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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH

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CRR No. 2030 of 2011 (O&M)  
Date of decision: 29.07.2024

Suresh Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sudhir Sharma, Advocate  
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. The present revision petition has been filed against the judgment of conviction dated 04.03.2010 and order on quantum of sentence dated 05.03.2010, passed by the Court of learned Judicial Magistrate First Class, Yamuna Nagar in Criminal Case No. 244, titled as *State vs. Suresh Kumar*, arising out of FIR No. 268 dated 13.09.2006, registered under Section 294 of IPC at Police Station Farakpur, whereby the petitioner had been held guilty and convicted under Section 294 of IPC and had been sentenced to undergo rigorous imprisonment for a period of 03 months and to pay a fine of Rs. 10,000/-, as well as against the judgment dated 23.04.2011, passed by the Court of learned Additional Sessions Judge, Yamuna Nagar in Criminal

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Appeal No. 22 of 2010, titled as *Suresh Kumar vs. State of Haryana*, whereby the appeal preferred by the petitioner had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of the present revision petition are that the aforementioned FIR had been registered in compliance of an order dated 07.03.2006 passed by this Court in CRM-M-13822-2006 observing that there was possibility of committing an offence punishable under Section 294 of IPC by the petitioner and giving directions to the concerned SHO to register an FIR and investigate the same. In compliance of those directions, the statement of complainant Sarita was recorded on 13.09.2006, who stated that she had been posted as a teacher in Govt. school at village Mandebri with effect from December, 2004. The petitioner, who was also posted there as Physical Training Instructor, used to misbehave with her by using obscene language. He used to sing obscene songs. The matter was orally reported to the Head Master of the school but the petitioner did not relent. She further recorded that on 09.08.2005, while she was present in the staff room, the petitioner had reached there and after opening the zip of his pant, he started committing obscene acts. The complainant reported the matter to the Head Master but was threatened by the petitioner with dire consequences. The matter was then reported to the police as well as the District Education Officer, Superintendent of Police, Yamuna Nagar but it yielded no result. She also stated that after her transfer to a school at Model Town, Yamuna Nagar in April, 2006, the petitioner also got himself posted at the same school with a view to harass her. On the basis of her statement, a case under Section 294 of IPC was registered. Investigation proceedings were initiated. During investigation, the petitioner was arrested

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and subsequently he was released on bail. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. was presented in the Court. The petitioner was chargesheeted for commission of offence punishable under Section 294 of IPC on finding a *prima facie* case by the trial Court. He pleaded not guilty to the charges and claimed trial.

3. To substantiate its case, the prosecution examined 04 witnesses in all, besides placing reliance upon certain documentary evidence and thereafter, the prosecution evidence was closed.

4. Statement of the petitioner under Section 313 of Cr.P.C. was recorded, wherein he abjured his guilt and claimed innocence. In defence evidence, he produced 04 witnesses namely Babu Ram, retired Inspector as DW-1, Saligram as DW-2, Pawan Kumar as DW-3 and Joginder Pal as DW-4.

5. On appreciating the evidence produced on record and after hearing both the parties, the trial Court held the petitioner guilty for commission of offence punishable under Section 294 of IPC and sentenced him to undergo rigorous imprisonment for a period of 03 months and to pay a fine of Rs. 10,000/-. Feeling dissatisfied, the petitioner preferred an appeal before the appellate Court but the same had been dismissed, as mentioned above.

6. It is argued by learned counsel for the petitioner that the impugned judgments, as passed by the Court below, are liable to be set aside as the same are not sustainable in the eyes of law. The trial Magistrate did not apply her judicious mind. The findings given by the trial Court were based on

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conjectures and surmises. The evidence produced on record had not been properly appreciated by the trial Court. There was unexplained delay in reporting the matter to the police, which had not been taken into consideration. The testimony of the complainant that she had reported the matter on 09.08.2005 to the police, has not been corroborated by any documentary evidence. The testimonies of PW-2 Satya Devi and PW-3 Jarnail Singh were hearsay in nature as they were not the eye-witnesses to any obscene act committed by the petitioner qua the complainant. The testimony of the complainant also did not inspire any confidence to connect the petitioner with the allegations as levelled against him. The ingredients required for commission of offence punishable under Section 294 of IPC had not been established at all. The defence plea as taken by the petitioner was more probable and trustworthy and proved that the petitioner had been falsely implicated but the trial Court as well as the appellate Court did not appreciate the said evidence in a proper perspective. With these submissions, it is argued that the impugned judgments are liable to be set aside, the revision petition deserves to be accepted and further that the petitioner deserves to be acquitted of the charge framed against him under Section 294 of IPC.

7. *Per contra*, learned State counsel has argued that the findings as given by the Courts below are well reasoned and warrant no interference by this Court. Therefore, it is urged that the revision is liable to be dismissed.

8. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

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9. As per allegations, the petitioner, who was posted as PTI in Govt. School, Mandebri, used to harass the complainant, who was also posted there as a teacher and as on 09.08.2005, he had committed an obscene act in her presence by opening the zip of his pants. The version of the prosecution is that the complainant had reported the matter to PW-3 Jarnail Singh, who was posted in the said school as Head Master, on the same day. However, on going through the testimonies of the complainant as well as PW-3, it is apparent that in fact no written complaint had been filed by the complainant as on 09.08.2005. Rather, in her sworn deposition, the complainant stated that she had reported the matter to the Head Master and then to the Education Department and that a written complaint on behalf of the Head Master had also been given at the concerned police station but no action was taken. During cross examination, she stated that the written complaint was given by her to the Head Master and he had given the said complaint to police on 13.10.2005. PW-3 Jarnail Singh contradicted her by stating that on 09.08.2005, the complainant had simply informed him about the obscene act committed by the petitioner and since the petitioner did not listen to him despite trying to prevail good sense upon him, then feeling helpless, he had given intimation to the Education Department. He did not say that any written complaint whatsoever had been lodged by the complainant either before him or before any other authority or to the police.

10. It has come on record that the matter had been reported to the police authorities for the first time on 13.10.2005, which fact has been admitted by the complainant also. DW-1 Inspector Babu Ram Walia deposed that he had conducted inquiry into the complaint so filed and had prepared his

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report Mark D-1. On a perusal of the contents of this report, it is revealed that no complaint was submitted by the complainant on 09.08.2005 qua committing any obscene act by the petitioner. Neither any such complaint had been sent to the Education Department. The testimony of DW-1 has remained un rebutted and unchallenged. Therefore, there is no reason to disbelieve the same. It is well settled proposition of law that defence witnesses are entitled to be given same credit, which is to be given to a prosecution witness. In view of the fact that none of the witnesses examined by the prosecution including complainant herself produced any documentary evidence on record to show that any written complaint/information was given by the complainant to PW-3 or to any Department including the Police Department, her version to this effect has become quite doubtful and as till 13.10.2005, nothing against the petitioner had been reported by the complainant or by PW-3 qua the act allegedly committed on 09.08.2005, a doubt is created over the truthfulness of entire prosecution version.

11. As mentioned above, the FIR in this case was registered only in pursuance of some order passed by this Court in CRM-M-13822-2006. Copy of this order has not been made part of the trial Court's record, so as to enable this Court to see as to exactly what direction had been given in the said order. The formal FIR was registered on 13.09.2006, obviously i.e. after the orders were passed by this Court in CRM-M-13822-2006 since as per inquiry conducted by DW-3, the allegations levelled in the complaint, which was lodged by PW-3 on 13.10.2005 were not established. In the peculiar facts of the case, when there is apparent delay of more than two months on behalf of the complainant herself in reporting the matter to the police, the possibility

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that a false story had been concocted at the time of making statement Ex. PA by the complainant when the formal FIR was actually registered cannot be ruled out. It is trite law that the delay in reporting the matter to the police or lodging of the FIR quite often results in embellishment which is a creature of afterthought. On account of delay, report not only gets bereft of the advantage of spontaneity, but danger also creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. Due to the fact that at least till 13.10.2005, no complaint with regard to the alleged incident occurred with the complainant had been given by her to the police or to any other authority, a suspicion has reasonably been created against her. Delayed information gives rise to suspicion and puts the Court on guard to look for a plausible and acceptable explanation for the delay. A quick information report is a towering circumstance that goes a long way to assure the veracity of the prosecution story as in such cases, there cannot be any time to create and deliberate a false case against the accused. Since in the present case, it has been revealed that from 09.08.2005 till 13.10.2005, no report to the police or any higher authority of the Education Department had been made by the complainant, therefore, it can reasonably be presumed that this time was utilized by the complainant for creating a false story against the petitioner.

12. Further, it has also come on record that the petitioner and PW-3 Jarnail Singh belonged to different unions of the school and there was party fraction between them and the complainant supported the union to which PW-3 affiliated. Hence, this can certainly be considered to be a reason for her implicating the petitioner falsely in this case, particularly in the circumstances

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when the statements of PW-2 and PW-3, who had been examined to support the version of the complainant, did not prove that the complainant had lodged any written complaint on 09.08.2005. The testimony of PW-2 Satya Devi, who was a Sweeper in the said school, is totally hearsay in nature. More so, it has come on record that even she herself had lodged an FIR under Section 354 of IPC against the petitioner. Therefore, she certainly had a motive to implicate the petitioner. Similarly PW-3 Jarnail Singh, being belonging to rival union, was also having a reason to do so. Not even this, none of them was admittedly an eye-witness to the occurrence and their statements are hearsay in nature, which did not help in corroborating the version of the complainant. While recording the findings of guilt of the petitioner, the Courts below are not shown to have taken all these facts into consideration. As such, the position which emerges is that the testimony of the complainant Sarita as PW-1 to the effect that the petitioner had committed obscene act in her presence by opening the zip of his pants as on 09.08.2005 cannot be acted and relied upon beyond doubt due to the inordinate delay in reporting the matter to the police in writing and for want of any evidence being produced on record by the prosecution to prove that any written complaint had been filed before the Education Department or any other authorities as well as due to the above discussed other reasons.

11. As such, the findings given by the learned trial Court and as affirmed by learned appellate Court are not sustainable in the eyes of law. Accordingly, the impugned judgment of conviction and order on quantum of sentence passed by the trial Court as well as the impugned judgment passed by the appellate Court are set aside. The petition is allowed. The petitioner is

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acquitted of the charge framed against him. Let a copy of this judgment along with the trial Court record be sent forthwith to the trial Court.

29.07.2024

*Waseem Ansari*

(MANISHA BATRA)  
JUDGE

*Whether speaking/reasoned*

*Yes/No*

*Whether reportable*

*Yes/No*