

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

229

CRR-1750-2018 (O&M)

Date of Decision: 27.04.2023

Harpal Singh and Others

...Petitioners

Versus

State of Punjab and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. P.B.S. Goraya, Advocate for the petitioners

Mr. Shiva Khurmi, AAG, Punjab
(assisted by ASI Ranjit Singh)

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioners through instant petition under Section 397 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') are seeking setting aside of order dated 24.01.2018 whereby Additional Sessions Judge, Tarn Taran allowing the application under Section 319 Cr.P.C. has summoned the petitioners to face trial for commission of offence punishable under Section 376 & 120-B Indian Penal Code, 1860 (for short 'IPC') and Section 3 of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act') in FIR No.82 dated 03.07.2017 registered at Police Station Goindwal, District Tarn Taran.

2. The brief facts of the case emerging from record and necessary for adjudication of present case are that respondent No.2

lodged a complaint dated 09.05.2017 with Senior Superintendent of Police, Tarn Taran alleging that Gian Singh son of Satnam Singh was in love with her and he was making physical relations on the pretext of marriage. She requested to take action against Gian Singh. The complainant appeared before Investigating Officer and made her statement disclosing that Gian Singh made physical relations with her on the pretext of marriage and now he is refusing to perform marriage. She does not want to take any legal action against Gian Singh because she wants to marry him. Gian Singh, in his statement, submitted that he does not want to marry the complainant because he has no relation with her. The Investigating Officer, on the basis of statements of both sides, closed the matter, however, on the basis of subsequent complaint, an FIR No.82 dated 03.07.2017 came to be registered against petitioners as well as Gian Singh. The complainant, at this point of time, made allegations against the petitioners that they had promised her that their son would solemnize marriage with her. The matter came to be investigated by Deputy Superintendent of Police, who in his report found present petitioners innocent though Gian Singh was arrested. Inquiry report of Deputy Superintendent of Police was put up before Superintendent of Police (Investigation), Tarn Taran who accepted inquiry report of the Deputy Superintendent of Police and challan came to be presented only against Gian Singh.

3. The complainant appeared before the Trial Court and in her examination, she reiterated contents of the FIR. The prosecution moved

an application under Section 319 Cr.P.C seeking summoning of present petitioners as accused. Application of the prosecution came up for consideration before learned Additional Sessions Judge, Tarn Taran who vide impugned order dated 24.01.2018 allowed the application and summoned the petitioners to face trial for commission of offence punishable under Sections 376 & 120-B of IPC and Section 3 of SC/ST Act.

4. Learned counsel for the petitioners *inter alia* contends that complainant in her first complaint, which came to be closed, did not name petitioners, however, she in the FIR added names of the petitioners just to create pressure upon Gian Singh with whom she was desperate to perform marriage. The police after conducting thorough investigation have found the petitioners innocent. There was no question of promise of marriage on the part of petitioners. It was relation between complainant and Gian Singh. The complainant, at the time of commission of alleged offence, was more than 25 years old, thus, she was quite competent to understand the outcome of her act and conduct. The complainant, after registration of FIR, has solemnized marriage with another boy, thus, she is not coming forward before this Court. The statements made by complainant before police and her examination vindicate stand of the petitioners that complainant at her own will made physical relations with Gian Singh.

5. *Per contra*, learned State counsel submits that Trial Court has categorically recorded findings against the petitioners and there is no infirmity in the impugned order.

6. Despite repeated notices and opportunities, there is no representation on behalf of respondent No.2 and matter is pending before this Court since 2018. This Court is left with no other option except to adjudicate the present petition with the able assistance of learned State counsel.

7. I have heard the arguments of learned counsel for the petitioner and learned State counsel and perused the record with their able assistance.

8. The conceded position emerging from record is that complainant at the time of commission of alleged offence was more than 25 years old. The complainant, in her first complaint, did not make allegations against the petitioners. The only grievance of the complainant was that Gian Singh has not solemnized marriage with her and he had developed physical relations on the pretext of marriage. In the second complaint, names of the petitioners were disclosed and FIR was registered against them. Deputy Superintendent of Police conducted investigation and found present petitioners innocent. Inquiry report of Deputy Superintendent of Police was duly accepted by Superintendent of Police (Investigation) and cancellation report was filed qua present petitioners. The complainant has solemnized marriage with another man.

9. From the perusal of record and arguments of both sides, it is quite evident that grievance of the complainant was that she wanted to solemnize marriage with Gian Singh and she had made physical relations on the pretext of marriage. The petitioners are parents of Gian Singh and they seem to be implicated just to pressurize Gian Singh to solemnize marriage. In Indian culture, it can be believed that parents of a boy promised a girl that their boy would solemnize marriage with her but it cannot be believed that they would ask a girl to make physical relations with their son on the promise of marriage. There was no such allegation in the first complaint and police in its report has found them innocent. The Trial Court relying upon statement of complainant has summoned the petitioners. They have been summoned to face trial for commission of offence punishable under Sections 376 & 120-B of IPC and Section 3 of SC/ST Act. There is no allegation of commission of offence of rape on the part of petitioners and there is only allegation that they had promised to complainant that their son would solemnize marriage with her. It appears that Trial Court has not considered first complaint of the complainant as well as inquiry report of Deputy Superintendent of Police and summoned the petitioners on the sole statement of the prosecutrix. Criminal law cannot be put in motion in a casual and mechanical manner.

10. In view of above facts and circumstances, the present petition deserves to be allowed and accordingly allowed. Impugned order

dated 24.01.2018 passed by Additional Sessions Judge, Tarn Taran, is hereby set aside.

(JAGMOHAN BANSAL)
JUDGE

27.04.2023
Mohit Kumar

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