
(2005) 09 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 18980-M of 2005

Kanhi Ram

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 14-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 1 RCR(Criminal) 684

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : Rajiv Sharma, for the Appellant; Partap Singh, Senior DAG, Haryana, for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—Initially, this petition was filed under Articles 226/227 of the Constitution of India, which has now been treated as one u/s 482 Code of Criminal Procedure vide order dated February 28, 2005.

2. Petitioner Kanhi Ram, uncle of the prosecutrix Biran alias Birmati daughter of Bhajan Lal, has filed this petition for issuing direction to hand over investigation of the case FIR No. 539 dated 22.11.2003 registered at Police Station Palwal, District Faridabad, under Sections 363/366 IPC, to some independent agency, as the police has not properly and fairly investigated the aforesaid case and has wrongly prepared the cancellation report dated 1.9.2004, copy of which has been annexed with the petition as Annexure P-7. A further prayer has also been made for issuing direction to Respondent Nos. 1 and 2 to provide security to the life and liberty of the Petitioner, prosecutrix and other family members.

3. The case of the Petitioner is that on 9.11.2003, Biran alias Birmati, who was 16 years of age, went to the fields. When she did not return, an extensive search was made, but she could not be traced. On enquiry, it was found that Satbir alias Bholu, Respondent No. 5, a resident of village Khaitela Sarai had incited Biran

alias Birmati and with ill intention had taken her away to some unknown place. On the complaint, made by the Petitioner, FIR No. 539 dated 22.11.2003 was registered at Police Station Palwal, District Faridabad, under Sections 363/366 IPC. After registration of the aforesaid case, the investigation was conducted by the local police, in which statements of the witnesses u/s 161 Code of Criminal Procedure were recorded. The alleged accused Satbir alias Bholu was arrested and subsequently, released on bail. Thereafter, vide order dated 3.12.2003, the Senior Superintendent of Police, transferred the investigation of the said case to CIA Staff Faridabad.

4. During pendency of the said investigation, on 17.1.2004, the prosecutrix came back to her house. On 18.1.2004, her statement u/s 161 Code of Criminal Procedure was recorded by the police, wherein she stated that on 9.11.2003, at about 8/9 a.m., when she alone went to the fields, Respondent No. 5 met her on the road and gave her a 'Laddoo' as Parshad. After eating the 'Laddoo', she became unconscious. She was put in a vehicle and taken to Palwal and then to Gaziabad. She further stated that thereafter, she was not aware to which place she was taken. After two days, she came to know that she was in Kurukshetra, where in a room she was raped by Respondent No. 5 and one Sanjay. After one day, Respondent No. 5 returned back and she was not allowed to go out of room. She further stated that she remained in the room with Sanjay for 20/25 days. She was being raped time and again. After 20/25 days, Respondent No. 5 again came and then she was raped by both of them. Thereafter, they wanted to get her married with a third person, to which she refused. Then she was not given meals for 2/3 days. Thereafter, the accused boarded her on a bus and said that it will go to her home. But the bus dropped her at Hapur. She was having no money. Then she was taken by one lady namely Dhanwanti, from where she came to her home.

5. After recording the aforesaid statement of the prosecutrix, offence u/s 376 IPC was added. During investigation, statements of 14 witnesses were recorded, but except the Petitioner and the prosecutrix, none of the witness supported the version of the Petitioner. Hence, the allegations levelled against Respondent No. 5 were found to be incorrect. The prosecutrix was also medico-legally examined at B.K. Hospital, Faridabad. The investigation of the case was conducted. Ultimately, the police prepared the cancellation report dated 1.9.2004, a copy of which has been annexed with this petition as Annexure P-7.

6. In the cancellation report, it has been stated that during the investigation, no evidence against Respondent No. 5 regarding kidnapping of the prosecutrix was found and the FSL report reveals that she was not raped. It was found that on 9.11.2003, she had left her house after altercation with her parents and came back on 17.1.2004. She was never subjected to rape at Hapur and Noida as she had made no statement in this regard against any body. She had made statement against Respondent No. 5 and Sanjay under pressure from her parents. She was not kidnapped and raped. Respondent No. 5 and Sanjay were

found innocent.

7. At that juncture, the Petitioner filed the instant petition for transfer of the investigation of the case, and alleged that the police under the influence of political pressure and for extraneous consideration has cancelled the aforesaid FIR. It has been stated in the petition that the prosecutrix was a minor girl and her statement was not recorded by the police nor she was produced before the Magistrate for getting her statement recorded u/s 164 Code of Criminal Procedure nor statement of any family member of the prosecutrix was recorded and the police under the political pressure after recording statements of some other witnesses submitted the cancellation report without properly and fairly investigating the matter.

8. I have heard the arguments of learned Counsel for the parties.

9. After perusing the cancellation report, Annexure P-7, copy of the MLR and separate replies filed on behalf of Respondent Nos. 1 and 2, Respondent No. 3 and Respondent No. 4, I am of the opinion that the police in this case has not conducted the investigation in fair and proper manner. The statement of the prosecutrix u/s 161 Code of Criminal Procedure has not been considered nor an attempt was made to get her statement recorded u/s 164 Code of Criminal Procedure Even statements of the Petitioner and other family members of the prosecutrix were not recorded. In these circumstances, I am of the opinion that the present case is a fit case, where investigation should be conducted by some independent agency.

In view of the aforesaid, the investigation of case FIR No. 539 dated 22.11.2003 registered at Police Station Palwal, District Faridabad, under Sections 363/366 IPC is ordered to be handed over to Superintendent of Police, Crime Branch, Haryana, Madhuban, who shall submit the final report in accordance with law within a period of eight months.

10. Vide order dated November 9, 2004, this Court had directed that the life and liberty of the Petitioner, prosecutrix and other family members should be safeguarded and in this regard, direction was issued to SHO, Police Station Palwal, District Faridabad. During the pendency of the aforesaid investigation, this direction shall remain operative.

Petition is disposed of accordingly.

Petition allowed.