

(2001) 08 P&H CK 0096

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 6023-M of 2001

Kala alias Krishan Pal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 03-08-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 323, 34, 356, 363, 364

Citation : (2001) 4 RCR(Criminal) 277

Hon'ble Judges : K.C. Gupta, J

Bench : Single Bench

Advocate : Mr. Namit Sharma, Mr. Pritam Saini, for the Appellant; Mr. Sudhir Nehra, AAG, for the Respondent

Final Decision : Allowed

Judgement

K.C. Gupta, J.—This order shall dispose of two CrI. Misc. Petitions bearing No. 6023-M of 2001 (Kala @ Krishan Pal v. State of Haryana and another) and 29147-M of 2001 (Salim v. State of Haryana and another) as both the petitions arise out of common complaint filed by Sardar Singh.

2. Briefly stated, the facts are that Sardar Singh, complainant (respondent No. 2) is resident of Village Adhmi, Sub-Teh. Bapoli, District Panipat. He has got two daughters, namely, Geeta and Kavita. On 5.3.1999, his both daughters were found missing. Sardar Singh made a report to the police about the abduction of his daughters. They were recovered on 7.3.1999 and made a statement before the Magistrate that they had gone of their own accord.

3. The allegation of the complainant, Sardar Singh (respondent No. 2) is that both his daughters were minors and they had been abducted by Kalan Singh etc., five in number including the petitioners, and were subjected to rape and then on 7.3.1999, they were released without getting them medico-legally examined and as such, the complainant prayed that Kalan Singh etc. be summoned under Sections 323, 365, 366, 376, 506, 34 IPC. Accordingly, after recording

preliminary evidence, they were summoned.

4. Kala @ Krishan Pal and Salim, petitioners, were apprehended and now they have applied for regular bail.

5. I have heard counsel for the petitioners, Sh. Pritam Saini in Crl. M. No. 6023-M of 2001, Sh. Sanjiv Gupta in Crl. M. No. 29147-M of 2001, Sh. Sudhir Nehra, AAG, Haryana, Sh. Na-mit Sharma, counsel for the complainant (respondent No. 2) and carefully gone through the file.

6. Counsel for the petitioners contended that the petitioners had been falsely implicated. They further contended that Sardar Singh had lodged FIR No. 25 dated 5.3.1999 in Police Station Sadar u/s 365 IPC alleging that his daughters had been forcibly taken away and suspected one Kalan Singh but the girls were recovered by the police on 7.3.1999 from village Maladi in U.P. and they made statements u/s 164 Cr.P.C before Judicial Magistrate 1st Class, Panipat, in which they stated that they had gone of their own accord as their father was threatening to kill them and earlier their elder sister, Kamlesh had committed suicide. They also mentioned that they were majors. They next contended that Sh, Bhagwani Devi wife of Sardar Singh, complainant, had lodged another FIR No. 43 dated 27.3.1999 u/s 364 IPC alleging that her daughter Kavita had been abducted and she had named three persons as the possible accused and later on Kavita appeared and made statement before the Magistrate that she had left the house of her own accord as she did not want to live with her father and that statement was recorded by S.D.M. on the same day and as such, the FIR was cancelled. They also contended that the petitioners were not named in any of the said First Information Reports. They further contended that in April, 1999, the present complaint was lodged by the father making allegations against five persons including the petitioners. They also contended that Geeta had given an affidavit stating her age to be 20 years while the other girl, Kavita, was also major. They next stated that the petitioners were in custody since 9.1.2001.

7. On the other hand, counsel for the complainant contended that the police was hand-in-glove with the petitioners and co-accused and did not get the girls medically examined and it was the duty of the police to get them first medically examined and then to produce them before the Magistrate for their statements. In my opinion, the contention of the learned Counsel is not tenable. There is no such law that the victim of rape should be first medico-legally examined, then she should be produced before Magistrate for recording her statement. The girls were produced before the Magistrate for recording their statements and they made statements that they were not abducted by any person and were not subjected to rape but had left the house of their own accord as their father had threatened to kill them and even their elder sister had committed suicide. Since, there was no allegation of rape in their statements, so, they were not rightly got medico-legally examined by the police.

8. Counsel for the complainant next contended that the girls were not properly

examined before the Judicial Magistrate. Against, there is no such rule that the Magistrate should have satisfied from the girls that they were not under any pressure of the police or of the accused or they were making statements voluntarily. Only requirement u/s 164 Cr.P.C. is that the statement is to be recorded on oath. It was not the duty of the Judicial Magistrate to record at what time the girls were produced before him for recording their statements u/s 164 Cr.P.C. and further whether he had given sufficient time to them to make up their mind to give their statement voluntarily without any fear or pressure. Magistrate was not also required to make any endorsement u/s 164 Cr.P.C. that in fact he had satisfied himself that both the girls were willing to make their statement voluntarily without any pressure of any kind as it is not the requirement of law u/s 164 Cr.P.C. The statement is to be recorded as the statement on oath of an ordinary witness. Therefore, it cannot be said by any stretch of imagination that those girls had made the statements at the desire of the police. I do not know from where The learned Additional Sessions Judge, Panipat, in his order dated 9.1.2001 has drawn the inference that the girls had made the statement under the influence of the police or that it was the duty of the Investigating Officer to get them med-ico-legally examined. It is also yet to be determined from the evidence led by the prosecution that the girls were minors. There is no medical evidence on file that the girls had been subjected to rape. The names of the petitioners had not been mentioned in both the FIRs as the possible persons who had abducted the girls or had committed rape with them.

9. Therefore, keeping in view the facts and circumstances of the case, I think it a fit case where concession of bail should be allowed to the petitioners. Let the petitioners be admitted to bail to the satisfaction of C.J.M., Panipat. Accordingly, the petitions are disposed of.

10. Petition allowed.