

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-8082-2024 (O&M)

Date of order: 16.02.2024

Rajesh Gupta

.....Petitioner(s)

Vs.

State of Punjab & Another

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Gurcharan Dass, Advocate
for the petitioner.

Mr. Kunwarbir Singh, AAG Punjab.

Mr. Harkaran Singh, Advocate
for respondent No.2.

Nidhi Gupta, J.

Prayer in the present petition is for issuing a direction to learned Additional Chief Judicial Magistrate, Rupnagar, to decide the application dated 01.09.2023 (Annexure P5) filed by the petitioner under Section 323 Cr.P.C. to commit the challan in FIR No.38 dated 08.03.2016 registered under Sections 354-A, 447 and 506 IPC, to the Court of Sessions.

2. Learned counsel for the petitioner inter alia submits that on the basis of a complaint filed by the petitioner FIR No.38 dated 08.03.2016 under Sections 354(A), 447 and 506 IPC was registered in Police Station Morinda, District Rupnagar (Annexure P1). It is submitted that the victim herein is the daughter of the petitioner. The date of incident is 14.01.2016. Date of birth of the victim is 18.04.1998. It is submitted that therefore, on the date of occurrence, the victim was a minor. Learned

counsel submits that accordingly, the petitioner had filed the above said application (Annexure P5) before the learned trial Court praying for addition of charge under the POCSO Act and committal of the case to the Court of Sessions. However, the same has not been decided till date. Hence, the present petition has been filed seeking a direction to the learned trial Court to first decide the said application before proceeding with the trial in the matter.

3. Mr. Harkaran Singh, Advocate puts in appearance on behalf of respondent No.2/accused and files Power of Attorney, which is taken on record.

4. No other argument is made on behalf of the petitioner.

5. I have heard learned counsel for the petitioner and perused the case file in detail.

6. Admittedly, the date of occurrence is 14.01.2016, whereas the FIR (Annexure P1) has been registered almost 2 months thereafter on 08.03.2016. It is also undisputed that date of birth of the alleged victim is 18.04.1998. Therefore, on the date of incident, the victim was 17 years and 9 months old. At this stage, reference may be made to the judgment of Kerala High Court in **Anoop vs. State of Kerala and others** **2022 SCC Online Ker2982**, wherein in para 40 it has been held as follows :-

“40. Therefore, on a profound consideration of the ground realities, the definition of ‘Child’ under Section 2(d) of the POCSO Act can be redefined as 16 instead of 18. Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigorous provisions of the POCSO Act and such sexual assault, if it is so defined can be tried under

more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teen age relationship after 16years, from the cases of sexual assault on children below16 years. The Act can be amended to the effect that the age of the offender ought not to be more than five years or so than the consensual victim girl of 16 years or more. So that the impressionable age of the victim girl cannot be taken advantage of by a person who is much older and crossed the age of presumable infatuation or innocence.”

7. This Court upon consideration of the complete facts and circumstances of the present case, is in consonance with the abovesaid view taken by the High Court of Kerala.
8. Moreover, perusal of the zimni orders reproduced by the petitioner in Para 6 of the petition reveals that the matter has been adjourned repeatedly due to non-appearance of the prosecution witnesses including the petitioner/complainant and his wife.
9. Learned counsel for the petitioner is unable to dispute the above said factual and legal position.
10. In view of the above, I find no merit in the present petition, and the same is accordingly, **dismissed**.
11. Pending application(s) if any also stand(s) disposed of.
12. However, nothing stated above shall be construed as an expression of opinion on the merits of the matter.

16.02.2024

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No