

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-29400-2017 (O&M)

Date of order: 13.02.2024

Avtar Singh @ Suraj

.....Petitioner(s)

Vs.

State of Punjab & Others

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTAPresent:- Mr. Vinod K. Kaushal, Advocate
for the petitioner.

Mr. Prabhdeep Singh Bhandari, AAG Punjab.

Mr. Naveen Batra, Advocate
for respondent No.2.

Nidhi Gupta, J.

Prayer in the present petition under Section 482 Cr.P.C. is for quashing of FIR No.57 dated 14.06.2015 (Annexure P1) registered under Sections 363 and 366-A IPC (Section 376 IPC and Sections 5 & 6 of POCSO Act added later on) at police station Maqboolpura, District Amritsar City; and subsequent proceedings initiated thereafter.

2. It is inter alia submitted by learned counsel for the petitioner that the petitioner and respondent No.2/the alleged victim, were in a consensual relationship. It is submitted that the FIR was registered on the basis of statement of respondent No.3/father of the alleged victim (respondent No.2 herein). Learned counsel submits that as has been admitted by the complainant in the FIR, at the time of commission of offence, the respondent No.2 was about 17-and-a-half years old. Pursuant to that, the parties have even solemnized marriage on 08.02.2017 as is borne out from the findings recorded in the order dated 14.02.2017 passed by learned Sessions Judge, Amritsar (Annexure P3). It is submitted that

thereafter, even one son was born to the petitioner and respondent No.2; and they both are living together happily.

3. Learned counsel for respondent No.2 does not dispute the above said submissions made by learned counsel for the petitioner.

4. Learned State Counsel however, opposes the prayer made on behalf of the petitioner and submits that as per the statement made by respondent No.2 under Section 164 Cr.P.C. dated 17.06.2015, she has levelled allegations against the petitioner for abducting and committing rape upon her against her wishes. It is further submitted that even as per the MLR, it was found that offence under Section 376 IPC has been made out.

5. No other argument is made on behalf of the parties.

6. I have heard learned counsel for the parties.

7. At this stage, reference may be made to the judgment of Karala High Court in **Anoop vs. State of Kerala and others 2022 SCC Online Ker 2982** 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 16 years, from the cases of sexual assault on children below 16 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.”

8. 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.
9. Perusal of record shows that notice was issued in the matter on 11.08.2017 by a Co-ordinate Bench of this Court. In the order dated 19.07.2018, a Co-ordinate Bench of this Court noted that as per office report, respondent No.3 was served through his wife. However, thereafter, no one has put in appearance on behalf of respondent No.3/complainant till date.
10. In view of the above, present petition is **allowed**; and FIR No.57 dated 14.06.2015 (Annexure P1) registered under Sections 363 and 366-A IPC (Section 376 IPC and Sections 5 & 6 of POCSO Act added later on) at police station Maqboolpura, District Amritsar City; and subsequent proceedings initiated thereafter; are ordered to be quashed qua the petitioner.
11. Pending application(s) if any also stand(s) disposed of.

13.02.2024

Sunena

Whether speaking/reasoned
Whether reportable

(Nidhi Gupta)

Judge

Yes/No
Yes/No