

CWP-5248-2018 (O&amp;M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

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CWP-5248-2018 (O&amp;M)

Date of Decision: 05.03.2025

ASI Naresh Kumar

...Petitioner

**Versus**

State of Haryana and another

...Respondents

Present: - Mr. Manish Soni, Advocate for the petitioner

Ms. Palika Monga, Deputy Advocate General, Haryana

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**JAGMOHAN BANSAL, J.** (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking expunging of remarks/strictures/directions recorded by learned Additional Sessions Judge, Rewari in its judgment dated 26.10.2017 (Annexure P/8).

2. The petitioner joined Haryana Police as Constable. From time to time, he came to be promoted and in March' 2016, he was holding rank of Assistant Sub-Inspector. One lady, namely Sapna lodged an FIR No.26 dated 18.03.2016 under Sections 376D, 342, 366, 328, 506 & 120-B of Indian Penal Code, 1860 which was registered at Women Police Station District Rewari against Govind Ram son of Rai Singh, Narender son of Sardar Singh, Nihal Singh alias Neta Ji son of Omkar, Sunil Kumar son of Surajbhan, Raj Kumar son of Ramavtar and Bansil Lal son of Nathu Ram. The police after completing investigation filed its report under Section 173 Cr.P.C. The matter came up for consideration before Additional Sessions Judge, Rewari who after considering evidence led by prosecution as well as defence passed a detailed and speaking judgment whereby accused were

honourably acquitted and it was recorded that prosecutrix has filed FIR to extort money from gullible people. While passing the judgment, the Trial Court noticed act and conduct of the petitioner. The Court made observations with respect to his act and conduct. The observations *qua* the petitioner are made in three paragraphs which are reproduced as below:-

“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.*

*XXXX XXXX XXXX XXXX*

*(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.*

*XXXX XXXX XXXX XXXX*

*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.”*

3. The petitioner is feeling aggrieved from aforesaid observations of the Trial Court, thus, instant petition.

4. Mr. Manish Soni, Advocate submits that observations recorded in impugned order *qua* the petitioner deserve to be set aside on following grounds: -

- i. The Trial Court has discussed about affidavits of family members of prosecutrix whereas no affidavit was on record. As per observation, the affidavit was verified by Investigating Officer. The said fact is totally incorrect;
- ii. The Trial Court has made observations against the petitioner without affording him an opportunity of hearing. The petitioner was neither accused nor Investigating Officer nor witness, thus, he was not part of the trial. The Trial Court was duty bound to issue notice to him and after noticing his stand, observations could be made;
- iii. The observations are in the teeth of High Court Rules & Orders. Rule 6 of Chapter 1, Part H of Volume III guides Judicial Officers with respect to criticism on the conduct of police and other officers.

In support of his arguments, Mr. Manish Soni, Advocate relies upon judgment of Supreme Court in *State of U.P v. Mohammad Naim, 1963 SCC OnLine SC 22* and *Manish Dixit and others v. State of Rajasthan, (2000) 1 SCC 596*.

5. *Per contra*, Ms. Palika Monga, Deputy Advocate General, Haryana, submits that during the course of trial, name of the petitioner unearthed. The prosecutrix in her examination/cross-examination disclosed his name. She admitted that she is on visiting terms with the petitioner for last two and half years. Investigating Officer deposed that prosecutrix was staying with the petitioner till April' 2016. She was not staying with her husband. The Trial Court has simply directed the Superintendent of Police to inquire the matter. There is no direction to register FIR or take adverse action without inquiry.

6. I have heard the arguments of learned counsel for both sides and perused the record with their able assistance.

7. From the perusal of record, it is evident that one lady with whom the petitioner was having relations lodged FIR against many persons alleging commission of offence of rape. One FIR was registered, however, initially there was separate trial of one accused. Ultimately, on account of common evidence, the matter was adjudicated at the same point of time though by two different judgments. The Trial Court noticed testimony of prosecutrix as well as other witnesses and came to a conclusion that there seems role of the petitioner in the story orchestrated by the prosecutrix. The petitioner and prosecutrix were in relation, thus, Superintendent of Police must independently inquire the matter.

8. The petitioner is seeking assailing of observations of Trial Court on the ground that he was neither accused, nor Investigating Officer nor witness still adverse observations were made against him. He was not granted opportunity and without granting opportunity of hearing, the Trial Court, contrary to judgments of Supreme Court, has recorded adverse findings. The observations of Trial Court are also contrary to High Court Rules & Orders. The petitioner is relying upon Rule 6 of Chapter 1, Part H of Volume III of High Court Rules & Orders which is reproduced as below: -

*“6. Criticism on the conduct of police and other officers:- It is undesirable for Courts to make remarks censuring the action of police Officers unless such remarks are strictly relevant to the case. It is to be observed that the Police have great difficulties to contend with in this country, chiefly because they receive little sympathy or assistance from the people in their efforts to detect crime. Nothing can be more disheartening to them than to find that, when they have worked up a case, they are regarded with distrust by the courts; that the smallest irregularity is magnified into a grave misconduct and that every allegation of ill-usage is readily accepted as true. That such allegations may sometimes be true it is impossible to deny but on a closer scrutiny they are generally found to be far more often false. There should not be an over-alacrity on the part of Judicial Officers to believe anything and everything against the police; but if it be proved that the police have manufactured evidence by extorting confessions or tutoring witnesses they can hardly be too severely punished. Whenever a Magistrate finds it necessary to make any criticism on the work and conduct, of any Government servant he should send a copy of his judgment to the District Magistrate who will forward a copy of it to the Registrar, High Court, accompanied by a covering letter giving reference to the Home Secretary's circular letter No. 920-J- 36/14753, dated the 15<sup>th</sup> April, 1936. Similarly, Sessions Judges shall also send a copy of their judgment*

*containing criticism of the work and conduct of police officers to the District Magistrate. They shall also send a copy of the judgment direct to the High Court accompanied by a covering letter giving reference to the High Court circular letter No 1585- Gaz. / XXXI-2, dated the 14th February , 1936.*

9. From the perusal of afore-cited Rule, it is evident that the Judges conducting trial are advised not to make adverse observations against Police Officers and other Government Officers. The Rule is principally advertent to situation arising on account of deficit, ineffective or defective inquiry. Sometimes Courts find that accused is acquitted on account of defective investigation or non-cooperation of the police officials. In such circumstances, more often than not, Courts make adverse remarks against the Investigating Officers. The present case is entirely different. It is not the case where Trial Court has made observations against the Investigating Officers or any Police official who appeared as witness or was part of investigation whereas it is a case where Trial Court, on the basis of evidence, has *prima facie* found that role of the petitioner is doubtful and it should be examined by jurisdictional Superintendent of Police, thus, reliance upon Rule 6 of Chapter 1, Part H of Volume III of High Court Rules & Orders is misplaced.

10. It is settled law that no order ensuing even civil consequences should be passed without granting opportunity of hearing. The said principle is not absolute. It depends upon facts and circumstances of each case. Courts time and again have held that it is not absolute that hearing should be granted before passing order e.g. while granting sanction to prosecute a Government Servant, there is no need to grant opportunity of hearing though sanction ensues prosecution. A Constitutional Bench in ***Union of India v.***



**Tulsiram Patel, (1985) 3 SCC 398** while adverting to question of opportunity of hearing has held: -

*“101. Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the nemo judex in causa sua rule as also to the audi alteram partem rule. The nemo judex in causa sua rule is subject to the doctrine of necessity and yields to it as pointed out by this Court in J. Mohapatra & Co. v. State of Orissa [(1984) 4 SCC 103 : (1985) 1 SCR 322, 334-5] . So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Maneka Gandhi case [(1978) 1 SCC 248 : (1978) 2 SCR 621, 676] at p. 681. If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiori so can a provision of the Constitution, for a constitutional provision has a far greater and all-pervading sanctity than a statutory provision. In the present case, clause (2) of Article 311 is expressly excluded by the opening words of the second proviso and particularly its keywords “this clause shall not apply”. As pointed out above, clause (2) of Article 311 embodies in express words the audi alteram partem rule. This principle of natural justice having been expressly excluded by a constitutional provision, namely, the second proviso to clause (2) of Article 311, there is no scope for reintroducing it by a side-door to provide once again the same inquiry which the constitutional provision has expressly prohibited.*



*Where a clause of the second proviso is applied on an extraneous ground or a ground having no relation to the situation envisaged in that clause, the action in so applying it would be mala fide, and, therefore, void. In such a case the invalidating factor may be referable to Article 14. This is, however, the only scope which Article 14 can have in relation to the second proviso, but to hold that once the second proviso is properly applied and clause (2) of Article 311 excluded. Article 14 will step in to take the place of clause (2) would be to nullify the effect of the opening words of the second proviso and thus frustrate the intention of the makers of the Constitution. The second proviso is based on public policy and is in public interest and for public good and the Constitution-makers who inserted it in Article 311(2) were the best persons to decide whether such an exclusionary provision should be there and the situations in which this provision should apply.*

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

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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, matter needs 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.

13. Pending application(s), if any, shall stand disposed of.

**(JAGMOHAN BANSAL)**  
**JUDGE**

**05.03.2025***Mohit Kumar*

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |