

(2016) 05 RAJ CK 0028

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 260 of 2016

Satya Prakash

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 04-05-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190

Citation : (2016) 4 CriLR 1690 : (2016) 3 RajCriC 973 : (2016) 4 WLC 782

Hon'ble Judges : Mr. Mahesh Chandra Sharma, J.

Bench : Single Bench

Advocate : Mr. J.K. Moolchandani, Advocate, for the Petitioner; Mr. R.S. Shekhawat, P.P, for the State; Mr. D.G. Chaturvedi, Advocate, for the Accused Respondent No. 2

Final Decision : Dismissed

Judgement

Mr. Mahesh Chandra Sharma, J.—This revision petition has been filed against the order dated 6.2.2016 passed by the learned Judge, Special Court (Protection of Children from Sexual Offences Act Cases), Bharatpur in Sessions Case No. 17/2016 whereby the complaint filed by the complainant petitioner under Section 190 Cr.PC. has been dismissed.

2. The brief facts of the case are that the complainant petitioner submitted a written report dated 12/8/2015 at Police Station, Mathura Gate, Bharatpur alleging inter-alia that his niece namely Kumari Chanchal D/o Anil Kumar aged about 17 years who is the student of First Year in R.D. Girls College, was going to Ayushi Beauty Parlor at Jaghina Gate, Near Kathputali Mandir, Gopalgahar Bharatpur for Beauty Parlor Course. Neeru @ Nirmala, who is the Director of the said Beauty Parlor, met her with her brother Ravi who treated her with bawdy intention and when she made complaint to the accused Neeru then she threatened her to do as liked by Ravi otherwise she will be failed in the said course and also threatened to kill her and her family members. Thereafter, Ravi met with her cousin's brother Gaurav @ Naveen and his sister and they

pressurised her for marriage with Gaurav and on 8.8.2015 Ravi and Gaurav threatened Chanchal and took her away by Scooty in Om Sai Hotel and booked a room and entered in the room to Chanchal forcibly and closed the door from outside and thereafter Gaurav gave her cold drink forcibly and after drinking the said cold drink she became unconscious and Gaurav by taking the advantage of her unconsciousness made physical relations with her and thereafter again made physical relations with her forcibly without her consent.

3. On the basis of the aforesaid written report, an FIR No. 560/2015 was registered against the accused persons for the offence u/Ss. 363, 366, 376, 384, 511 and 120B IPC and Section 3/4 of POSCO Act.

4. The police commenced investigation in the aforesaid matter. Thereafter the statement of Chanchal was recorded u/S. 164 Cr.P.C. before the concerned Magistrate in which she specifically stated that Nirmala is the Director of Ayushi Beauty Parlor, who met her with Ravi and when she made complaint against Ravi to Nirmala then she threatened her. She has further stated in her statement that the Investigating Agency with the collusion of accused Nirmala deleted her name from charge-sheet and submitted the charge-sheet in the concerned court against the other accused persons namely; Naveen Katara @ Gaurav Katara and Jitendra Katara @ Ravi for the offences u/Ss. 363, 366, 376, 384, 511 and 120B IPC and Section 3/4 of POSCO Act.

5. Thereafter, the complainant petitioner moved an application under Section 190 Cr.RC. before the learned court below for taking cognizance against accused Nirmala. The accused persons filed reply to the said application and stated that as per the version of FIR as well as statement of witness, it is clear that no incident had taken place during the period of Beauty Parlor course i.e. 1st May to 14th May 2015 and therefore no case is made out against Nirmala and prayed for dismissal of the said application.

6. Learned counsel for the complainant petitioner has submitted that the name of the accused respondent Neeru has been mentioned in the FIR Counsel has further submitted that the prosecutrix reported to respondent Neeru regarding bad intention of Ravi who had threatened the prosecutrix that she has three brothers and they will kill the whole family of her. Due to this reason, the prosecutrix has also named the accused respondent in the statement given by her under Section 164 Cr.RC. in which she has narrated that the accused respondent No. 2 also pressurised the prosecutrix to marry with one Naveen and the act of the respondent No. 2 also comes under the definition of the abetment which falls under Sections 16 and 17 of the POSCO Act and also comes under Section 120-B and 376 IPC despite that the accused respondent No. 2 has not been charge-sheet by the police, while she has committed offence along with other accused persons.

7. On the other hand, Mr. Dharam Gopal Chaturvedi learned counsel appearing for the accused respondent No. 2 has drawn attention of the Court towards

provisions of Section 190 Cr.P.C. Counsel has further submitted that the complainant petitioner has moved an application under Section 190 Cr.P.C. upon that the Court has taken cognizance against the accused persons, who have been charge-sheeted. Counsel has further submitted that the cognizance could also be taken by the Magistrate concerned on the complaint filed under Section 190 Cr.P.C. for the aforesaid offences but the police filed the charge-sheet only against the accused persons for the offences under Sections 16 and 17 of POSCO Act. He has further contended that instant revision petition filed by the petitioner is not maintainable. Counsel has further submitted that the learned court below has not committed any material irregularity or illegality in passing the said order. Hence the impugned order passed by the learned court below needs no interference of this Court.

8. I have heard learned counsel for the respective parties and perused the relevant material on record including the order dated 6.2.2016 passed by the court below.

9. In my considered opinion the order impugned dated 6.2.2016 has been passed by the trial court after taking into consideration the entire material available on record and no material irregularity or illegality has been committed by the trial court in passing the said order. However, I am in agreement with the observations made by the court below in its order dated 6.2.2016 relevant portion of which is reproduced as under:

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The criminal revision petition filed by the petitioner is devoid of merit and accordingly stands dismissed.

10. However, liberty is granted to the petitioner to move an application under Section 319 Cr.RC. before the trial court at the appropriate stage of the matter.