



253

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-10599-2019 (O&M)
Reserved on: 30.07.2024
Pronounced on: 07.08.2024

Rajdeep Singh Mehrok

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Nitin Kaushal, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

Mr. I.P.S. Kohli, Advocate
for respondent No.2.

HARPREET SINGH BRAR J.

1. Present petition is preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short ‘Cr.P.C.’) seeking quashing of FIR No.02 dated 26.01.2019 under Section 8 of the Protection of Children from Sexual Offences Act (for short ‘POCSO Act’) and Sections 354-A & 509 of the Indian Penal Code, 1860 (for short ‘IPC’), registered at Police Station NRI Kapurthala

2024.PHHC.103161



and all subsequent proceedings arising out of the same.

2. Briefly, the facts are that respondent No.2 is a Canadian citizen and resides in Canada. The present FIR was registered on the basis of the complaint moved by respondent No.2 to the effect that the petitioner is her maternal uncle, who resides in Kapurthala. On 03.03.2012, respondent No.2, who was 11 years old at that time, along with her family members visited the house of her maternal grandparents, where the petitioner resided as well. On 4th, 5th and 6th of March 2012, respondent No.2 was subjected to sexual assault and molestation at the hands of the petitioner. He also threatened respondent No.2 with a knife that in case she disclosed the occurrence to anyone, she would be put to death. Respondent No.2 returned to Canada a few days later. Subsequently, respondent No.2 informed her parents of the incident and they immediately approached the Canadian authorities for taking necessary action against the petitioner. Since the occurrence did not take place within their local jurisdiction, respondent No.2 moved a complaint dated 26.06.2018 before the Chairperson, Punjab State Commission for NRIs, Chandigarh, on the basis of which instant FIR was registered.

3. Learned counsel for the petitioner, *inter alia*, contends that the complaint in the present case was filed on 03.07.2018 i.e. after a period of more than six years from the alleged incident. Further, all the allegations made in the present FIR are false and fabricated and no *prima facie* offence is made



out against the petitioner. No evidence has been supplied by respondent No.2 to substantiate her claims. Importantly, the alleged offence took place prior to the coming into force of POCSO Act since it came into effect from 14.11.2012. Therefore, attraction of Section 8 of POCSO Act in the present case is illegal and against well settled principle that criminal laws do not have retrospective effect. Similarly, Section 354-A of IPC would also not applicable in the present case, as the same was inserted in IPC by the Criminal law (Amendment Act), 2013 and came into force on 03.02.2013. With regard to Section 509 of IPC, learned counsel avers that before the Criminal law (Amendment Act), 2013, the maximum punishment prescribed under Section 509 of IPC was 01 year. As a result, the petitioner cannot be proceeded against under section 509 of IPC, as the Magistrate is barred by Section 468 of Cr.P.C from taking cognizance due to delay and laches. Lastly, it was argued that the instant FIR is a brazen attempt to pressurize the petitioner and his mother into giving away their share in the family property, as the complaint in the present case was filed on 03.07.2018 and immediately, thereafter, Civil Suit No.208/2018 was filed by mother of respondent No.2.

4. *Per contra*, learned counsel for respondent No.2 submits that the case is still under investigation. Once the final report under Section 173 Cr.P.C. is presented before the Magistrate, the petitioner would have liberty to seek discharge at the time of framing of charges and therefore, no interference is



warranted by this Court at this stage. It is further argued that no person would stake the reputation of a young girl just to have an upper hand in a property dispute. The civil suit was filed by mother of respondent No.2 and respondent No.2 has no role to play in the said dispute. Therefore, argument advanced by learned counsel for the petitioner that the instant FIR is a pressure tactic in order to intimidate the petitioner and his family members, cannot be appreciated. Lastly, learned counsel submits that the Magistrate has power to condone the delay, where there is sufficient reason given for condonation either *suo-moto* or on application filed in this behalf. Reliance in this regard was placed upon the judgments of the Co-ordinate Benches of this High Court, the Delhi High Court and the Andhra Pradesh High Court in ***M/s Golden Forests (I) Ltd. Vs. Registrar of Companies, 1999(1) R.C.R.(Criminal) 758 (Punjab and Haryana), Mars International India Pvt. Ltd. Vs. State of NCT of Delhi, 2012(1) R.C.R.(Criminal) 580 (Delhi), and Vinayak Steels Ltd. Vs. State of A.P. 2006(1) R.C.R.(Criminal) 375***, respectively.

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the complaint to the Chairperson, Punjab State Commission for NRIs, Chandigarh for registration of the case against the petitioner, was filed in July, 2018 i.e. after a period of more than 6 years. Delay in setting the law into motion by lodging of complaint and registration of FIR is normally viewed by the Courts with suspicion, as it undermines the integrity



of the cause of action. Hence, it becomes imperative to satisfactorily and cogently explain the delay. In the case at hand, however, the explanation put forth by respondent No.2 that initially Canadian authorities were approached for taking appropriate action and only after their refusal the complaint was moved before the Punjab State Commission for NRIs, lacks force. Here, it would be worthwhile to refer to the judgment of the Hon'ble Apex Court in ***Thulia Kali Vs. State of Tamil Nadu, (1972) 3 SCC 393***, wherein a two Judges Bench, speaking through H.R. Khanna, J. observed as follows:

“12. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained...”

6. Furthermore, it is settled law that the protection provided under Article 20(1) of the Constitution of India against *ex-post facto* law extends to cases, wherein distinct offences are created subsequently. The other aspect of



Article 20 of the Constitution of India is debarring infliction of greater penalty, post commission of the offence. The Constitution Bench of the Hon'ble Supreme Court in ***C.B.I. Vs. R.R. Kishore*** discussed the scope of Article 20(1) of the Constitution and held as follows:

*“The right under first part of sub-article (1) to Article 20 of the Constitution is a very valuable right, which must be safeguarded and protected by the courts as it is a constitutional mandate. The Constitution bench of this Court in **Rao Shiv Bahadur Singh v. State of Vindhya Pradesh (1953) 2 SCC 111**, highlighted the principle underlying the prohibition by relying upon judgment of **Willes, J. in Phillips v. Eyre (1870) LR 6 QB 1 at pp. 23 and 25** and of the United States Supreme Court in **Calder v. Bull 1 L Ed 648 at p. 649 : 3 US (3 Dall) 386 (1798)**, to hold that it would be highly unjust, unfair and in violation of human rights to punish a person under the ex post facto law for acts or omissions that were not an offence when committed. In the English system of jurisprudence, in the absence of a written Constitution, the repugnance of such laws is justified on universal notions of fairness and justice, not on the ground of invalidating the law itself, but as compelling the beneficial construction thereof where the language of the statute by any means permits it. Under the American law, ex post facto laws are rendered invalid by virtue of Article 1, Sections 9 and 10.” (emphasis supplied)*

7. In the case at hand, the factum of the offence occurring in the month of March in the year 2012 is not contested. A review of FIR (*supra*)



would show that Section 8 of POCSO Act has been employed against the petitioner. The POCSO Act, which was enacted in consequence to India's ratification of the UN Convention on the Rights of the Child in 1992, came into effect on 14.11.2012. Since the POCSO Act was brought into force after the alleged occurrence, the attraction of Section 8 of the said Act would be struck by the protection extended under Article 20(1) of the Constitution of India. Resultantly, the application of Section 8 of POCSO Act cannot be sustained in the present case. Similarly, Section 354-A of IPC, which was inserted by the Criminal law (Amendment Act), 2013 was also brought into force after the date of the alleged incident i.e. 03.02.2013 and as such, would also not be applicable in the present case and liable to be quashed.

7. With respect to the offence punishable under Section 509 of IPC, it would be apposite to mention that before the Criminal Law (Amendment) Act, 2013 was brought into force on 03.02.2013, the maximum punishment prescribed under the said Section was simple imprisonment for a term, which may extend to one year, or with fine, or with both. Section 468 Cr.P.C. provides limitation period for taking cognizance of offences and bars taking cognizance beyond the period of limitation. The offence under Section 509 of IPC was punishable with 01 year of imprisonment at the time of the incident, therefore, as per Section 468(2)(b) Cr.P.C., the period of limitation for taking cognizance of the same would be one year. The Constitution Bench of the Hon'ble



Supreme Court in ***Sara Mathew Vs. Institute of Cardio Vascular Disease and Others, 2014(14) RCR Criminal 10***, has categorically held that for the purpose of calculating the period of limitation under Section 468 Cr.P.C., the relevant date would be the date of filing of the complaint or the date of institution of prosecution and not the date, on which the Magistrate takes cognizance or the date of issuance of process by the Court. In the case at hand, the complaint was filed on 03.07.2018 i.e. after a period of more than six years from the dates of the alleged incident i.e. 4th, 5th and 6th of March 2012. Resultantly, learned Court below would be barred from taking cognizance of the present matter, as the prosecution was instituted beyond the period of limitation.

8. No doubt, the Court has the power to extend the period of limitation in certain cases under Section 473 Cr.P.C. i.e., if the Court, either on application or *suo moto*, is satisfied that given the facts and circumstances of the case, the delay has been properly explained or that the taking of cognizance is necessary to do so in the interest of justice, however, this provision is not relevant for our consideration since no such order has been passed by the learned Trial Court, condoning the delay and recording its reasons for doing so.

9. In the facts and circumstance of the present case, this Court does not find any reason in allowing the criminal prosecution to continue against the petitioner. As such, in view of the above discussion, FIR No.02 dated 26.01.2019 under Section 8 of POCSO Act and Sections 354-A & 509 of IPC,



registered at Police Station NRI Kapurthala and all subsequent proceedings arising out of the same are hereby quashed qua the petitioner.

10. All the pending miscellaneous application(s), if any, shall stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

07.08.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No