

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-A-936-2022 (O&M)
Date of order: 27.02.2024

Lxxx

.....Applicant(s)

Vs.

Subodh Kumar & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Jagjit Singh, Advocate
for the applicant.

Nidhi Gupta, J.

Present application under Section 378(4) Cr.P.C. is filed for permission to grant special leave to file appeal against impugned judgment dated 01.11.2021 passed by learned Judicial Magistrate, 1st Class, Sultanpur Lodhi, District Kapurthala, whereby complaint filed by the applicant under Sections 354, 323, 324 and 34 IPC, has been dismissed and respondents have been acquitted.

2. Learned counsel for the applicant inter alia submits that the impugned judgment is on the face of it illegal, unfair and unjust and deserves to be set aside as the applicant had led sufficient evidence on record to prove the charges. It is submitted that the applicant had examined herself as CW2, Dr. Neena Agnihotri as CW-1, husband of the applicant, namely L.J. Tirkey as CW-3, Kanchan Sharma, who was the eyewitness, as CW-4, H.C. Gurdial Singh as CW-5 and H.C. Bidhi Chand as CW-6. It is further submitted that all the prosecution witnesses supported the version of the applicant and proved it, even then, the Ld. Trial Court has

acquitted the accused, which is not sustainable in the eyes of law. The Ld. Trial Court failed to appreciate that the applicant suffered head injury attributed to respondent No.1, she was beaten by respondent No.2 and respondent No.1 outraged the modesty of the applicant. It is further submitted that the Ld. Trial Court gave much importance to the improvement in the version of the applicant, but failed to appreciate that this is bound to happen after lapse of time. Yet, the Ld. Trial Court acquitted the accused on the ground of improvement in the version of applicant. As such, the finding of the Ld. Trial Court is not sustainable in the eyes of law.

3. No other argument is made on behalf of the applicant.

4. I have heard learned counsel for the applicant and perused the case file in detail.

5. Brief facts of the case as set out by the applicant are that on 11.07.2013 at around 09:30 AM, the applicant along with her friend Kanchan Sharma went to the house of Manju Sharma where her friend Kanchan Sharma paid the tuition fees of her children. When they were returning and reached near the house of Bibha Devi/respondent No.2 herein, said Bibha Devi and her son Subodh Kumar/respondent No.1 herein, came in front of them. Bibha Devi, armed with wooden stick/danda gave blows with the same on the body of applicant, Subodh Kumar gave slaps and fist blows to the applicant. He also tried to make her naked. Then, both accused dragged the applicant to their house, where Subodh Kumar gave her head injury by breaking liquor bottle on her head.

6. Perusal of record of the case shows that there are glaring discrepancies and contradictions in the story put forth by the applicant/complainant. As per the complaint, she had alleged that respondent No.1 had outraged her modesty on 11.07.2013/date of incident. However, in respect of the present incident the applicant had first filed a complaint on 15.07.2013 on the basis of which DDR No.13 under Section 323 IPC was recorded, in which the applicant had never made any allegation of outraging her modesty. Thereafter, the applicant had moved written application dated 24.07.2013 (produced as Ex.CW6/A before the learned trial Court). Even in the said application, there was no allegation by the applicant that respondent No.1 had tried to outrage her modesty. It is only when the present complaint dated 17.12.2013 was filed that any allegation of outraging the modesty of the applicant surfaced for the first time. Thus, the learned trial Court is correct in holding that the applicant had improved her versions at each stage.

7. Even in the evidence, there are serious discrepancies. Admittedly, in her preliminary evidence recorded on 28.10.2014 as CW1, the applicant had further embroidered the events to allege that respondent No.1 had forcibly tried to open the string of her *salwar*. However, thereafter, in her pre-charge evidence recorded on 27.05.2016, the applicant made no allegation regarding forcible removal of string of her *salwar*.

8. Furthermore, in respect of the same incident/occurrence, the applicant had also filed complaint dated 29.04.2017, which was dismissed by the learned Judge Special Court,

Kapurthala vide order dated 18.08.2018 (annexed as Exhibit DZ1/A before the learned trial Court). It has come on record that in the said case too, the applicant had recorded her statement on 25.07.2017 (annexed as Exhibit Dz before the learned Court below) in which no allegation was made regarding forcible removal of string of *salwar*.

9. It has been further alleged by the applicant that respondent No.2 armed with wooden stick had given blows on her body while respondent No.1 gave her slaps and fist blows; as also that respondent No.1 had given head injury by breaking liquor bottle on her head. However, perusal of the initial statement dated 15.07.2013 (annexed as Exhibit CW2 before the trial Court) made by the applicant, shows that she had alleged that on the date of incident i.e. 11.07.2013, she was going along with one Kanchan Sharma, when the respondents/accused stopped her and respondent No.2 hit her on the head with glass bottle while respondent No.1 gave blow of wooden stick. Clearly therefore, the allegations made against the respondents have been inter-changed thus casting shadow of doubt on the correctness of the version of events as narrated by the applicant.

10. Moreover, the MLR was never proven by the applicant in accordance with law. Yet even as per the MLR, all the injuries have been inflicted by blunt weapon. This clearly belies the version of the applicant that she was hit on the head by a glass bottle. Even Dr. Neena Agnihotri, who deposed vide affidavit Ex.CW1/A, did not give any opinion that injury was caused with blunt or sharp weapon. She never deposed that she had

removed any glass pieces from any injury. Accordingly, injury on the head of the applicant was held to be not proven beyond reasonable doubt.

11. It has further been admitted by the applicant before the learned trial Court as also by learned counsel for the applicant before this Court that there are irreconcilable contradictions in the version put forth by the applicant. It has also been admitted that there are numerous litigations pending between the applicant and the respondents. Therefore, it cannot be ruled out that the present complaint is motivated.

12. Accordingly, it is in these circumstances that the learned trial Court had acquitted the respondents. Learned counsel for the applicant is unable to controvert the above said findings of the learned trial Court. Nothing whatsoever has been produced before this Court to dispute any of the above said findings.

13. In view of the above, I find no merit in the present application, and the same is accordingly, **dismissed**.

14. Pending application(s) if any also stand(s) disposed of.

27.02.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No