

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 217

Criminal Revision No.266 of 2022
Date of Decision: May 05, 2023

Deepak Kumar Verma

..... PETITIONER(S)

VERSUS

State of Punjab and another

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

. . .

PRESENT: - Mr. D.S. Matya, Advocate for the petitioner.

Mr. Harpreet Singh, Addl. AG, Punjab.

. . .

Tribhuvan Dahiya, J (Oral)

This petition has been filed for setting aside the order dated 20.08.2021 whereby charges under Sections 493, 495, 376 IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') have been framed against the petitioner.

2. The FIR No.129 dated 08.09.2020, registered under Sections 493, 495, 376 of IPC, 1860 in the case was lodged on a statement of the prosecutrix/ respondent No.2, aged around twenty six years, alleging that the petitioner, who was running a gym at Gurgaon, solemnized marriage with her on 29.11.2016. After marriage, the two lived as husband and wife at Gurgaon. After four months, the petitioner left the complainant in her sister's house on the plea that he was trying to make his parents agree to the marriage. And on their agreeing, he shall take her to his home. The petitioner came to Mukerian and continued his relations with the complainant. He used to take her at different hotels in different cities, and kept on making physical relations with her. Whenever she asked the petitioner to take her to the in-laws' house, the petitioner was evasive and stated that his parents were still annoyed. During that time she forcibly

visited the petitioner's house, but his parents did not permit her to live there

and she was abused and ousted from there. The petitioner used to take her to rented accommodation, where his friends would do obscene acts in the petitioner's presence and he never objects. In February-March 2019, when the complainant's brother-in-law/*jija* uploaded her photographs with the petitioner, she received a call from a person, Ram Kumar Verma, and came to know that Deepak Kumar was already married with his daughter Ruby Verma of Faridabad. Out of this wedlock, they also had two daughters. The petitioner cheated the complainant into this relationship, and is now threatening her again to form physical relations. On her refusal, she is threatening to kill her.

3. On completion of investigation, final report under Section 173 (2) Cr.P.C. was presented and charges against the petitioner were framed vide the impugned charge-sheet dated 20.08.2021, under Sections 493, 495, 376 IPC and Section 4 of the POCSO Act, 2012.

4. Learned counsel for the petitioner has contended that charges framed against the petitioner are not *prima facie* made out from the allegations levelled. Firstly, the provisions of POCSO Act, 2012 are not attracted in the case, since the complainant/prosecutrix was an adult, more than twenty six years of age, at the time of alleged occurrence. Secondly, it has been contended that a marriage was duly solemnized between her and the petitioner on 29.11.2016 and the two stayed together as married couple having consensual physical relations. The FIR was lodged about five years thereafter on 20.08.2021, levelling allegations of rape and cheating against the petitioner which are patently false. The allegations on the face of it do not constitute the offences alleged even *prima facie*.

5. Learned State counsel, on instructions from ASI Jasvir Singh, does not dispute the fact that the prosecutrix was an adult even at the

time of lodging of the FIR, and there is no material on record to invoke offences under Section 4 of the POCSO Act, 2012. He, however, submits that there are specific allegations against the petitioner of forcible physical relations with the prosecutrix and deceiving her into the matrimonial relationship, despite being earlier married.

6. The submissions made by learned counsel for the parties have been considered.

7. As per the prosecutrix's own statement dated 20.08.2021, leading to lodging of FIR in question, she was around twenty six years of age. Therefore, even at the time of alleged deceptive marriage on 29.11.2016, her age would be around twenty one years. There is no material on record, nor could any be pointed out by learned State counsel, that could have formed the basis for the trial Court to charge the petitioner under Section 4 of POCSO Act, 2012. Accordingly, provisions of POCSO Act, 2012 are not even *prima facie* attracted against the petitioner in this case.

8. In view thereof, the impugned charge-sheet dated 20.08.2021 is unsustainable, and is hereby set aside. Without considering the merits of other charges under Sections 493, 495 and 376 IPC, the case is remanded to the trial Court to pass a fresh order in accordance with law, after hearing the parties.

8. Disposed of.

(Tribhuvan Dahiya)
Judge

May 05, 2023

Payal

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No