However, such power has to be exercised judiciously and the Courts are not permitted to exercise the same at whims or fancies and arbitrarily. Arbitrariness has always been held anathema to exercise of any power.

7. The applicant filed complaint with police authorities and FIR came to be registered. The police did not find substance in the complaint and accordingly filed cancellation report. The applicant is 45 years old lady, thus, cannot be assumed to be ignorant of law. As per applicant, she was raped on 07.01.2016 and 10.02.2016. The applicant opted to remain silent after alleged incident of 07.01.2016 and she approached police on 10.02.2016 i.e. after second incident. There is gap of one month between 07.01.2016 and 10.02.2016 i.e. date of first incident and second incident. The applicant attempted to implicate police officials who did not agree with her complaint. The trial Court has dismissed complaint, thus, applicant could file revision before Competent Court whereas applicant has filed appeal along with application seeking special leave to appeal. MLR was not supporting the case of the applicant. No injury was found over the body of the applicant. Accordingly, the complainant/applicant failed to make out prima facie case warranting summoning of alleged accused.

8. Having regard to the findings recorded by trial court including accepted legal position, this Court is of the considered opinion that in the case in hand, there is no infirmity or irregularity in the impugned order

whereby trial Court has dismissed the complaint. Accordingly, this Court fully agrees with the finding recorded by Tried Court. Request of the applicant seeking permission special leave to appeal is hereby rejected. In the result, application seeking special leave to appeal and appeal stand dismissed.

(JAGMOHAN BANSAL)
JUDGE

15.12.2022
anju

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>