

CRR-1455-2018
Date of decision: 14.02.2024

Karan
...Petitioner

Versus
State of UT, Chandigarh
...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. N.S. Gill, Advocate
for Mr. Munish Gupta, Advocate
for the petitioner.

Mr. Vivek Singla, APP, UT Chandigarh

HARPREET SINGH BRAR, J. (ORAL)

1.

The present revision petition is preferred against judgment dated 16.01.2018 passed by learned Additional Sessions Judge, Chandigarh whereby appeal against judgment of conviction dated 23.01.2017 passed by learned Judicial Magistrate 1st Class, Chandigarh in FIR bearing no. 347 dated 03.09.2015 registered under Sections 294, 509, 34 of the IPC at Police Station Sector 36, Chandigarh, was dismissed.
2.

Briefly, the facts are that on 03.09.2015, the petitioner and co-accused were driving in a car bearing registration no. CH-01-AT-3994, and catcalling at women. The petitioner was driving the car while the co-accused person was sitting beside him. They started tailing and stalking the complainant/victim, Anjali and her friend, who were walking on the main road, and shouted unsavoury and lewd remarks from their car. Further, the co-accused also got out of the car and gestured them to sit inside. Feeling chagrined, the complainant called the police. Upon receiving the complaint, SI Saravjeet reached at the spot and caught hold of both the petitioner and the co accused person. Subsequently, FIR was registered against both the accused persons and investigation was launched. After completion of the

investigation, Challan was submitted against the both the accused persons in the trial Court as per Section 173 of the Code of Criminal Procedure (hereinafter 'Cr.P.C.' for brevity).

3. After assessing all the material brought on record, the learned trial Court convicted both the accused persons vide judgment dated 23.01.2017. Taking into consideration the antecedents, age of accused and other facts and circumstances, the Trial Court adopted a lenient view on the matter of quantum of sentence and granted them the benefit of probation. Aggrieved by the judgement of conviction, the petitioner preferred an appeal before the learned Lower Appellate Court which was dismissed on merits vide judgment dated 16.01.2018.

4. Learned counsel for the petitioner assails the judgment of conviction on the ground that the investigating officer is also the complainant in the present case as the FIR was registered on the basis of the statement of the investigating officer and not the victim. Because the investigating officer is himself the complainant and not the victim on whose account the FIR was registered, the principle of fair investigation was violated and clearly bias cannot be ruled out.

5. Learned counsel further submits that on scrutinizing the cross examination of Anjali (PW-1) it is apparent that no specific role is attributed to the petitioner and it was in fact the co-accused who passed the obscene comments. Since no overt act has been attributed to the petitioner, he has been wrongly convicted. Moreover, Anjali's statement, recorded under Section 164 Cr.P.C., reveals that only one person got out of the car and tried to stop her, yet, the police set up a case against two people and crucially did not conduct any identification parade. Lastly, it was argued that there are material contradictions in the testimonies of the prosecution witnesses which make the entire prosecution case flimsy.

6. Per contra, learned State counsel opposes the prayer of the petitioner as the learned Trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, which has been further upheld by the learned lower Appellate Court and therefore no intervention is warranted.

7. Having heard the learned counsel for the parties and after perusing the records of the case, it is clear that both the accused persons were at the spot of occurrence in the said car. This is substantiated by the deposition of the victim (PW-1). The victim has categorically mentioned in her cross examination that there were two people in the car and she identified the accused persons in court. While it is true that there are no specific allegations of making vulgar remarks against the petitioner, the fact that he was accompanying the co-accused and was the driver of the car, clearly points to their common intention. Section 34 of IPC requires meeting of minds between the accused persons and prior concert. Since that has been adequately established by the prosecution, the petitioner can be held vicariously liable for the acts of the co-accused. In fact the victim further deposed that even in the court room, she was subjected to crude and offensive remarks and gestures at the hands of the petitioner and co-accused.

8. Upon studying the deposition of the investigating officer, SI Saravjeet Singh (PW-3), it is clear that it is consistent with the deposition of the victim (PW-1). Merely, because the FIR was lodged on account of statement of the investigating officer and not the victim cannot be a ground for acquittal, especially when no material is brought before the Court by the petitioner to show that the investigating officer harboured any ill-will, malice or hostility towards him. Similarly, no evidence is produced by the petitioner to prove that the victim and the police connived with each other in order to falsely implicate the petitioner.

9. With regard to claim of material discrepancies in the statements of the prosecution witnesses, the learned counsel for the petitioner has failed to point out

10. In view of the facts and circumstances of the case, this Court finds that learned counsel for the petitioner has failed to point out any perversity or illegality in findings recorded by the learned lower Appellate Court or the learned trial Court which warrants interference by this Court. As such, there is no merit in the present revision petition and the same is hereby dismissed.

14.02.2024

Ajay Goswami

(HARPREET SINGH BRAR)

JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No