

(2019) 01 P&H CK 0443

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 16905 Of 2018

Aasma

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 14-01-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 319, 482

Indian Penal Code, 1860 — Section 120B, 376D, 506

Protection Of Children from Sexual Offences Act, 2012 — Section 4, 6, 16

Citation : (2019) 01 P&H CK 0443

Hon'ble Judges : Hari Pal Verma, J

Bench : Single Bench

Advocate : Harshit Jain

Final Decision : Dismissed

Judgement

Hari Pal Verma, J

Petitioner has filed the present petition under Section 482 Cr.P.C. for quashing the order dated 07.04.2018 (Annexure P-1) passed by learned Sessions Judge, Sangrur, whereby application dated 06.01.2018 (Annexure P-5) filed by the petitioner under Section 319 Cr.P.C. to summon respondent Nos.2 and 3 as additional accused in FIR No.136 dated 08.09.2016 under Sections 376-D, 506, 120-B IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for brevity "POCSO Act"), registered at Police Station City-I, Malerkotla, was dismissed.

The aforesaid FIR was registered at the behest of the petitioner-complainant, in which the police after conducting the investigation submitted the challan against accused Mohammad Illiyas, Mohammad Shamshad alias Babbu, Fardin Iqbal alias Manwar and Jamila alias Jeelo. However, respondent Nos.2 and 3 i.e. Firdosh w/o Mohammad Shamshad and Abbas son of Hajji Mohammad were found innocent. Through the application moved by the public prosecutor under Section 319 Cr.P.C. summoning of Firdosh and Abbas, respondent Nos.2 and 3, respectively is

sought as they were found innocent during the course of investigation by the police on the ground that these persons played active role and more particularly when the prosecutrix has specifically named them in her application as well as in the statement made before the court.

Learned counsel for the petitioner has argued that respondent No.2 had called the petitioner time and again at her place and respondent No.3-Abbas is son of Hajji Mohammad, who is brother-in-law of respondent No.2. The accused mentioned in the FIR are somehow or the other are related to respondent No.2. Mohammad Shamshad is husband of respondent No.2, whereas Mohammad Iqbal is brother of respondent No.2. From the FIR, it is clear that respondent No.3 has also committed rape on the complainant and this fact was duly mentioned in the representation sent to the DSP, Sangrur as well as in her examination in chief and cross-examination as PW1. Despite their active involvement, the accused sought to be summoned have not been named as accused in the challan. Therefore, the application under Section 319 Cr.P.C. for summoning respondent Nos.2 and 3 was moved by the public prosecutor, but the same was dismissed by the trial court vide order dated 07.04.2018 (Annexure P-1). From the cross-examination of the petitioner, it is established that she was talking to Mohammad Illiyas on mobile phone given by him but failed to note the fact that the petitioner was introduced to Mohammad Illiyas by respondent

No.2-Firdosh only, but still the application has been dismissed.

I have heard learned counsel for the petitioner.

It is the pleaded case of the petitioner that respondent Nos.2 and 3 were specifically named by the prosecutrix. These accused from the very beginning have played active role in the commission of offence, but still they were exonerated by the police. Interestingly, the application has been filed by the prosecutrix in her personal capacity, but the same was not forwarded by the public prosecutor. The complaint Ex.PA submitted does reflect that the prosecutrix came in the contact with Firdosh as she used to come to the house of her sister to get her clothes stitched. But thereafter, she started visiting the house of Firdosh. So far as Abbas is concerned, he attributed with the allegation of rape after her marriage with Mohammad Illiyas, which took place on 29.02.2016. The FIR in question was registered after inquiry conducted by DSP, Malerkotla and thereafter, accused Mohammad Illiyas, Mohammad Shamshad alias Babbu, Fardin Iqbal alias Manwar and Jamila alias Jeelo were challaned. Charges were framed against them for the offences punishable under Sections 376, 376-D, 506, 120-B IPC and Sections 4, 6 and 16 of the POCSO Act. Statement of the prosecutrix does indicate that even after the marriage, Mohammad Illiyas had not taken her to the matrimonial home, rather she was taken in a rented house. Therefore, there is nothing on record which may establish that the proposed accused ever instigated the prosecutrix or Mohammad Illiyas to have a relationship. It suggests that respondent No.2-Firdosh helped them in performing their marriage. The evidence indicates that

the prosecutrix used to talk with Mohammad Illiyas on mobile phone, which was given to her by none else but by Mohammad Illiyas himself. Therefore, nothing else has come in the evidence, which may warrant summoning of proposed respondent Nos.2 and 3. In the absence of any material against the accused, sought to be summoned, the application filed by the prosecution under Section 319 Cr.P.C. has rightly been dismissed.

The present petition is dismissed accordingly.