

In the High Court for the States of Punjab and Haryana at
Chandigarh

CRM-M-31449-2019

Date of Decision: *July 13, 2023*

Sharda Devi

... *Petitioner*

Versus

Rajender and others

... *Respondent*

CORUM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. J.P. Sharma, Advocate,
for the petitioner.

Vivek Puri, J.

1. The petitioner has assailed the impugned order dated 14.06.2017 (Annexure P-1) passed by the Court of learned Sub Divisional Judicial Magistrate, Kanina and the order/judgment dated 15.03.2019 passed by the Court of learned Additional Sessions Judge, Narnaul (Annexure P-2) vide which the private respondents no. 1 to 4 have been wrongly discharged.

2. The petitioner had instituted a complaint against the private respondents alleging that on 15.08.2013, she was proceeding to her village Pota and on the way, the respondent no.1 inappropriately touched her. The petitioner escaped and on the way, she met Maya wife of Babu Lal and both of them reached Pota. It has been alleged that the respondent no.1 had been doing the mischievous act again and again on the way.

The petitioner narrated the incident to her sister-in-law and

brother-in-law, who advised her to remain silent as it was the matter of her dignity. On the next day, the petitioner narrated the incident to her husband, who talked to the respondent no.1. The respondent no.1 threatened the husband of the petitioner. Thereafter, the respondents no. 1 to 4 committed trespass in their house. The respondent no.1 again inappropriately touched the petitioner and gave beatings to her husband. An alarm was raised which attracted Ishwar Singh, Bala and Raj at the spot and they rescued them from the clutches of the assailants.

3. The petitioner led the preliminary evidence and the respondents no.1 to 4 were summoned to face trial under Sections 354, 323, 452, 506 and 341 of the Indian Penal Code (for short 'IPC'). In the pre-charge evidence, the complainant stepped into witness box as CW1 and also examined Raj Kumar, CW2, Ishwar Singh CW3, Maya Devi, CW4 and MHC Satender, CW5.

4. The learned trial Court in terms of the impugned order dated 14.06.2017 concluded that no case is made out against the respondents no.1 to 4 to frame charge and accordingly, they were discharged from the allegations levelled against them.

5. The petitioner has assailed the order by filing a criminal revision and the same has also been dismissed by the

Court of learned Additional Sessions Judge in terms of the order/judgment dated 15.03.2019.

6. The petitioner has assailed the aforesaid orders by way of present revision and is seeking the issuance of directions to trial Court for framing of charge against the private respondents.

7. I have heard learned counsel for the petitioner.

8. At the very outset, it may be mentioned here that the present case has been instituted by the petitioner and the private respondents no.1 to 4 have been summoned to face trial in a case instituted otherwise than on the police report. The petitioner had led the evidence as per the provisions of Section 244 of the Code of Criminal Procedure (for short 'the Code'). The charge has to be framed on the touch stone of the provisions of Section 245 of the Code which provides as following:-

“245. When accused shall be discharged

(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.”

9. On adverting to the merits of the present case, the learned trial Court while discharging the respondents no.1 to 4 in terms of the order dated 14.06.2017 has observed as following:-

“9. Perusal shows that a DDR No. 37 was entered on 17.08.2013 upon application of complainant in which she lodged that she was going from Sehlang bus stand to her matrimonial home in village Pota and at that time Rajender and Raj Kumar came on motorcycle and started abusing her. When she continued walking after ignoring them they stopped the motorcycle before her and started misbehaving with her. At that time one vehicle passed from the road and watching the vehicle both the brothers started running. She went to the house of her brother-in-law Ishwar from there and narrated whole the story to her sister Bala and also told all the version to her brother-in-law Ishwar; that on 16th August at around 7.30 PM, her husband reached to the house of her brother-in-law, where she was also present and she told all the version to him. He became angry and asked her to lodge the complaint in police station. At the same time Rajender, Raj Kumar, Jitender and 2-3 more persons reached their house and started abusing them and also tried to outrage modesty of complainant.

However, in the complaint the complainant has improved her version and has only shown accused No.1 Rajender chasing her and trying to outrage her modesty. She has further shown

presence of Maya wife of Babu Lal as eye witness. When she appeared in witness box, she again improved her version and again levelled allegation against both Rajender and Raj Kumar regarding using of abusive language and trying to outrage her modesty. In her cross-examination she admitted that Maya Devi was her sister-in-law. She further admitted that the place of occurrence was public path. She further deposed that her husband was mercilessly beaten but no any medical was conducted. She also did not get any medical conducted for herself. She further deposed that the incident took place at her residence.

The evidence of complainant herself is full of contradictions and surprisingly despite suffering injuries, her husband did not get himself medically examined. She told that all the accused entered into house of her brother-in-law, but other witnesses told that they entered into her house. Both complainant and her brother-in-law are having residence. All the witnesses so appearing are a chance witnesses and close relatives of the complainant. Further the presence of no one on the public path even at the time of 7.30 pm shows doubt. Further it has come in the evidence of witness that husband of complainant was convicted in case FIR No. 228 dated 17.08.2013 under Section 294 & 506 IPC upon the complaint of daughter of accused No.1. Though he was acquitted from learned appellate Court later on but this is clear motive for filing the present complaint. The version of complainant has not been supported by any other eye

witnesses regarding the incident except Maya Devi whose presence has not been shown in the original statement of complaint in concerned DDR. She also appear to be interested witness being close relatives of complainant. Further the allegation of altercation and beating by all the accused by entering into the house of complainant has not been supported by any medical evidence and further there is also not a clear evidence as to where the alleged incident took place and thus all these discrepancies so occurring from the evidence clearly shows that the story was narrated by the complainant cannot be believed and cannot be basis of conviction of accused.”

10. The learned revisional Court has also dismissed the revision petition by making the following relevant observations:

“13. In this regard, a DDR No. 37 Ex.CW-5/B was admittedly entered in Police Station on 17.08.2013 upon the application of the complainant, wherein she did not utter a single word with regard to meeting of Maya wife of Babu Lal on the way at the time of incident in question. Likewise, she attributed the role of chasing and passing lewd remarks upon her by the accused Rajender and Raj Kumar on the motor cycle on the day of incident. On the contrary, the complainant has improved her version in her complaint and blissfully remained silent with regard to presence of accused Raj Kumar while chasing and hurling abuses upon her along with accused Rajender on the day of incident. She further implanted an eye witness in

the name of Maya wife of Babu Lal in her complaint. The complainant again improved in her pre-charge evidence before learned trial Court and roped accused Raj Kumar with regard to hurling abuses and attempting to outrage her modesty along with accused Rajender. Thus, this discrepant statement of complainant makes her untrustworthy witness. Likewise, it is admitted case of the complainant that the houses of complainant and her brother in law are separate houses. A bare perusal of the complaint reveals that the complainant attributed role to the accused-respondents that they had trespassed in her house. On the contrary, the complainant herself deposed that the accused had intruded into house of her brother in law. Thus, it makes the place of occurrence also doubtful, which shows that either the complainant is suppressing the true genesis of the case or she is not a truthful witness. A bare perusal of the impugned order further reveals that the learned trial Court disbelieved the evidence of the complainant and her witness being close relative and interested witnesses as well as chance witnesses. I do not differ with the findings of learned trial Court, especially when the revisionist failed to controvert the same.”

11. It is significant to note that the observations of the Courts below indicate that there was an improved version put forth by the petitioner. The first version of the case was unfolded when the matter was reported to the police vide DDR No. 37 (Ex.CW-5/B) in the police station on 17.08.2013. The

said DDR did not contain any reference to the meeting of the petitioner with Maya wife of Babu Lal at the time of the incident. Even the allegations with regard to the passing of lewd remarks were also attributed to the respondent no.2 in the complaint, which was also observed to be an improved version. In the DDR, the said allegations were only levelled against the respondent no.1. It has also been observed that the place of occurrence was doubtful and in such circumstances, no fault can be found in the observations of the revisional Court that the petitioner was making an attempt to suppress the genesis of occurrence.

12. It has also been observed that the case of the petitioner was based upon the deposition of close relative and interested witnesses. Although, the case of the complainant cannot be discarded only on the score that the witnesses were relatives and interested, but it is a circumstance which puts a stringent duty upon the Court to scrutinize the evidence with more care and caution. It is not that the case of the petitioner has been discarded only on that score but there are other significant circumstances emerging in the case raising a serious doubt with regard to the genuineness of the prosecution version. Besides, the possibility of false implication cannot be ruled out on account of previous litigation and enmity. Furthermore, the allegations are also to the effect that the respondents no.1 to 4 had given beatings to the husband of

the petitioner, but significantly no medical evidence has been adduced in this regard.

13. In these set of circumstances upon taking all the evidence referred to in Section 244 of the Code, no case is made out which, if unrebutted, would warrant the conviction of the respondents no.1 to 4. Consequently, no illegality, irregularity or error is made out in the impugned orders/judgments, which may call for any interference by this Court.

14. Present petition is dismissed, accordingly.

July 13, 2023
vkdl

(Vivek Puri)
Judge

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No