

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

[113]

CRR-388-2023 (O&M)
Date of Decision:09.02.2023

Jafruddin

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Mazlish Khan, Advocate
for the petitioner.

JAGMOHAN BANSAL, J. (Oral)

CRM-6373-2023

Application is for condonation of delay of 30 days in filing the revision petition.

Keeping in view the averments made in the application, the application is allowed and delay is condoned.

CRM stands disposed of.

CRR-388-2023

The petitioner through instant petition filed is seeking setting aside of order dated 30.09.2022 whereby Ld. Additional Sessions Judge (Fast Track Special Court for Trial of Offences Under POCSO Act), Nuh has dismissed the application of the petitioner filed under Section 319 Cr.P.C.

The brief facts of the case are that on 26.04.2020, a complaint was lodged to the police alleging that on 22.04.2020 at around 4.00 A.M., the minor daughter of the complainant was feeding her animals and at that time, Akir son of Jamshed and Mausim son of Nijar

Mohammad came there and started doing obscene acts. In the meantime, father of the prosecutrix came there and Akir and Mausim fled away from the spot. The prosecutrix disclosed to the complainant that about two months ago when she had gone to the fields to collect fodder for cattle, both forcibly raped upon her and made a video in a mobile phone.

An FIR No.114 dated 26.04.2020 under Sections 506, 376(2) (g) of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for brevity 'POCSO Act') came to be registered at Police Station Pinangwan Station District Nuh. The police investigated the matter and found that no offence of rape has been committed by the accused. Mausim had committed obscene acts with the daughter of the complainant and accordingly Sections 450, 376 (D) of IPC and Section 6 of the POCSO Act as well as Section 25 of the Arms Act were deleted and accused namely Akir son of Jamshed was found innocent. The challan was presented against Mausim under Section 354A and 506 IPC and Section 8 of POCSO Act. The trial Court framed charges against Mausim under Section 506 IPC and Section 6 of POCSO Act and in alternative Section 376(2) (n) of IPC.

The prosecutrix appeared before the trial Court as PW-3 and made allegations against respondent No.2-Akir. She reiterated her statement made under Section 164 Cr.P.C and Section 161 Cr.P.C. The petitioner moved an application under Section 319 Cr.P.C. seeking summoning of respondent. The trial Court vide order dated 30.09.2022 has dismissed application of the petitioner.

Learned counsel for the petitioner, *inter-alia*, contends that there are specific allegations against respondent No.2, however, the trial

Court has failed to appreciate the contents of the allegations and relied upon police report. Offence under Section 376 IPC is made out against respondent No.2. Thus, the trial Court was bound to proceed against respondent No.2-Akir.

I have heard the arguments raised by learned counsel for the petitioner and perused the record.

The relevant extracts of the impugned order dated 30.09.2022 read as:

“It is considered view of this Court that in order to summon an additional accused under section 319 Cr.P.C., the court has to see that the nature of evidence must be of more than a prima facie case on the basis of evidence collected by the police during inquiry, investigation and trial. In the instant case, the present FIR was registered by the police on the basis of complaint dated 26.04.2020 moved by the father of the victim wherein he had alleged that on 22.04.2020, at about 4.00 A.M., when his daughter went to give fodder to the cattles then accused Mosim and Aakir came there and started to outrage the modesty of his daughter but in the meantime, he also reached there and after seeing him, both the accused fled away from there. It was further alleged in the complaint that thereafter, his daughter disclosed him that two months ago, she was raped by both of them and also clicked her nude photographs and on the basis of those photographs, they used to blackmail her and thereafter, they had committed rape upon her several times. When the prosecutrix got recorded her statement before the learned Magistrate under section 164 Cr.P.C. then although she levelled the similar allegations before the Magistrate, but she never alleged that on 22.04.2020 she had ever been raped by the accused. When the victim was got medico-legally examined then before the doctor also, she had levelled similar allegations and specifically narrated that on 22.04.2020 no rape was committed upon her by accused as accused had run away after seeing her father. Even, before the

Counselor also she disclosed the same story that on 22.04.2022 accused had not committed rape upon her rather they had only tried to drag her for taking her into the fields by holding her hand but they could not succeed as her father came there; but when the prosecutrix appeared before the court as PW3, then she drastically changed her version and deposed an improved story before the court by saying that in 22.04.2020, at about 4.00 A.M. when she was working in her house then accused Mosim and Aaki dragged her to the fields and both of them committed rape upon her without her consent. However, it is not the case of the complainant in his complaint nor is case of the prosecutrix in her statement under section 164 Cr.P.C. before the learned Magistrate and before the doctor as well as before the Counselor. Due to material delay in reporting the matter to the police, even samples of the victim could not be drawn for the purpose of examination in FSL. Hence, the material improvement in the story of the prosecutrix before court as PW3 creates a reasonable suspicion about the true story, especially when it has been mentioned in the final report under section 173 Cr.P.C. that after a thorough investigation, no role of the proposed accused Aakir was found that is why he was declared innocent.

10. Learned Special Public Prosecutor for the State has not been able to bring out any lacuna in the police investigation. The Investigating Officer after due investigation, did not find the involvement of the proposed accused named above in the present case rather he was found innocent after conducting a thorough investigation up to DSP rank. The Court cannot become an instrument in the hands of the prosecution and the complainant to add person as accused merely on the asking of the prosecution or the complainant.”

From the perusal of the impugned order dated 30.09.2022 and arguments of learned counsel, this Court does not find any ground to interfere with the impugned order. The trial Court has recorded categorical findings and there is no legal or factual infirmity in the said order. The criminal law cannot be put into motion at the whims and fancies of the

complaint. It is well known fact that the criminal proceedings cause mental and physical agony. The petitioner has failed to point out any infirmity in police report and simply relying on statement of prosecutrix. No plausible explanation is coming forward regarding non-reporting of allegation of rape committed trial to 23.04.2020. The time of alleged incident i.e. 4 a.m. also creates doubt.

No ground is made out for setting aside of order dated 30.09.2022 passed by Additional Sessions Judge (Fast Track Special Court for Trial of Offences Under POCSO Act), Nuh. Thus, present petition deserves to be dismissed. Accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

09.02.2023
Anjal

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