

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.123

CRM-M-32006-2022

Date of Decision: 20.01.2023

Manoj and another

.... Petitioners

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Neeraj Goel, Advocate
for the petitioners.

TRIBHUVAN DAHIYA, J. (ORAL)

This petition has been filed under Section 482 Cr.P.C. with the
following prayer:

It is therefore, respectfully prayed that the present
petition may kindly be allowed and consequently:

impugned order or charge and chargesheet dated
8.4.2022 (P-13) arising in CHI-103 dated 10.12.2021
passed by Ld. JMIC Bhiwani (Ld. Trial Court) and the
judgment/order dated 12.7.2022 passed by Ld. ASJ,
Bhiwani (Ld. Revisional Court) in criminal revision
no.10 dated 18.4.2022 arising out of FIR No.33 dated
23.5.2021, under Section 12 of POCSO Act and 354A(2),
354A(3) IPC (subsequently charged petitioner No.1
under Sections 201, 216 and 180 IPC only and petitioner
No.2 under Sections 354A(2) and 354A(3) only)

P.S.Women Police Station Bhiwani, District Bhiwani,

along with all consequential proceedings thereon, may kindly be quashed/set aside.

2. As per the facts apparent on record, FIR No.33 dated 23.05.2021 was lodged under Section 12 of POCSO Act and Sections 354A(2) and 354A(3) of IPC (subsequently petitioner No.1-Manoj was charged under Sections 201, 216 and 180 IPC only, and petitioner No.2-Harikishan under Sections 354A(2) and 354A(3) only) at Women Police Station Bhiwani, District Bhiwani. After completion of investigation, report under Section 173 Cr.P.C. was submitted against both the petitioners, whereupon charges were framed against them by the impugned order dated 08.04.2022 (Annexure P-13). The petitioners preferred a revision against the order framing charge, which was dismissed vide order dated 12.07.2022 (Annexure P-14).

3. On 17.05.2021, a complaint of sexual misbehaviour with the inmates of the Bal Sewa Ashram (Orphanage), Bhiwani was received by the Sessions Judge, Bhiwani. He ordered an enquiry by the Chief Judicial Magistrate-cum-Secretary, District Legal Services Authority, Bhiwani. His report is on record as Annexure P-10, which has been prepared after visiting the Ashram on 18.05.2021. As per the report, no criminal offence whatsoever was made out against any person for commission of any indecent/sexual act (bad touch) with the minor female inmates of the Orphanage. The report, however, recommends that for the casual lapse of the counsellor/petitioner No.2, he must be made to face departmental action.

4. The FIR in question was lodged on information having been received by an officer of the Police on 22.05.2021 that an obscene act has been committed with a minor girl in Bal Sewa Ashram (Orphanage), Bhiwani. On reaching there, the police recorded statement of the victim,

who levelled allegations against petitioner no.2, a counsellor for the Orphanage. Petitioner no.1 was found to have connived with and given shelter to petitioner no.2 and kept him hidden.

5. Learned counsel for the petitioners contends that prior to lodging of the FIR, the enquiry (Annexure P-10) was conducted on the orders of the Sessions Judge, and no criminal offence whatsoever was found to have been committed by the petitioners against any inmate. It has been submitted by the learned counsel that after the petitioners' stand cleared in the said enquiry, charges could not have been framed against them by the trial Court by passing the impugned order. In support of the contentions, he has relied upon law laid down by the Supreme Court of India in *Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EOW, CBI and another*, (2020) 9 SCC 636.

6. Learned counsel has been heard.

7. It is a matter of record that the Investigating Agency has not conducted the alleged enquiry, which pertained to some other complaint received by the Sessions Judge prior in time on 17.05.2021. The FIR was lodged on information received by an officer of the Police on 22.05.2021. Besides, the said enquiry is not even a part of the report submitted under Section 173 Cr.P.C. Merely because the petitioners have been cleared in a fact-finding enquiry ordered by the concerned Sessions Judge on a prior complaint, it cannot be a ground to quash the charges framed against them by the trial Court on the basis of material placed on record after thorough investigation, vide the report submitted under Section 173 Cr.P.C. It is settled law that at the time of framing charges only *prima facie* case is to be seen, and both the Courts below have held that *prima facie* case stands duly established against both the petitioners. Therefore, there is no error of law or

jurisdiction so far as the order framing charges against the petitioners is concerned.

8. The judgment relied upon by the learned counsel in *Ashoo Surendranath Tewari* case (*supra*) also does not advance his case. It has no application to the facts and circumstances of the instant case, as the law laid down therein is, when accused is exonerated in adjudicating proceedings on merits and the allegations are found to be not sustainable at all, criminal prosecution on the same set of facts and circumstance, cannot be allowed to continue. The alleged enquiry, said to have been conducted in the case on the orders of the Sessions Judge, is a fact-finding enquiry of an earlier complaint received by him. The FIR in question was subsequently lodged on a different complaint. Therefore, it cannot be said that inquiry as well as criminal trial are on identical facts and circumstances. Besides, even the said enquiry does not fully exonerate the petitioner no.2 (against whom it was conducted); instead, it directs him to face departmental action for the lapse. No enquiry was ever conducted against petitioner no.1 at any stage. Therefore, the argument cannot even be entertained *qua* him.

9. In view thereof, there is no ground to interfere with the impugned orders.

10. Petition stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

20.01.2023
Maninder

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