

CRM-M-27612-2018
Date of decision:15.04.2024

...Petitioner

versus

...Respondents

Present: Ms. Promila Nain, Advocate
and Mr. Amit Thakur, Advocate
for the petitioner.

Mr. S.K. Jain, Advocate
for Respondent No. 2.

Mr. Sandeep Kumar, DAG Punjab.

1. The present petition has been preferred under Section 482 Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.'). seeking quashing of impugned order dated 17.05.2018 passed by learned Additional Sessions Judge, Ludhiana whereby application filed by the petitioner under Section 294 Cr.P.C. in FIR No. 109 dated 03.06.2017 registered under Section 354-B of the IPC and Section 8 of Protection of Children from Sexual Offences Act, 2012 (hereinafter 'the POCSO Act') at Police Station Division No. 4, Ludhiana, was dismissed.

2. Briefly, the facts are that the mother of the victim, moved an application before Navita Puri, Principal, Kundan Vidya Mandir Senior Secondary School, Ludhiana submitting that her daughter, who is a student of grade LKG in the said school, is being sexually assaulted by an employee of

the school. It was also stated that the accused wears brown uniform. During investigation, the petitioner was identified by the victim as the culprit.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case by the Principal as she has an adverse attitude towards non-teaching staff since they have been asking for an enhancement in salary. In pursuance of this agenda, some of the other non-teaching staff members and one teacher have been previously dismissed from service by the Principal by leveling false allegations against them. In fact, vide order dated 13.07.2016 (Annexure P-2) learned Judicial Magistrate Ist Class, Ludhiana had issued instructions to the police authorities for taking action against the Principal for registering false case against the teacher.

4. Moreover, the petitioner was put on duty in the Senior section of the school and as per the school procedure, students from Nursery, K.G. and Middle section, which is located in a different building, cannot enter the Senior section without written permission. The non-teaching staff of the school are also not entitled to enter the Nursery, K.G. and Middle section of the school without permission of the Principal. Further, in spite of about 50 CCTV cameras installed on the school premises, no reference has been made to them which fortifies the case of the petitioner as it indicates *mala fide* on the part of the Principal.

5. Learned counsel further contends that on 04.06.2017, police officials, in connivance with the Principal, took petitioner's daughter namely Komal, son-in-law, their minor child and sons into illegal custody. In this regard, a writ petitioner bearing no. CRWP-699-2017 titled '*Raj Kumar vs. State of Punjab and others*' was also moved before this Court. The petitioner seeks to place about 11 documents on the record that would assist in proving

his defence. However, the learned trial Court has fallen into grave error by

dismissing the application of the petitioner regarding the same vide impugned order dated 17.05.2018. Learned counsel places reliance on the judgment rendered by the Hon'ble Supreme Court in ***Shamsher Singh Verma v. State of Haryana 2016(1) R.C.R(Criminal) 167.***

6. Learned State counsel submits that an application under Section 294 Cr.P.C. is not maintainable at this stage and it has only been filed by the petitioner to delay the trial. As such, the trial Court has correctly dismissed the same vide impugned order dated 17.05.2018.

7. I have heard the learned counsel for the parties and perused the record with their able assistance.

8. It is settled law that the accused does not have the right to call upon the court to examine any material produced by him at the time of framing of charges since at this stage the trial Court is only required to assess whether a prima facie case is made out on the basis of material available in the report under Section 173 Cr.P.C only. The Cr.P.C. only makes provisions for the accused to lead evidence only at the stage of defence evidence. This view has recently been reiterated by a two Judge bench of the Hon'ble Supreme Court in ***State of Gujrat v. Dilipsinh Kishorsinh Rao 2023(4) Crimes 146***, wherein speaking through Justice Aravind Kumar, the following was held:

“8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.”

9. A three Judge bench of the Hon'ble Supreme Court in ***State of Orissa v. Debendra Nath Padhi (2005) 1 SCC 568*** has settled the conundrum regarding right of the accused to lead evidence at the stage of framing of

charges and speaking through Justice Y.K. Sabharwal, the following observations were made:

“25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is 'necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code'. The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the Court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. In so far as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it whether police or accused. If under Section 227 what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by Court and under a written order an officer in charge of police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.” (emphasis added)

10. In the present case, the petitioner seeks to place on record evidence in his defence at the time of framing of charges and it can only be done when trial reaches the stage of defence evidence. Further, the reliance placed

by him on *Shamsher Singh Verma(supra)* is unfounded since a CD was sought to be produced therein at the stage of defence evidence.

11. In view of the discussion above, this Court finds the present petition to be bereft of any merit and accordingly, the same is dismissed.
12. Pending miscellaneous applications shall also stand disposed of.

15.04.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

- (i) Whether speaking/reasoned

Yes/No
- (ii) Whether reportable

Yes/No