
(2001) 07 P&H CK 0105
In the Punjab And Haryana At Chandigarh
Case No : Criminal M. No. 4764-M of 2001

Krishan

APPELLANT

Vs

Sardaras

RESPONDENT

Date of Decision : 26-07-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 367, 439
Penal Code, 1860 (IPC) — Section 323, 34, 364, 365, 366

Citation : (2001) 4 RCR(Criminal) 1

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

Bench : Single Bench

Advocate : Mr. Sachin Mittal, for the Appellant; Mr. Rajesh Bhardwaj, AAG, for the Respondent

Final Decision : Allowed

Judgement

K.C. Gupta, J.—Briefly slated, the facts are that Sardar Singh, complainant (respondent No. 1) 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.

2. The allegation of the complainant, Sardar Singh (respondent No. 1) is that both his daughters were minor and they had been abducted by Kalan Singh etc., five in number including the petitioner, and were subjected to rape and then on 7.3.1999, they are 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.

3. Krishan, petitioner, was apprehended and now he has applied for regular bail.

4. I have heard counsel for the petitioner, Sh. Sachin Mitral, Sh. Rajesh

Bhardwaj, AAG, Haryana, Sh. Namit Sharma, counsel for the complainant and carefully gone through the file.

5. Counsel for the petitioner contended that the petitioner had been falsely implicated. He 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 statement 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. He further contended that Smt. 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. He next contended that the petitioner was not named in any of the said first information reports. He further contended that in April 1999, the present complaint was lodged by the father making allegations against five persons including the petitioner. He next contended that the petitioner was aged about 56 years and on the day of occurrence i.e. 5.8.1999, he was not present in the village but was admitted in the Military Hospital, Fatehgarh for treatment. He also contended that Geeta had given an affidavit stating her age to be 20 years while the other girl, Kavita, was also major. He next stated that the petitioner was in custody since 9.1.2001.

6. On the other hand, counsel for the complainant contended that the police was hand in glove with the petitioner 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 they feared harassment at the hands of their father 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.

7. Counsel for the complainant next contended that the girls were not properly examined before the Judicial Magistrate. Again, 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 statement voluntarily. Only requirement u/s 164 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 statements voluntarily without any fear and pressure. Magistrate was not also required to make any endorsement u/s 164 Cr.P.C, that in fact he had satisfied himself and both the girls were willing to make their statements 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 medico-legally examined. It is also yet to be determined from the evidence led by the prosecution that the girls were of minor age. So, prima facie there is no medical evidence on file that the girls had been subjected to rape. The name of the petitioner had not been mentioned in both the FIRs as the possible person who had abducted the girls or had committed rape with them.

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

9. Petition allowed.