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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-786-2025 (O&M)

Date of Decision: 25th August, 2025

ASI NARESH KUMAR

.....Appellant(s)

V/s.

STATE OF HARYANA AND ANOTHER

.....Respondent(s)

CORAM: **HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA**
HON'BLE MR. JUSTICE ROHIT KAPOOR

Present Mr. Manish Soni, Advocate, for the appellant.

Mr. Pankaj Mulwani, Sr. DAG, Haryana.

ASHWANI KUMAR MISHRA, J. (Oral)

1. This Appeal arises out of an order passed by the learned Single Bench, dismissing the Writ Petition of the present appellant wherein, he had prayed for expunging of remarks by the trial Court against him.

2. The appellant's contention that he was neither a party to the proceedings nor any opportunity of explanation was furnished to the appellant, has not found favour with the learned Single Judge.

3. The facts of the case are that FIR No.26 dated 18.03.2016, came to be lodged by a lady (as 'X') under Sections 376D, 342, 366, 328, 506 and 120-B of the IPC, 1860, at Police Station Rewari against certain individuals. The investigation was concluded whereafter, a charge-sheet came to be filed against accused persons under Section 173 Cr. P.C. After the case was committed to the Court of Sessions, the trial was conducted pursuant to the charge-sheet submitted in the matter. During the course of the trial, the conduct of the complainant was noticed by the Court concerned. Involvement of the appellant was also noticed by the concerned Court, which proceeded to observe as under:-

“13. XXXX XXXX XXXX

B. Now, it is to be seen whether evidence of PW13/PW16 prosecutrix inspire confidence about her rape by accused Raj Kumar and others?

Before, commenting upon the reliability in the testimony of prosecutrix, it is worth to mention here that the conduct of prosecutrix as a married woman who had been found missing from her matrimonial home twice as per the evidence led and she even does not have faith of her parents and of her relatives who gave affidavits to this effect before the court duly verified by an officer of DSP level, wherein they had termed her a lady of immoral character having illicit relationship with ASI Naresh Kumar and involved in falsely implicating innocent persons to extort money and who at the time of distress preferred to call PW Arun or ASI Naresh Kumar instead of her own relations including husband and in the divorce petition filed by her husband, he had questioned her chastity and as per Investigating Officer, prosecutrix despite married not having not got divorce from her husband stayed with ASI Naresh Kumar at Gurgaon etc. are the factors which indicate that prosecutrix's conduct as a married woman is not above board. Such kind of prima facie conduct of the prosecutrix indicates that her testimony in this case cannot be taken as gospel truth on its face value. Rather, it is to be dealt and relied with great caution as she is unlike a rape victim with rural background who does not have exposure of dirty part of world and also to the legal integrities.

With above observations, this court if analysis the testimony of PW13/PW16 prosecutrix, only conclusion arrived at is that her story of gang rape is not reliable.

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(xii) It is a case wherein the claim of defence that prosecutrix is hand in gloves with ASI Naresh Kumar, is evident from the fact that he is the one to whom prosecutrix (sic) had contacted as per her own version, he is the one who had

accompanied her to Rewari and visited house of the accused at Uttam Nagar with prosecutrix as stated by her, he is the one with whom the prosecutrix had stayed in Gurgaon as per Investigating Officer, he is the one who had been termed as Jija accompanying the prosecutrix in statement under section 164 Cr.P.C, Ex.PJ/Ex. PAE, because as per Investigating Officer Jija was ASI Naresh Kumar and finally he is the one who took the possession of prosecutrix from the Investigating Officer after prosecutrix's statement and medical. Hence, in the case in hand, possibility cannot be ruled out that the allegations of prsecutrix's (sic) parents projected through affidavits and claim of defence that ASI Naresh Kumar is using prosecutrix to extort money, has some truth in it.

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15. Since, in the case in hand, the conduct of the prosecutrix, a married woman, is not above board, as her story of gang rape as such has clouds around and concoction in her version is more prominently evident, she do not deserve any compensation under Section 357 or 357A Cr.P.C., as these provisions are meant for genuine cases and not for the one lodged otherwise to extort money or to misuse process of law. Rather, it is a case wherein there is requirement on the part of police authorities to enquire into whether there is prima facie nexus between the prosecutrix and ASI Naresh posted at Gurugram and if they are found involved in implicating innocent persons to extort money, to proceed with against them in accordance with law. This court without commenting further, leave it to the wisdom of SP, Rewari, to proceed with the issue in accordance with law. It is further directed to Public Prosecutor for this court to apprise SP, Rewari, about the directions passed, so that desired action is initiated, in the interest of justice and to protect innocents from false implication.”

4. Aggrieved by the observations of the trial Court, the appellant filed CWP-5248-2018, with a prayer to expunge the remarks of the trial Court Judge made against the appellant.

5. Learned Single Bench, after having considered the plea of the appellant, proceeded to hold as in Para 11 and 12 of the judgment, which are reproduced hereunder:-

“11. The petitioner is relying upon judgment of Supreme Court in Mohammad Naim (supra) and Manish Dixit (supra) to contend that Trial Court was bound to grant him opportunity of hearing before passing adverse order. It is not a case of passing order whereas the Trial Court has simply directed the Superintendent of Police to examine act and conduct of the petitioner. He is part of disciplined force. It has come on record that he was having relations with the prosecutrix. The Trial Court has found that the allegations of the prosecutrix were false and she has implicated innocent persons to extort money. Rape is a serious offence. On account of false implications, it becomes difficult for Courts to decipher genuine cases from the bunch of false and fabricated cases. In such circumstances, the Trial Court was forced to ask jurisdictional Superintendent of Police to inquire the matter. The Trial Court has not held the petitioner guilty whereas the Court has simply asked the Superintendent of Police to inquire into the matter. The petitioner would certainly get an opportunity when the matter would be inquired by the jurisdictional authorities. The impugned order cannot be modified simply on the ground that the Trial Court has asked the jurisdictional Superintendent of Police to inquire act conduct of the petitioner without granting him opportunity. The petitioner is certainly going to get an opportunity at each and every stage. He is a part of disciplined force. If it is found that he was responsible for prompting the

prosecutrix to file false cases against innocent persons, it would be a matter of concern. Thus, matters need to be examined.

12. In the wake of above discussions and findings, this court is of the considered opinion that present petition being bereft of merit deserves to be dismissed and accordingly dismissed.”

6. At the very outset, we may notice that the judgment of acquittal, passed by the concerned Sessions Judge, has been put to challenge before this Court by way of an application bearing No. CRM-A No.1349/MA/2018 and leave to appeal has been granted by the Division Bench of this Court on 12.11.2018. The Appeal of the complainant i.e. CRA-AD-159-2018, is, therefore, pending consideration before this Court.

7. Various submissions are made on behalf of the appellant to submit that the findings returned by the trial Court, implicating the appellant, is not supported by any material evidence on record or that the records do not justify any such inference to be drawn against the complainant. However, such submissions cannot be considered by us in present proceedings as the merits of the judgment of the Sessions Court would have to be accorded consideration in the pending Criminal Appeal.

8. We are confining our consideration in the facts of the present case to the issue regarding legality of observations made against the appellant by the Sessions Judge, alone.

9. Learned counsel for the appellant argues that so far as complainant is concerned, she had only implicated the accused person in the present case, and it was not a case in which any prior complaint or

subsequent complaint was made by the prosecutrix against anyone else. On this aspect, we permitted learned State counsel to obtain instructions.

10. Learned State counsel, on the basis of the instructions obtained from SI Kapila (No.704/RWR), Police Station Women, Rewari, Haryana, states that this was the only case in which the prosecutrix had implicate the accused person and she has not made complaint against anyone else.

11. Learned counsel for the appellant has also placed reliance upon the conclusion drawn by the Forensic Science Laboratory, Karnal, as per which the DNA profile, obtained from seminal stains on the source of towel, allegedly recovered from the place of occurrence which matched with the DNA profile of one of the accused. The forensic report is said to match the DNA profile of the recovered towel with the DNA profile of the accused. Learned counsel has also placed reliance upon the statement of the Doctor to contend that the medical evidence did not rule out possibility of sexual assault upon the victim.

12. We may reiterate that these submissions have been noticed by us not with an intent to evaluate the evidence or to make any comment with regard to the conclusions drawn by the Court concerned, on merits, of the acquittal order. In the facts of the case, we however find that the appellant was not put to any notice by the trial Court regarding his involvement nor was he produced as a witness during the course of the trial. In such circumstances, we are of the view that any observation made by the trial Judge, regarding the appellant, cannot be construed in law as expression of opinion adversely impacting the present appellant. The observations of the

Court can only constitute the basis for the State as the employer to examine the matter independently, without being influenced with the directions of the trial Judge.

13. We, therefore, dispose of the present Appeal by observing that the observations made by the trial Judge, contained in paras 13 and 15 of the judgment of the acquittal, will not be construed as material adverse to the appellant. This however will not preclude the State, as an employer, from getting the matter examined on its own merits and in accordance with law.

14. All pending applications, if any, in this case are disposed of accordingly.

[ASHWANI KUMAR MISHRA]
JUDGE

[ROHIT KAPOOR]
JUDGE

August 25, 2025
Ess Kay

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>