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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-42007-2023 (O&M)
Reserved on : 14.09.2023
Date of decision : 26.09.2023

Palwinder Singh ... Petitioner(s)

Versus

State of Haryana and Another ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Namit Khurana, Advocate for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG Haryana
for respondent No.1.

ALKA SARIN, J.

1. The challenge in the present petition under Section 482 of the Code of Criminal Procedure, 1973 is to the order dated 04.08.2023 (Annexure P-3) passed by the Additional Sessions Judge, Kurukshetra during trial of FIR No.668 dated 04.12.2019 under Sections 498-A, 323, 34, 313, 506, 377, 328, 468, 471, 420 of the Indian Penal Code, 1860 registered at Police Station Pehowa, District Kurukshetra wherein certain questions, which were sought to be put to the complainant-respondent No.2 in her cross-examination, were declined.
2. Learned counsel for the petitioner would contend that the

complainant-respondent No.2 during her examination-in-chief has stated that the petitioner had compelled her to watch pornography against her wishes and had also forced her into anal inter-course and hence it was necessary for the petitioner to put the questions to the complainant-respondent No.2. As per the petition, three vital questions as stated under were not permitted to be put to the complainant-respondent No.2 :

“i) When did accused Palvinder commit anal sex with you for the first time?

ii) After how many days of marriage, accused Palvinder commit anal sex with you for the first time?

iii) Was the act of anal sex a routine by the accused Palvinder?”

3. I have heard learned counsel for the petitioner.

4. During the cross-examination, three questions put by the counsel for the petitioner were disallowed by the Trial Court. The questions sought to be put to the complainant-respondent No.2 have been reproduced above.

5. Hon’ble Supreme Court in the case of **“State of U.P. Vs. Reghubir Singh” [1997 (3) SCC 775]** held as under :

“13. Now the question is should the court have allowed defence witness to make such imputations on the moral character of her mother in a case where the fact in issue was whether the accused have kidnapped and murdered her son? Section 140 of the Evidence Act permits that

"witnesses to character may be cross-examined and re-examined." Section 155 of the Act permits the adverse party to impeach the credit of a witness in the modes enumerated in the Section. The first mode envisaged is by adducing evidence of persons who testify that they believe the witness to be unworthy of credit. Questions to elicit indecent or scandalous imputations from witnesses in the guise to shake the credit of another witness of party should not have been permitted. Section 151 of the Act saddles every trial court with the power to forbid such questions such questions "although such questions or inquiries may have some bearing on the questions before the Court unless they relate to facts in issue." (The second and third modes envisaged in Section 155 are not relevant in this context) The 4th mode prescribed in the Section applies to a limited class of cases. It is: "when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character."

6. The Gujarat High Court in the case of **“Prashant Maheshbhai Pandya & Ors. Vs. State of Gujarat” [2016 (3) Crimes 90]** held as under :

“18. Section 151 gives power to the court to forbid questions on the ground that those are indecent or scandalous, subject, however to the exception that they

relate to the facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed. In other words, indecent and scandalous questions can be put if they directly relate to the facts in issue and also if it is necessary to be known in order to determine whether or not the facts in issue existed. It has to be pointed out, therefore, that these exceptions are vital, and if in any given case the Court is satisfied that even an indecent or scandalous question may have a bearing upon a fact in issue, the same cannot be forbidden. If a question is merely intended to insult or annoy and is offensive in form, the court has power to forbid the same as is clear from Section 152.”

7. It appears that under the garb of the given suggestions, irrelevant questions were being put to the witness which were indecent or scandalous in nature. It has been observed in the cross-examination that the complainant-respondent No.2 had started crying listening to the questions. Learned counsel for the petitioner has not been able to explain the relevancy of posing the said questions. The manner in which the questions have been put appear to be only with an aim to insult the witness. The said three questions can in no manner be said to be necessary for establishing or destroying the facts in issue. From a perusal of the file it also appears that the defence counsel had been subjecting the witness to lengthy cross-examination.

8. Section 151 of the Indian Evidence Act, 1872 empowers the Court to forbid any questions or inquiries which it regards as indecent or scandalous, although the questions may have some bearing unless they relate to the facts in issue or to determine whether or not the facts in issue existed. If a question is merely intended to insult or annoy and is offensive in form, the Court has the power to forbid the same as is clear from Section 152 of the Indian Evidence Act, 1872. Cross-examination cannot be made a means of harassment or causing humiliation to the victim. In the absence of there being any relevance to the issue in hand, the questions have rightly been disallowed by the Trial Court.

9. In view of the above, the present petition which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

26.09.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO