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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-19433-2024 (O&M)
Date of decision: 21.11.2024

Cxxxx

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kartar Singh, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Balraj Gujjar, Advocate
for respondent No.2.

None for respondent No.3.

HARPREET SINGH BRAR, J. (ORAL)

1. This is second petition preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') against the impugned order dated 31.01.2019 (Annexure P-5) passed by learned Additional Sessions Judge, Fast Track Court, Faridabad, in the case stemming from FIR No.98 dated 01.12.2018 under Sections 363, 450, 506 of the Indian Penal Code, 1860 (for short 'IPC') and Section 6 of the Protection of Children from Sexual Offences

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Act, 2012 (for short 'POCSO Act'), registered at Police Station Women, NIT Faridabad (Annexure P-1), whereby the respondents-accused were discharged by learned Court below.

2. The facts, tersely put, are that on the night of 12.11.2018, around midnight, the prosecutrix was sleeping in her room, when respondent No.2-accused and three of his associates forcibly abducted her. They took her to an isolated location, tied her mouth with a cloth and sexually assaulted her. They left her at around 5:00 a.m., warning her not to reveal the incident to anyone, otherwise they would kill her and her family. Further, on 01.12.2018, at about 12:30 a.m., while the prosecutrix was sleeping in her room, respondent No.2-accused and his associates entered, tied her mouth with a cloth and abducted her in a car. They drove to an isolated location, where they sexually assaulted her inside the car. Subsequently, they left her near *Chungi* No.17 at about 05.00 a.m. and again threatened to kill her, if she disclosed the incident. Upon returning home, the prosecutrix informed her mother about the ordeal. On the basis of this, FIR (*supra*) was registered and the investigation commenced. After completion of the investigation, final report under Section 173 of Cr.P.C. [now Section 193 of *Bharatiya Nagarik Suraksha Sanhita, 2023* (for short 'BNSS')] was filed against accused Sakil Ahmad, Ashiq and Anil and an application for releasing respondents No.2 & 3 was moved by the police, which was duly accepted by learned Court below. Hence, the instant petition.



3. Learned counsel for the petitioner, *inter alia*, contends that bare perusal of FIR (*supra*) clearly reveals that the offence of rape has been committed. Moreover, the petitioner-victim has specifically named respondent No.2 in the FIR as well as in her statement recorded under Section 164 of Cr.P.C. (*now Section 183 of BNSS*). Further, an application under Section 319 of Cr.P.C. (*now Section 358 of BNSS*) was moved during course of the trial to summon respondents No.2 & 3 as additional accused, which was partly allowed by learned trial Court, vide order dated 22.04.2019, summoning accused Hari Bhagat. The said summoning order was challenged before this Court and the same was set aside vide order dated 10.02.2023 (Annexure P-8). Thereafter, the petitioner-victim approached the Hon'ble Supreme Court. The Hon'ble Apex Court, vide order dated 20.11.2023, observed that since the statement of the petitioner was not yet recorded, it would not be prudent to interfere with the order passed by this Court and the SLP was dismissed. Later on, once the statement of the petitioner was recorded, another application under Section 319 of Cr.P.C. (*now Section 358 of BNSS*) was moved by the petitioner. This application was withdrawn, however, learned trial Court granted liberty to the petitioner to file a fresh application under Section 319 of Cr.P.C. (*now Section 358 of BNSS*), after the impugned order of discharge is quashed by this Court.

4. *Per contra*, learned counsel for respondent No.2 contends that the



matter was duly investigated by the police, who arrived at the conclusion that none of the allegations against respondents No.2 & 3 were correct. The police rightly found them to be innocent. Accordingly, the application for their release was filed before learned trial Court. Learned trial Court, after hearing the parties and assessing the evidence on record, upheld the police report and discharged them. As such, interference by this Court, at this stage, would be unwarranted.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that after the matter was duly investigated, the police arrived at the conclusion that there was no incriminating material against respondents No.2 & 3 and thus, found them to be innocent. Subsequently, an application seeking their discharge or release from custody was filed by the police before learned trial Court. Learned trial Court, after hearing the parties, accepted the said application and consequently, respondents No.2 & 3 were released from custody, vide impugned order dated 31.01.2019 (Annexure P-5).

6. At this juncture, it would be profitable to cite the judgment of the Hon'ble Supreme Court rendered by a Constitution Bench in ***Hardeep Singh Vs. State of Punjab and another, (2014)3 SCC 92***. While dealing with the cases, where an accused has been discharged, Justice B.S. Chauhan opined as under:

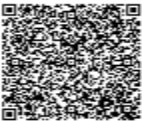
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“112. However, there is a great difference with regard to a person who has been discharged. A person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation; the court had come to the conclusion that there is not even a prima facie case to proceed against such person. Generally, the stage of evidence in trial is merely proving the material collected during investigation and therefore, there is not much change as regards the material existing against the person so discharged. Therefore, there must exist compelling circumstances to exercise such power. The Court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398 Cr.P.C. without resorting to the provision of Section 319 Cr.P.C. directly.”

7. In the present case, respondents No.2 & 3 were found to be innocent by the police. This finding was put before learned trial Court in the form of an application. Learned trial Court, after considering the application and hearing the parties, discharged respondents No.2 & 3 and released them from custody. Resultantly, it can be said that respondents No.2 & 3 stood the stage of inquiry before the Court and upon judicial examination of the material collected during investigation, the Court had come to the conclusion that there is not even a *prima facie* case to proceed against them. In such a scenario, it becomes imperative for the prosecution to bring new material and evidence on

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record to justify nullification of the discharge order. However, in the present case, no new evidence has been produced by the petitioner. The issue of discharge, therefore, cannot be re-opened on the same facts and circumstances.

8. Therefore, in light of the above discussion, this Court is of the considered opinion that learned Court below, vide impugned order dated 31.01.2019, discharged respondents No.2 & 3 based on correct appreciation of the facts and the law laid down by the Hon’ble Supreme Court and as such, the same does not warrant any interference by this Court. Accordingly, the present petition is dismissed and the impugned order dated 31.01.2019 passed by learned Additional Sessions Judge, Fast Track Court, Faridabad is upheld.

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

[HARPREET SINGH BRAR]
JUDGE

21.11.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No