

2023:PHHC:108821

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.41161 of 2023
Date of Decision: 22.08.2023

Kuldeep Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Present:- Mr. Arnav Sood, Advocate
for the petitioner.

MEENAKSHI I. MEHTA, J. (Oral)

By way of the instant petition, the petitioner has invoked the jurisdiction of this Court under Section 482 Cr.P.C to seek the quashing of the FIR bearing No.0148 dated 14.06.2022 registered at Police Station Model Town, District Hoshiarpur, under Section 366 IPC (wherein the offences under Sections 376 & 506 IPC are stated to have been added and the offence under Section 366 IPC is reported to have been deleted later-on), along-with all the subsequent proceeding arising therefrom.

2. Bereft of unnecessary details, the allegations as levelled by respondent No.2-complainant, the cousin brother of the victim (here-in-after to be referred as 'P'), in the subject FIR, are that on 13.06.2022, he had gone to pick 'P' up from her office but he did not find her there. 'P' had earlier disclosed to him that the petitioner had been harassing her and he suspected that she had been abducted by the petitioner.

3. It is worth-while to mention here that later-on, the statement of 'P' (Annexure P-6) was recorded under Section 164 Cr.P.C and she had specifically alleged therein that the petitioner abducted her from her office and thereafter, he forcibly solemnized the marriage with her and his mother and brother had also pressurised her for the same and that the petitioner had raped her several times before her marriage while threatening her with the knife and had been continuing to do so even thereafter.

4. I have heard learned counsel for the petitioner in this petition, at the preliminary stage and have also perused the file carefully.

5. Learned counsel for the petitioner contends that 'P' is the legally wedded wife of the petitioner and hence, no offence of rape could be constituted against him in view of Exception 2 appended to Section 375 IPC and moreover, 'P' had wilfully and voluntarily married the petitioner and both of them had filed a petition in this Court for seeking protection of their lives and liberty which was allowed vide the order dated 21.06.2022 (Annexure P-2) and he also contends that the petitioner had filed a petition under Section 9 of the Hindu Marriage Act (for short 'the HM Act') against 'P' and in her written statement Annexure P-5 as submitted in the said petition, 'P' did not even whisper about her having, allegedly, been raped by the petitioner and he, further, refers to the copy of the application (Annexure P-7) as purported to have been moved by 'P' to her employer mentioning therein that she solemnized Court marriage with the petitioner and he contends that in these circumstances, the petitioner is entitled to the relief, as prayed for in the instant petition.

6. As regards the contention qua the present case falling under Exception 2 appended to Section 375 IPC which provides that “*Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape*”, it is pertinent to mention here that ‘P’ has categorically alleged in her statement recorded under Section 164 Cr.P.C (Annexure P-6) that the petitioner had been committing rape on her even prior to her marriage with him. It being so, the protection of the above-referred Exception would not be available to the petitioner.

7. So far as the afore-raised contentions regarding the petition filed by ‘P’ and the petitioner, as decided vide order Annexure P-2 and the absence of the allegation of rape in the written statement and the contents of application Annexure P-7 are concerned, these can and shall be looked into and adjudicated upon by the trial Court at the appropriate stage after appreciating and evaluating the evidence that may be led on the record during the course of the trial and the same cannot be decided at this stage.

8. As a sequel to the fore-going discussion, it follows that the present petition, being *sans* any merit, deserves dismissal. Resultantly, the same stands dismissed accordingly.

9. However, it is clarified that nothing contained here-in-before shall be construed to be an expression of the opinion of this Court on the merits of the case, pending before the trial Court.

22.08.2023
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: No