

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR-1219-2023 (O&M)

Date of decision: 22.09.2023

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...Petitioner(s)

Vs.

State of Haryana and Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr.Shobit Phutela, Advocate
for the petitioner.

Ms. Deep Shikha Chauhan, AAG Haryana.

NIDHI GUPTA, J.**CRM-21054-2023**

This is an application under Section 482 Cr.P.C. seeking
condonation of delay of 47 days in filing the Criminal Revision.

After going through the contents of the application, the
same is allowed subject to all just exceptions.

MAIN CASE

Prayer in the present petition filed by the
complainant/father of the victim, is for setting aside order dated
20.12.2022 passed by learned Additional Sessions Judge (Fast Track Special
Court to Try the Offences of Rape and under POCSO Act), Kurukshetra in
case bearing No.CRM-254-2022 arising out of FIR No.24 dated 21.02.2017
under Section 346 IPC registered at Police Station Ismailabad, Kurukshetra,
whereby the protest petition filed by the petitioner has been dismissed and
cancellation report filed by the police has been accepted.

2. FIR in the present case was registered on the basis of statement of father of the victim/petitioner and the same reads as follows:-

"...Sir it is submitted that I Shish Pal son of Ramsaran, caste Jaat, resident of Shisla District Kaithal. On 19.02.17 I alongwith my family had come the marriage of my sister's daughter at village Dhol. The marriage of my sister's daughter was in M.K. Garden. I alongwith my family had gone to M.K. Garden Dhala Majra in the marriage ceremony. My daughter namely sita @ Meenu was also with us in the palace. I at about 3 o'clock look daughter Sita @ Meenu in the marriage palace, but I did not find her, I have searched her lot in the palace but could not find her. My daughter is missing from the palace. Identification of my daughter are as fair colour, lengthy face, thin strong body Height 5 feet 5 inch age about 17 years 3 months. Wearing yellow colour salwar Kamij (shirt) wearing sandal in feets. I and my family searched her at our own level, but could not found her. Date of birth of my daughter is 24.12.1999. Today I have come to you that my daughter be searched...."

3. Learned counsel for the petitioner inter alia submits that the victim/daughter of the petitioner went missing on 19.2.2017 whereupon he registered the above said FIR. Subsequently, the victim was recovered on 23.02.2017 and she informed the petitioner that she had been kidnapped by the accused/respondents No.2 to 4 herein. Thereafter, Statement of the victim was recorded under Section 164 Cr.P.C. before the learned Judicial Magistrate, 1st Class, Kurukshetra on 24.02.2017, in which she stated as follows: -

"Stated that in December 2016, Pradeep met me near Chopal and on that day my mother was left behind and he said to me that I came to know about marriage of daughter of your

paternal aunt 'bua' namely Rishu on 19.02.2017 and he said that I shall come outside palace at the time of marriage and then I refused him but he said that if I will not come outside then he will make my video viral and he said that he will put mobile in outside balcony of your house and you give missed call to me with this phone and I will get to know but I refused about this and then he came on the day of marriage with two boys and auto was parked already on the day of marriage and he sent me with both the boys and said that I will come later and thereafter both those boys took me to a village and white car was already parked there. Thereafter, they took me in that car and they stopped the car outside a Dhaba in Panipat and Pradeep came there and then Pradeep made both his friends get out of the car and he attempted to rape me. Pradeep is grandson 'pota' of real brother of my grandfather and I know him since childhood. I was having friendship with Pradeep since June 2016. At that time, I went with Pradeep due to some work in nearby Village. Thereafter, my family members caused beating to me and him. Thereafter, Panchayat was held and Sarpanch and other remaining family members got our compromise conducted. In Panipat, we stopped in car for 5/10 minutes and thereafter we stopped for one hour outside the car and he raped me in the car and when I attempted to move out of car then he locked the car and he removed my clothes and did obscene talk with me but after coming out of car he did not say anything to me for one hour and after about one hour, he said that I have some work and he went from there. Thereafter, both of those boys had food in the Dhaba and while going back one boy who belongs to village of maternal uncle 'mama' of Pradeep. He touched me and did obscene talk with me and thereafter both of them kept on moving the car for complete night and on next day during evening they left me in

a Gurudwara and they took me to Delhi. Thereafter, I stayed there alone for two days in Gurudwara because Singh Sahab allows to stay in Gurudwara only for two days. I did not say anything to anyone there. Because they told me that if I will say anything then they will kill me and will made my video viral. They told me that they are nearby. I stayed there for 20, 22 and when on 22nd I refused to stay then on 22nd I kept on waiting for them and they came during evening on 22nd and I don't know where they took me. Thereafter, during entire night, I don't know where they took me. They received call of elder brother of Pradeep namely Sandeep and he said that my family members have submitted police complaint. Thereafter, day before yesterday, they were going after leaving me at Gurudwara and Sandeep called them and they said that we are ok and we are leaving her. Thereafter, I sat there in Gurudwara and I asked phone from many persons but they did not give me phone. Thereafter, one aunty gave me phone but I could not talk with my father completely and I went outside and took phone from a 'rehri wala' and called my father and I took number of my maternal uncle 'mama' from him who resides in Gurugram. Thereafter, I talked with my maternal uncle 'mama' and I boarded Metro from old Delhi and came to HUDA City Center Gurugram. There my maternal uncle 'mama' came to take me. Sandeep is also in connivance with them. My video was made by Pradeep. That in June 2016 when I went with him then he made this video. At that time, I was in friendship with him. I said to him that delete my video but he never showed that video to me..."

4. Learned counsel submits that despite the fact that victim had categorically named the accused/respondents No.2 to 4 in her statement under Section 164 Cr.P.C., no action was taken by the police in

the complaint filed by the petitioner. It is contended that even as per the MLR dated 26.02.2017 (Annexure P2), it has been clearly stated therein that *"Possibility of sexual assault cannot be ruled out"*. It is further submitted that one of the reasons cited in the challan (Annexure P3) for filing cancellation report is that as per the FSL report, semen could not be detected on any of the exhibits mentioned above. Learned counsel submits that semen could not be detected on the clothes of the victim as, as reported in the MLR (Annexure P2) *"Clothes sealed were not same as worn at the time of incident. History of taken bath and changing of clothes."* It is submitted that accordingly in view of the fact that admittedly the clothes of the victim submitted for examination were not the same as those worn by her when she was kidnapped and raped whereafter, she had taken bath and changed her clothes, it was for this reason that semen was not detected on the exhibits. It is submitted that though the prosecutrix had categorically alleged 'rape' by respondent No.2 yet offence under Section 376 IPC was not added. On the contrary, the police proceeded to file cancellation report after shoddy investigation. It is submitted that even no offence under the POCSO Act was added.

5. Learned counsel for the petitioner further took this Court through the voluminous record to submit that there are glaring discrepancies in the investigation conducted by the police on the basis of which, cancellation report was filed. In this regard, learned counsel refers to challan/final report under Section 173 Cr.P.C. dated 06.06.2017 (Annexure P3), whereby cancellation of the present FIR has been recommended on

the ground that the victim never stayed at the Gurdwara. Learned counsel contends that however, in reporting this, the Investigating Agency has ignored the categorical deposition of CW3-Gurwinder Singh, Clerk, Shishganj Gurudwara Sahib, Delhi, who had deposed that *"he is working as clerk in Sikh Gurudwara Delhi. He has brought the summoned register pertaining to the lockers of the passengers. As per record, there is entry at Sr.No.27 dated 20.02.2017 of locker No.132 in the name of victim-prosecutrix. The rent of locker was Rs.20/- and on the receipt No.158666 signature of 'S' is there. The locker was vacated on 22.02.2017 under the signature of victim-prosecutrix. The copy of the register is Ex.C7."* It is submitted that even the receipt of Rs.20/- paid as rent of the locker, was duly signed by the prosecutrix and therefore, it is clear that victim had stayed at the Gurudwara and the police had ignored the vital evidence in this regard.

6. It is further submitted that as the victim was a minor girl of 17 years and 4 months at the time of incident, therefore, offence under POCSO was attracted and should have been added. It is contended that in this view of the matter the evidence ought to have been examined afresh by the Court of learned Additional Sessions Judge.

7. Learned counsel further submits that medical examination was conducted in a delayed manner on 26.2.2017 while the incident took place on 19.02.2017. However, despite that as per the MLR (Annexure P-2), *"possibility of sexual assault cannot be ruled out."* It is submitted that accordingly in view of the above said facts, present Criminal

Revision Petition be allowed and impugned order dated 20.12.2022 be set aside.

8. No other argument is raised on behalf of the petitioner.

9. I have heard learned counsel for the petitioner.

10. Perusal of the record of the case reveals that the learned trial court after considering and appreciating the documentary as well as oral evidence on record, as also the submissions and pleadings on behalf of the parties, had returned the following findings which are produced herein below:-

"12. The present FIR No.24 dated 21.02.2017, under Section 346 IPC was registered in the Police Station Ismailabad on the complaint moved by the complainant 'S' regarding missing status of his daughter/victim 'S' @ 'M'. On 23.02.2017 the victim-prosecutrix was recovered and produced by her father. Her statement under Section 164 Cr.P.C. was got recorded. Thereafter, the investigation was conducted in this case and ultimately the cancellation report was filed by the police in the Court on the grounds that phone location of Pardeep from 19.02.2017 to 24.02.2017 is of town Pundri, Kaithal as he was attending a marriage there.As far as the other person Dharampal is concerned, the entire village has taken his responsibility that he was present in the village on the date of the incident. Furthermore, it also came on the record that the complainant and the others visited the marriage which was being attended by Pardeep and after satisfying themselves that victim is not present only then they all left the marriage. As per record of Shishganj Gurudwara, Delhi there was no entry regarding the stay of victim-prosecutrix neither she was seen in the CCTV cameras installed in the Gurudwara premises.

Further, no semen was detected on the belongings of the victim-prosecutrix.

13. Now, aggrieved by the cancellation report dated 06.06.2017 the complainant has filed the protest petition which was treated a private complaint. The complainant has himself stepped into the witness box as CW1 and has also examined the victim-prosecutrix as CW5 along with other witnesses to prove prima facie allegations against the accused persons. However, as per version of the complainant, after her recovery the victim-prosecutrix has informed him that Pardeep, Sandeep and Dharampal kidnapped her forcibly, whereas the victim-prosecutrix while stepping into the witness as CW5 is stating that Pardeep, Dharampal and one other boy, whom she does not recognize have forcibly taken her. This her version in the statement recorded under section 164Cr.P.C Furthermore, she is stating that Sandeep had only talked on phone with other persons whereas as per the version of the complainant Sandeep was the person who actively involved in the kidnapping of the victim-prosecutrix by being present there. Furthermore, the complainant is totally silent regarding the previous compromise effected between the parties though he has stated that previously also the Pardeep has raped the victim-prosecutrix then why immediately complaint was not moved has no-where been explained. On the other hand, the victim-prosecutrix is totally silent qua this fact that previously also Pardeep has raped. Otherwise also, CW2 'VS' maternal uncle of the victim-prosecutrix has clearly stated that after the recovery of victim-prosecutrix her family members came to his house at Gurgaon and took her away and subsequently came to know that the victim-prosecutrix was kidnapped and raped. If the victim-prosecutrix on seeing CW2 'VS' started crying and he consoled her also then why he subsequently came to know

what happened with her no explanation forthcoming on record in this regard. Further, as per victim-prosecutrix the accused Pardeep has told her that he will throw a phone in the balcony of her house and she would give missed call to him. However, there is nothing on record to show that the said phone was produced by the complainant before the police at any point of time for the reasons best known to him. That would have been the best evidence to prove that Pardeep was in contact with the victim-prosecutrix but still that mobile was never produced. Furthermore, in her statement recovered under Section 164 Cr.P.C. victim-prosecutrix has nowhere stated that Pardeep came to Delhi whereas in her statement recorded in the court she has stated that Pardeep also came to Delhi. Further, in her statement recorded under section 164 Cr.P.C. victim-prosecutrix has stated that other boys present also touched her inappropriately, but she is totally silent qua this fact in her statement recorded in the court. No doubt, the complainant has examined CW3 Gurvinder Singh, Clerk Gurudwara Shish Ganj Sahib Delhi who has provided the locker which was taken by the victim-prosecutrix for two days but merely renting a locker in the Gurudwara does not prove that she stayed there for the time period when the locker was taken there. The investigating agency has conducted the investigation and checked the CCTV footage of the camera installed in the Gurudwara premises but still the victim-prosecutrix was nowhere seen in the same. Neither any record of her stay was there. Mere taking of a locker on rent by anybody does not show that he was present in the Gurudwara for whole time. Otherwise also, who paid the rent of the said locker if the victim-prosecutrix is alleging that she was taken from the palace and she was left by the other boys near the Gurudwara, then how she came in possession of the money, no explanation

is forthcoming on record when she was being threaten not to leave the premises. Furthermore, the victim-prosecutrix went missing on 19.2.2017 whereas the matter was reported to the police on 21.2.2017. There is no explanation forthcoming on record that why the matter not immediately reported by the complainant to the police, if he was already suspecting a person. Furthermore, the complainant is claiming that doctor did not take the clothes of the victim-prosecutrix in to possession but from the copy of the MLR ExC3 it is clear that the clothes of the victim-prosecutrix were taken in to police possession and the same were sent to the FSL, Madhuban but no semen was deducted upon the same as is clear from the report Ex.C10 proved by Dr. M.K. Malik as CW10.”

(Emphasis supplied)

11. Thus, from the above said findings, it emerges that: as per the CDR obtained from Cyber Cell, from 19.02.2017 to 24.02.2017 the main accused Pradeep Kumar was found at Habri Road, Pundri, District Kaithal in marriage function; even as per enquiries made from other villagers, all of them informed that from 19.02.2017 to 20.02.2017 Pradeep Kumar was present at Pundri and Kaithal in wedding of son of his paternal uncle ‘chacha’; even as per enquiries made from Sarpanch and other respected persons of the village, it was reported that co-accused Dharampal was also present in his village on 19.2.2017; furthermore as per investigation conducted on 03.04.2017, ASI Dharmbir Singh had reached Sheeshganj Gurudwara Delhi and had included the Manager of Sheeshganj Gurudwara namely Tarsem Singh and Clerk Labh Singh in the investigation who checked the records of Gurudwara from 19.02.2017 to 23.02.2017 and

also checked CCTV footage of the cameras installed in Gurudwara and after checking the photo of girl Seeta they informed that this girl has not visited Gurudwara and that they do not allow anyone to stop in Gurudwara without checking ID; thus, notwithstanding the testimony of CW3, the story put-up by the prosecutrix that she was kept in the Gurudwara by the accused against her will, is not clearly established on record to be factually correct; moreover, from the statement of the prosecutrix under section 164 Cr.P.C., it is also clear that the prosecutrix has herself admitted that she was in a relationship with main accused-Pardeep even in 2016 and she has stated in her statement under Section 164 Cr.P.C. that “...that Pradeep Kumar is grandson ‘pota’ of real brother of my grand father and I was in friendship with him since June 2016... .. My video was made by Pradeep. That in June 2016 when I went with him then he made this video. At that time, I was in friendship with him. I said to him that delete my video but he never showed that video to me...”. From the above facts it is clear that even prior to the present incident, the prosecutrix was in consensual relationship with respondent No.2/main accused; it is admitted that earlier also in respect of the earlier incident a compromise had been entered into between the parties; and no doubt, as per the MLR (Annexure P-2) it has been recorded that “possibility of sexual assault cannot be ruled out”, however, simultaneously, MLR also records that “No injury marks seen....No external injury marks seen on any part of the body...Hymen old healed torned. No injury marks seen..”.

12. Learned counsel for the petitioner has shown nothing to this Court to controvert or dispute the above said findings. In view of above discussion, I find no ground is made out to interfere in the impugned order. Present petition accordingly stands **dismissed**.
13. Pending application(s) if any also stand(s) disposed of.

22.09.2023

Sunena

(Nidhi Gupta)**Judge****Whether speaking/reasoned: Yes/No****Whether reportable: Yes/No**