

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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CWP-12247-2022
Date of Decision: 20.09.2023

KIMI CHAUHAN

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Vaneet Thakur, Advocate for
Mr. Arun Takhi, Advocate for the petitioner.
Ms. Niharika Sharma, AAG, Punjab.
Mr. Gaurav Kalsi, Advocate
for respondent No.6.

VINOD S. BHARDWAJ, J. (ORAL)

The prayer made in the present petition is for issuance of directions to the respondents to take action on the complaint submitted by the petitioner on 02.04.2022 as per the directions contained in the judgment of the Hon'ble Supreme Court in the matter of 'Lalita Kumari Vs. Govt. of U.P.', reported as (2014) 8 SCC (Criminal) 524.

Learned counsel for the petitioner contends that the petitioner used to visit the clinic of respondent No.6, who is an RMP for taking medicines and on the pretext thereof, the respondent No.6 started visiting the house of the petitioner. The family relations evolved amongst the parties. Father of the petitioner was working with Punjab State Electricity Board and was not keeping proper mental health, whereupon he took premature retirement on 31.01.2022. The respondent No.6 asked the petitioner to help him in his clinic in lieu of a remuneration of Rs.5,000/- per month, whereupon the petitioner claims to have

started the work in the clinic of respondent No.6 w.e.f. February 2022. It is averred that respondent No.6 told the petitioner that he was having a matrimonial dispute with his wife and after getting divorce from her, he is planning to marry the petitioner. On one of the said days, when there was no patient in the clinic, the respondent No.6 allegedly took undue advantage of the absence of the patients and bolted the door of the clinic from inside and started committing objectionable acts with the petitioner. He entered into a physical intimacy and sexually assaulted the petitioner on the pretext of solemnizing the marriage with her. She has further averred that believing the words of respondent No.6, she allowed him to continue to have sexual relations with her. Thereafter, when she requested respondent No.6 to perform marriage with her after seeking divorce from his wife, he started putting her off on one pretext or the other. She further alleges that respondent No.6 uttered unparliamentary remarks pertaining to the caste of the petitioner as well.

A complaint was thereafter, submitted by the petitioner to the respondent-Authorities, however, no action was taken thereupon, even though a cognizable offence was disclosed from the contents of the said complaint. It has also been averred that the conduct of respondent No.6 has not been above board and that he alongwith his friends namely Jaswinder Singh and Bhim Sen had caused injuries to the wife of Bhim Sen with a sharp edged weapon, for which case FIR No.152 dated 19.10.1999 under Sections 323, 324 and 34 of IPC had been registered at Police Station Nawanshahar. The respondent No.6 alongwith his associates was thereafter convicted vide judgment dated 10.08.2006 passed by the JMIC, Nawanshahar, but were ordered to be released on probation subject to furnishing bonds to the tune of Rs.5,000/- each. However, he again indulged in committing sexual assault on one Kamlesh Rani and that case FIR

No.124 dated 28.07.2007 was also registered against him for offence under Section 376 IPC at Police Station Nawanshahar, District Nawanshahar. It is further averred that respondent No.6 targets the girls from under-privileged sections of the society and allures them to enter into physical intimacy with him on one pretext or other, only to dump them at a later point of time. Despite the complaint having been submitted, no action was taken.

Reply had been filed by way of an affidavit of Ranjit Singh, Deputy Superintendent of Police, Sub Division S.B.S. Nagar, wherein it has been averred as under:

“2. That it is respectfully submitted that apparently the allegations of the petitioner were found to be untrustworthy and dubious. It is submitted that the petitioner is a graduate, aged about 26 years, whereas, respondent no.6-Dr. Sunil Kumar is married man, have two children and aged about 41 years and petitioner was well aware of these facts and further the allegations of sexual intercourse on the promise of marriage by respondent no.6-Dr. Sunil Kumar are entirely different to that of other cases of offence of rape as defined under Section 375 of IPC.

3. That it is further submitted that thorough inquiry into the allegations of the petitioner was carried out by the Deputy Superintendent of Police (CAW & C), SBS Nagar, and during preliminary inquiry it has been transpired that in fact there was a property dispute between respondent no.6-Dr. Sunil Kumar and Manjit Kaur (mother of the petitioner) and from thorough inquiry, it has come to the fore that respondent no 6-Dr. Sunil Kumar had purchased a house situated in the area of village Jethu Majra from Manjit Kaur (mother of the petitioner) for Rs.10,00,000/- and after receiving the amount from respondent no.6-Dr. Sunil Kumar, Manjit Kaur has also executed a receipt, affidavits in favor of respondent no.6-Dr. Sunil Kumar, however, the possession of the house was not given to him by the vendor Manjit Kaur and when

respondent no.6-Dr. Sunil Kumar asked for the possession of the house, then the aforementioned complaint was moved by petitioner against respondent no.6-Dr. Sunil Kumar. It is further submitted that during inquiry, the CDR of the mobile Nos.87278- 23110 and 82839-77164 used by petitioner and mobile No.79865- 91969 of respondent no.6-Dr. Sunil Kumar were obtained from the respective cellular companies and it has transpired that petitioner has made 962 calls between 24.09.2021 to 29.03.2022 from her mobile No.82839-77164 to mobile No.79865-91969, whereas, respondent no.6-Dr. Sunil Kumar has made 150 calls from his aforementioned mobile number to the petitioner. It is further submitted that petitioner has also made 195 calls between 01.04.2021 to 23.04.2022 from her mobile No.87278-23110 to mobile No.79865-91969 being used by respondent no.2-Dr. Sunil Kumar, whereas, he has made 32 calls from his aforementioned mobile number to petitioner, during the aforementioned period.

4. That it is further submitted that the allegations of the petitioner that she was threatened by respondent no.6-Dr. Sunil Kumar by showing his revolver, are also thoroughly inquired and it was found that respondent no.6-Dr. Sunil Kumar has a licensed revolver and due to assembly elections in Punjab, the same was found to be deposited at police station Sadar Nawanshahar since 21.01.2022 and the same was received by Dr. Sunil Kumar from police station Sadar Nawanshahar, on 17.03.2022. The allegations of uttering derogatory words by Dr. Sunil Kumar to the petitioner, have also not been supported by any of witness and it appears that the same were also leveled by the petitioner in order to take undue advantage of her status.

5. That it is further submitted that from the inquiry it has been found that petitioner and respondent no.6-Dr. Sunil Kumar remained in relationship for months together and they developed intimacy consensually, out of their own sweet will. It is further submitted that respondent no.6 used to visit the house of the petitioner frequently and is known to the parents of the petitioner

as well and when the relationship between petitioner and respondent no.6-Dr. Sunil Kumar become strained due to property dispute then petitioner moved the instant complaint against respondent no.6-Dr. Sunil Kumar and even if it is considered that the sexual relations between the parties were with the promise to marry with the petitioner, even then same has not come within the ambit of Section 375 of IPC.

6. That it is further submitted that after thorough inquiry the fact finding report, was sent to the Senior Superintendent Police, SBS Nagar, and the same was duly considered by the Senior Superintendent of Police, SBS Nagar, and the same was further forwarded to Deputy District Attorney (Legal), SBS Nagar, for legal opinion and vide its legal opinion the Ld. Deputy District Attorney (Legal). SBS Nagar, has opined that no cognizable offence is made out in the matter, accordingly, the complaint of the petitioner has already been filed in the office by the Senior Superintendent of Police, SBS Nagar, vide its order dated 11.05.2022.”

Counsel for respondent No.6 contends that the petitioner has an alternative remedy of approaching the Illaqa Magistrate under Section 156(3) of the Cr.P.C. and that appropriate directions can be issued by the Illaqa Magistrate for registration of a criminal case and that the present writ petition is an abuse of the process of law. He further contends that the official respondents have already conducted an inquiry into the allegations levelled and the said allegations have been found to be false and unsubstantiated. Rather sufficient malice has been noticed by the officer who conducted the inquiry and as such, the petitioner cannot be given a benefit ignoring that the inquiry concludes in favour of respondent No.6. Process of law is being deployed to malign the petitioner and to cast undue pressure on respondent No. 6.

Learned counsel for the petitioner, however, controverts that the grievance espoused by the petitioner is not in relation to the conclusion drawn by the respondent-Authorities but on account of the fact that the directions issued by the Constitutional Bench of the Hon'ble Supreme Court in the matter of **Lalita Kumari Vs. State of U.P. (supra)** have not been followed. As per the directions contained therein, wherever the allegations disclose the commission of a cognizable offence, the Authorities are bound to register an FIR and thereafter to conduct an investigation into the same. In the present case, even though the complaint (Annexure P-1) disclosed a cognizable offence however, the respondent-Authorities chose to conduct a preliminary inquiry notwithstanding the mandate of the Constitutional Bench of the Hon'ble Supreme Court as well as the substantive provisions contained in Section 154 of the Cr.P.C. He further contends that the inquiry conducted by the respondent-Authorities itself establishes the factum that the petitioner had been involved in sexual acts with respondent No.6 and that the conclusion drawn by the respondents with respect to such sexual intercourse is that the same was consensual. The petitioner was never subjected to medical examination and that the version of the petitioner was disbelieved while conducting the preliminary inquiry by the respondent-Authorities.

Counsel for the respondents reiterated the submissions as noticed above.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file as well the judgment of Hon'ble Supreme Court in the matter of **Lalita Kumari (supra)** with their able assistance.

The directions contained in the above said judgment of Constitutional Bench of the Supreme Court are reproduced hereinafter below:

“Conclusion/Directions:

111) In view of the aforesaid discussion, we hold:

- i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*
- ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*
- iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.*
- iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*
- v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*
- vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:*
 - a) Matrimonial disputes/ family disputes*
 - b) Commercial offences*

- c) *Medical negligence cases*
- d) *Corruption cases*
- e) *Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.*

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

- vii) *While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.*
- viii) *Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”*

It is evident from a perusal of the same that the respondent-Authorities are required to register an FIR, once a cognizable offence is made out, and that the said process has not been followed in the present case. The respondent-Authorities have been empowered to conduct a preliminary inquiry in specified cases culled out in direction No.vi, after obtaining appropriate order and recording of satisfaction. Nothing has been brought on record of the case by the respondent-Authorities that any such order/satisfaction has been recorded and the preliminary inquiry was conducted as per the mandate of law laid down by the Hon'ble Supreme Court in the judgment of ***Lalita Kumari (supra)***.

Insofar as reliance by the respondent-Authorities on the judgment of **'Sudhir Bhaskar Rao Tambe Versus Hemant Yashwant Dhage and others'**

reported as (2016) 6 SCC 277 is concerned, the preposition of law laid by the Hon'ble Supreme Court in the said judgment is not disputed. However, merely because a person has an efficacious remedy of filing a complaint before the Illaqa Magistrate under Section 156(3) of the Cr.P.C., it would not operate as a bar on writ Court to entertain a writ petition where the mandate of the Statute and directions issued by the Hon'ble Supreme Court are apparently violated. Discretion is always left to the judicial conscience of the High Court while dealing with the said issue. It may, under a given set of facts and circumstance of each case and in the fitness of things, entertain or refuse to entertain a writ petition despite or for the reason of the existence of an alternative remedy. However, mere existence of an alternative remedy, cannot be a ground to validate the act of the respondent-Authorities in committing breach of the letter of law and directions given by the Hon'ble Supreme Court.

Taking into consideration the totality of circumstances and without commenting on the conclusion drawn by the respondent-Authorities, in the inquiry already conducted by them, lest it may cause prejudice to the rights of either party, the action of the respondent-Authorities in committing breach of the directives issued by the Hon'ble Supreme Court in the case of ***Lalita Kumari (supra)*** is held to be bad.

The present petition is accordingly disposed of with a direction to the Sr. Superintendent of Police, S.B.S. Nagar (Nawanshahar) to ensure the meticulous compliance of the directions issued by the Hon'ble Supreme Court and to take appropriate action against the officers/officials committing default/violation of such directives. Every act of the respondent-Authorities, on receipt of a complaint, ought to ensure compliance of the aforesaid directions.

It is made clear that in the event of ordering an investigation in the matter and the allegations of the petitioner being found unsubstantiated, falsely motivated and/or malicious, the respondent-Authorities would be at liberty to initiate proceedings for malicious prosecution and false implication against the petitioner as well. Letter of law is not a license to abuse the process. Any person who proposes to exert pressure by false implication is also required to be prosecuted rather than being given any leverage. The tendency to falsely implicate too needs to be checked so as to reduce the burden of false cases being initiated for malicious consideration and malafide. The laxity in initiating action against motivated complainants or complaints should also be taken to a logical end so that complaint is not deployed as a tool of harassment.

Needless to mention that as the preliminary inquiry has already been conducted by an officer at the rank of Deputy Superintendent of Police, the further investigation ought to be conducted by an officer not below the rank of Deputy Superintendent of Police. Such I.O shall however be entitled to consider the evidence and inquiry already conducted, before coming to a conclusion.

Disposed of accordingly.

SEPTEMBER 20, 2023

rajender

**(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No