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

CRR No. 682 of 2011 (O&M)
Reserved on : 03.05.2024
Pronounced on : 26.07.2024

Suresh Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

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

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

MANISHA BATRA, J.

1. The present revision petition has been filed against the judgment of conviction dated 20.01.2010 and order on quantum of sentence dated 22.01.2010, passed by the Court of learned Judicial Magistrate First Class, Yamuna Nagar in Criminal Case No. 121, titled as *State vs. Suresh Kumar*, arising out of FIR No. 269 dated 14.09.2006, registered under Section 354 of IPC at Police Station Farakpur, whereby the petitioner had been held guilty and convicted under Section 354 of IPC and had been sentenced to undergo rigorous imprisonment for a period of 06 months and to pay a fine of Rs. 1,000/-, as well as against the judgment dated 04.01.2011, passed by the Court of learned Sessions Judge, Yamuna Nagar in Criminal Appeal No. 24 of 2010, titled as *Suresh Kumar vs. State of Haryana*, whereby the appeal preferred by the petitioner had been dismissed.

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2. Brief facts of the case relevant for the purpose of disposal of the present revision 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 354 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 Satya Devi was recorded on 14.09.2006, who stated that she had been posted as a Sweeper in a govt. school at village Mandebri. The petitioner, who was also posted there as Physical Training Instructor, was having ill eye upon her and in furtherance of his bad intention, one day when there was holiday in the school, he came to her house and asked her to accompany him to school but she refused to do so. She reported the matter to the female staff as well as Head Master of the school. One day, she was sitting in a room when the petitioner came there and pressed her chest and tried to overpower her and also tried to commit indecent acts with her. However, she saved herself by running outside. She again brought the incident to the notice of the female staff members of the school, on which, the petitioner was called and the matter was discussed but he did not mend his behavior. After some days, when she was marking her presence in the attendance register, the petitioner came from behind and caught hold of her hand and tried to grasp her. Due to which, she gave an application in writing on 24.09.2005 to the Head Master regarding the said incident. She also alleged that apart from this, the petitioner also used to sing obscene songs and do obscene acts. She had moved an

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application against the petitioner before the administration but no action was taken. On the basis of her statement, a case under Section 354 of IPC was registered. Investigation proceedings were initiated. During investigation, the petitioner was arrested 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 354 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 05 witnesses in all, besides placing reliance upon certain documentary evidence and thereafter, the prosecution evidence was closed. Statement of the petitioner under Section 313 of Cr.P.C. was recorded, wherein he abjured the guilt and claimed innocence. In defence evidence, he produced Joginder Lal, Sarpanch as DW-1, Kavita Rani as DW-2, Babu Ram, retired Inspector as DW-3, Pawan Kumar, Clerk of the office DEO as DW-4 and HC Daulat Ram as DW-5.

4. By 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 354 of IPC and sentence him to undergo rigorous imprisonment for a period of 06 months and to pay a fine of Rs. 1,000/-. Feeling dissatisfied, the petitioner preferred an appeal before the appellate Court but the same had been dismissed, as mentioned above.

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5. 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 his judicious mind. The findings given by the trial Court were based on conjectures and surmises. The evidence produced on record had not been properly appreciated by the trial Court. The allegation that any written complaint had been filed by the complainant had not been proved beyond doubt as no complaint, which could be considered to be legally admissible in evidence, had not been proved to be lodged by her before the police or her superiors. Mark A was only a photocopy and had not been proved in accordance with law. The testimony of the complainant about reporting the matter to the police had not been corroborated by any documentary evidence whatsoever. The statements of PW-2 Sarita Rani and PW-3 Jarnail Singh were hearsay in nature. Neither they were eyewitness to the alleged act of outraging the modesty of the complainant by the petitioner nor their statements inspired any confidence to prove that fact. The ingredients required for commission of offence punishable under Section 354 of IPC were not established. On the contrary, the defence evidence produced on record by the petitioner was more probable and trustworthy and was sufficient to prove that it was a case of false implication of the petitioner at the behest of PW-3 Jarnail Singh, who was having enmity with the petitioner due to the fact that the petitioner was affiliated to a rival union of teachers. With these submissions, it is argued that the impugned judgments are liable to be set aside, the revision deserves to be

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accepted and further that the petitioner deserves to be acquitted of the charge framed against him under Section 354 of IPC.

6. *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.

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

8. As per allegations, the petitioner, who was posted as PTI in Govt. School, Mandebri, had been harassing the complainant and tried to outrage her modesty on 24.09.2005 and on some previous occasions. On a careful assessment of the evidence produced on record, it appears that the complainant materially improved her version at the time of recording her statement before the trial Court. As stated by her, when the petitioner tried to outrage her modesty, then she had submitted a written complaint to the Head Master of her school and identified its photocopy as Mark A. A perusal of Mark A reveals that neither any endorsement qua receipt of any complaint by PW-3 on 24.09.2005 had been made therein nor its original had been produced and made part of the challan report for the reasons best known to the Investigating Officer who did not even appear as a witness. The document Mark A, which is simply a photocopy, cannot be considered to be admissible in evidence as it has not been proved in accordance with law and, therefore, the same certainly could not be taken into consideration for the purpose of proving the allegations as levelled therein. Though PW-3 Jarnail Singh deposed that a written complaint was given by the complainant to him and he

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had informed his Department, however, he did not produce on record any letter forwarding the complaint of the complainant or any register containing the endorsement regarding sending of such complaint to his superior officers or to the police not it was his version that Mark A was copy of that very complaint that was submitted by the complainant before him. As such, it cannot be stated that Mark A was the same complaint that had been sent to the police authorities or higher authorities of the Education Department for the purpose of taking any action against the petitioner.

9. Apart from the above, even if for the sake of arguments, it is assumed that Mark A had actually been filed by the complainant, still on perusal of the contents of the same, it is revealed that the same did not corroborate the testimony of the complainant and she made many exaggerations and improvements in her sworn deposition. In Mark A, it is alleged that while the complainant was marking her attendance in the attendance register, the petitioner came from behind and while catching hold of her hands, he started doing wrong act with her, due to which, her bangles were broken. However, in her sworn deposition, she simply stated that on a particular day, the petitioner caught hold of her hand while she was marking her attendance. In complaint Mark A, it was alleged that the petitioner committed wrong acts with her previously also but the details of any such act had not been given therein, whereas, in her sworn deposition, she stated that the petitioner used to have meaningless conversation with her and that he had pinched her and further that he used to force her to talk to him. She further deposed that one fine day, he had come to her house when it was a holiday

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and insisted her to go along with him to the school with him. During cross examination, she stated that before filing Mark A, she had not submitted any complaint regarding the act and conduct of the petitioner. She stated that she could not give details of the exact date, month and year when the petitioner had caught hold of her hand, had pinched her or had visited her house. All this goes to create a doubt over the veracity of the version of not only the complainant but the entire prosecution story because of the reason that from her statement, it has not been proved beyond doubt that at any point of time, prior to recording statement Ex. PA on 14.09.2006, any written complaint had been filed by her making allegations of her modesty being outraged at the hands of the petitioner.

10. So far as the statement of PW-2 Sarita Rani is concerned, the same is totally hearsay in nature because admittedly the petitioner had not committed any act of outraging the modesty of the complainant in her presence. PW-3 Jarnail Singh though deposed that the complainant had filed a complaint against the petitioner alleging that he had been harassing her by doing obscene acts with her but he did not say that Mark A was the complaint that was filed by the complainant before him. He stated that he did not remember that he had sent the complaint filed by the complainant to superior officers by making any entry in the register or anywhere else. His admission to this effect creates a doubt that no complaint or in fact written complaint was filed by the complainant and that is why the same had not been sent either to the police or to the higher authorities of the Education Department. It is relevant to mention here that the FIR of this was lodged only on 14.09.2006 in

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compliance of order dated 07.03.2006 passed by this Court in CRM-M-13886-2006 giving directions to lodge the FIR and not on the basis of any previous complaint shown to have been filed by the complainant. No material whatsoever has come on record to show that any complaint had been lodged by the complainant before the police authorities prior to recording her statement Ex. PA on 14.09.2006 but no action had been taken by the police. The Investigating Officer of this case had not been examined, due to which, it has not been proved that any complaint had previously been filed by the complainant at all, on which, no action was taken by the police authorities. In such circumstances, when the complaint Mark A has not been proved in accordance with law and when no material whatsoever has come on record to prove that any written complaint had at all been filed by the complainant to the police, it can reasonably be presumed that there has been inordinate delay in reporting the matter to the police. This delay has certainly created a shadow of reasonable doubt about the veracity of the version of the complainant as the possibility of introducing a coloured version, exaggerated on count or concocted story as a result of deliberation and consultation cannot be ruled out at all. If the petitioner had actually committed some wrong act with the complainant, then it was incumbent upon her to give a quick information about the same to the police for assuring the veracity of her allegations. However, the same has not been proved to have been done by her at all, thereby creating a serious doubt over the truthfulness of the prosecution story.

11. In view of the discussion as made above, it emerges that the Courts below are not shown to have taken the above discussed facts into

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consideration while passing the impugned judgments and as such, in the considered opinion of this Court, 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 not sustainable in the eyes of law and are liable to be set aside. The same are accordingly set aside. The revision petition is accepted. The petitioner is 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.

26.07.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No