

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-52112-2023 (O&M)

Date of order: 13.02.2024

Priyanka Mangla

.....Petitioner(s)

Vs.

Abhishek Aggarwal

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rahul Gautam, Advocate
for the petitioner.

Nidhi Gupta, J.

In this petition under Section 482 Cr.P.C. prayer is for partial modification/setting aside of order dated 22.05.2023 passed by learned Judicial Magistrate, 1st Class, Faridabad (Annexure P1) whereby the learned Court has deleted Section 377 IPC and framed charges against the respondent-accused only under Sections 498-A, 406 read with Section 34 IPC; and setting aside of order dated 29.09.2023 passed by learned Additional Sessions Judge, Faridabad (Annexure P2) whereby the Revision Petition filed by the petitioner against the said order dated 22.05.2023 (Annexure P1), has been dismissed.

2. Learned counsel for the petitioner-wife inter alia submits that the petitioner had registered FIR No.14 dated 28.01.2017 under Sections 354-A, 377, 498-A and 406 IPC against the respondent-husband at Women Police Station Sector 16, Faridabad. However, vide the impugned order dated 22.05.2023 (Annexure P1), the respondent has been charged only under Sections 498-A and 406 read with Section 34 IPC, while

deleting offence under Section 377 IPC. Learned counsel states that against this order, the petitioner had preferred a criminal revision petition before the learned Additional Sessions Judge, Faridabad. However, the same has been dismissed vide the impugned order dated 29.09.2023 (Annexure P2). Hence, present revision petition.

3. Learned counsel for the petitioner vehemently submits that the impugned order (Annexure P2) has been passed on wholly incorrect premise that “..no proctoscopic examination of the revisionist/complainant was conducted..”. Accordingly, the learned Sessions Court has opined that final opinion as to whether offence under Section 377 IPC was committed could not be given. Learned counsel contends that the said finding of the learned Additional Sessions Judge, Faridabad is on the face of it wrong being contrary to the medical record dated 08.02.2017 (Annexure P5), which clearly records that proctoscopic examination of the petitioner was indeed conducted by the Surgeon on 06.02.2017. It is submitted that therefore, the impugned orders are inherently flawed being contrary to the facts on record and deserve to be set aside.

4. No other argument is made on behalf of the petitioner.

5. I have heard learned counsel for the petitioner.

6. Perusal of record of the case shows that the petitioner was married to the respondent-husband on 30.04.2015. One son was born out of their wedlock. Admittedly, the parties are living separately since August, 2016. FIR in the present case was registered on 28.01.2017.

7. Perusal of the medical report dated 08.02.2017 (Annexure P5) no doubt shows that proctoscopic examination of the

petitioner-wife was conducted by Surgeon on 06.02.2017. However, the report thereupon is that “no abnormality detected”.

8. When confronted with the above said finding as recorded in the medical report dated 08.02.2017, learned counsel for the petitioner, contradictorily argues that the said report could not have recorded any abnormality, in view of the fact that the proctoscopic examination of the petitioner was conducted many months after she had stopped living with the respondent. Therefore, it is admitted by learned counsel for the petitioner that offence under Section 377 IPC could not be established.

9. It has further come on record that immediately after registration of FIR on 28.01.2017, medical examination of the petitioner was conducted on 29.01.2017. In this regard, the following observations recorded in the order dated 29.09.2023 in respect of the findings recorded in MLR dated 29.01.2017 are relevant and reproduced as follows:-

“13. Now coming to the merits of the case, revisionist/complainant alleged that respondent Abhishek has committed unnatural sex with her, therefore, he has committed offence under Section 377 IPC. The medical examination of complainant/revisionist was done at Civil Hospital, Ballabgarh by Dr. Sonia Upadhyay, wherein there is no evidence of any internal and external injury over the body of revisionist/complainant and no proctoscopic examination of the revisionist/complainant was conducted. The revisionist is only relying upon the opinion of doctor that possibility of sexual intercourse cannot be ruled out. As per the MLR of revisionist/complainant regarding details of injuries, doctor stated that : No evidence of any struggle mark/injury on any part of body. No evidence of any tear/laceration/bruise/injury

on buttocks/anal orifice/perianal region. No evidence of any tear/laceration/injury on vulva/vagina/perineum anteriorly. In the MLR itself doctor has opined that “Final opinion can only be given after proctoscopic examination”. However, as per record, no proctoscopic examination of the revisionist/complainant has been conducted. In these circumstances, it cannot be said that offence under Section 377 IPC attracts against respondent/accused Abhishek”.

(Emphasis added)

10. It appears that thereafter proctoscopic examination of the petitioner was conducted on 06.02.2017, as per which no abnormality was detected. A combined reading of the Proctoscopic report dated 08.02.2017 (Annexure P5) with the above said findings recorded in MLR dated 29.01.2017 shows that there is no prima facie evidence in respect of the allegations made by the petitioner against the respondent. Accordingly, I find no error in the impugned order 22.05.2023 passed by learned Judicial Magistrate, 1st Class, Faridabad (Annexure P1); and order dated 29.09.2023 passed by learned Additional Sessions Judge, Faridabad (Annexure P2), whereby offence under Section 377 has been deleted.

11. **Dismissed.**

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

13.02.2024
Sunena

(Nidhi Gupta)
Judge

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