

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCRM-A 1371-MA of 2018
Date of decision: 25.07.2023.

Bhagwan Dass

.....Applicant

Vs.

State of Punjab and another

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Manbir Singh Batth, Advocate for the applicant.

Nidhi Gupta, J.

Applicant/complainant has moved this application under Section 378(3) Cr.PC seeking grant of Leave to Appeal against judgment of conviction and order of punishment dated 12.2.2018 passed by Ld. Addl. Sessions Judge, Rupnagar in Sessions Case No.100 dated 22.11.2017 titled as 'State v Omvir', whereby respondent no.2 has been acquitted for offence under Section 366A IPC, and convicted only under Section 363 IPC; and sentenced to undergo RI for 5 months and to pay fine of Rs.5000/- and in default of payment of fine to undergo further imprisonment for one month.

FIR in this case was recorded on the complaint made by Bhagwan Dass, brother of the prosecutrix, who alleged that his sister Bhagwati aged 16 years was kidnapped on 5.7.2017 by respondent no.2 Omvir on the pretext of marrying her. Prosecutrix was found on 21.7.2017 in the company of respondent no.2 Omvir.

Ld. counsel for the applicant submits that ld. trial court was in material error in acquitting respondent no.2 for the offence under Section 366-A IPC and convicting him for lesser offence under Section 363 IPC as, the ld. trial court failed to appreciate the fact that PW7/ prosecutrix-Bhagwati was aged about 16 years at the time of incident. It is submitted that accordingly respondent no.2 deserved to be convicted under the provisions of POCSO Act, 2012.

Heard ld. counsel for the applicant.

In this regard, findings of the ld. trial court as contained in para 12 of the impugned judgment are apposite, and are reproduced below:-

“12.Keeping in view the arguments advanced by learned Addl. PP and learned defence counsel and from the perusal of record, pertaining to the present case, it is clear that prosecution has examined nine material witnesses to prove its case against the accused. The prosecution has examined PW1 Bhagwan Dass, complainant, PW2 Nem Chand, PW3 Pan Kumari and all the three witnesses have stated that accused had taken away the minor girl from the lawful guardianship of her family members. As such, the prosecution has proved the ingredients of offence under Section 363 IPC. The prosecution has examined PW7 Bhagwati, prosecutrix herself, who has admitted in her cross-examination that she had not resisted the accused from taking her to Gorakhpur, Yamunanagar and other places, however, she had met the public at large on the way. The prosecutrix has not stated that

accused had induced her for sexual intercourse or whether he had forced her for the said act. She had admitted the fact that her family members had arranged her marriage with some person of Uttar Pradesh and at present he is ready to marry with the person of the choice of her family members. The prosecution has not been able to prove any birth certificate of the prosecutrix to prove the fact that she is minor in age, however, the complainant has alleged that she is the youngest sister and is aged about 16 years, but as per Aadhar Card produced on behalf of prosecution, she is more than 17 years and near about 18 years, which shows that prosecutrix is able to understand the consequences of the act committed by her and she is mature enough to resist the illegal act, if committed by any person. From the perusal of statement of prosecutrix recorded under Section 164 Cr.P.C., it is clear that prosecutrix has not levelled any allegations against the accused nor she has stated that accused was having any intention to commit offence. One step further the prosecutrix had refused to get her medical examination and she herself had gone to the Police Station in the company of accused and disclosed there that she had gone with accused as per her own wish and will. At this point Ld. Addl. P.P. has argued that consent of the minor is of no consideration when she had been taken by the accused from the lawful guardianship of her parents. However, prosecutrix has not levelled any allegations regarding malafide intention of accused. In these

circumstances, the prosecution has not been able to prove its case against the accused under Section 366-A of IPC, therefore, accused is acquitted of the charge framed against him under the said Section. However, prosecution has established its case against the accused under Section 363 of IPC, therefore, accused is ordered to be convicted accordingly, under Section 363 of IPC. Let the convict be heard on the quantum of sentence”.

Ld. counsel for the applicant is unable to dispute the above said findings, or show anything contrary, thereto. It is also not disputed by the ld. counsel that as per the applicant himself, date of birth of the prosecutrix as recorded in her Aadhar Card is 1.1.2001.

In view of above, I find no merit in this application.

Dismissed.

25.07.2023.
Joshi

(Nidhi Gupta)
Judge