

(2002) 04 DEL CK 0045

In the Delhi High Court

Case No : Criminal M. (M) No. 622 of 2002

Trilochan Singh Johar and Another

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Criminal Law (Amendment) Act, 1983 — Section 114A

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 327(2), 327(3), 376A

Penal Code, 1860 (IPC) — Section 363, 366, 376

Citation : (2002) 4 AD 951 : (2002) CriLJ 3268 : (2002) 98 DLT 228 : (2002) 62 DRJ 787 : (2002) 3 RCR(Criminal) 196

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : M.I. Siddiqui, for the Appellant; Pawan Sharma and Richa Kapur, for the Respondent

Judgement

S.K. Agarwal, J.—By this petition u/s 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), petitioners are seeking quashing of FIR No.101/2000 under Sections 363/366/376, IPC, P.S. Vasant Vihar (State v. Vinod James) and the proceedings thereon, pending in the Court of Ms. Mamta Sehgal, Additional Sessions Judge, New Delhi.

2. The accused has not been impleaded as the party and the prayer clause of the petition reads as under :-

1. for protecting the matrimonial prospects and educational career of petitioner No.2 the FIR No.101/2000 registered at Vasant Vihar, P.S. under Sections 363/366/376, IPC be kindly withdrawn and cancelled;

2. the petitioners be exempted from appearing as PWs. in the learned trial court on 28.2.2002, and on subsequent dates, or in the alternative prosecution evidence be stayed till the final disposal of the present petition."

3. Notice. I have heard the learned counsel for the parties and have been taken

through the record. Learned counsel for the petitioners has pressed for a detailed order.

4. The above noted case was registered on the report lodged by petitioner No.1 alleging that his daughter (petitioner No.2) then aged about 17 years was kidnapped by the accused Vinod James; his description was given in the FIR found that his innocent daughter was black-mailed. He requested for registration of the case and for tracing out of his daughter. During investigations, girl was recovered after about 15 days and was restored to her parents. Her statements under Sections 161 and 164 Cr.P.C. were recorded. Accused was arrested. After investigations, challan was filed. The case is now pending trial.

5. Learned counsel for the petitioners argued that the girl (petitioner No.2) is residing with her parents and pursuing her studies quiet seriously. She does not want to undergo the trauma of appearing as a witness in the court. Petitioner No.1 is also is search of a suitable match in the sikh community for her. The accused brought ill reputation to their family and subjected the girl to mental torture. The accused attempted to convert her to christianity by keeping her with him 15 days. He further argued that the girl was above the age of 17 years and below 18 years and that accused is in possession of letters allegedly written by her to the basis of which he may succeed in proving that she was the consenting party and, Therefore, no useful purpose is likely to be served by pursuing the above case. They, thus, pray for quashing the FIR and the proceeding thereon.

6. Learned counsel for the petitioners further argues that power u/s 482 Cr.P.C. are not governed by any other provision of the Code, Therefore, in the peculiar circumstances the petitioners are entitled to the relief of cancellation of the above FIR and the proceedings thereon without even impleading the accused as respondent. I am unable to agree. Law with regard to powers of the court for quashing the FIR and the proceedings thereto is well-settled by the Supreme Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, and several subsequent judgments. At this stage, on the basis of un-controverted allegations made in the FIR and the evidence collected by the prosecution in support of its case, it cannot be said that the accused had not committed any offence. As per the petitioners' own showing, the matter is listed for the prosecution evidence. Thus, no case for quashing the FIR is made out.

7. Other apprehensions expressed by the petitioners also appear to be misplaced. Sub-section (2) of Section 327 Cr.P.C. provides that the enquiry into and the trial of rape cases shall be conducted in camera. A duty cast upon the court to conduct the trial of such cases. Sub-section (3) of the Section further prohibits the printing or publishing of matter in relation to any such proceedings, except with the previous permission of the court. The Appex Court, while emphasising the necessity of holding such trials in camera, laid down that the court should as far as possible avoid disclosing the names of the prosecutrix in their orders to save any embarrassment to the victim of the sex crime. The anonymity of the victim must be maintained throughout the trial. In State of

Punjab Vs. Gurmit Singh and Others, it was held :-

"22. The alarming frequency of crime against women led the Parliament to enact Criminal Law (Amendment) Act, 1983 (Act 43 of 1983) to make the law of rape more realistic. By the amendment Act, Sections 375 and 376 were amended and certain more penal provisions were incorporated for punishing such custodians who molest a women under their custody or care. Section 114-A was also added in the Evidence Act for drawing a conclusive presumption as to the absence of consent in certain prosecutions for rape, involving such custodians. Section 327 of the code of Criminal Procedure which deals with the right of an accused to an open trial was also amended by addition of Sub-sections (2) and (3) after re-numbering the old Section as Sub-section (1). Sub-section (2) and (3) of Section 327 Cr.P.C. provide as follows :

Section 327, Court to be open --

(2) Notwithstanding anything contained in Sub-section (1), the inquiry into and trial of rape or an offence u/s 376, Section 376A, Section 376B, Section 376-C or Section 376-D of the Indian Penal Code shall be conducted in camera: Provided that the presiding judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain, in, the room or building used by the Court. (3) Where any proceedings are held under Sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court.

23. These two provisions are in the nature of exceptions to the general rule of an open trial. In spite of the amendment, however, it is seen that the trial Courts either are not conscious of the amendment or do not realise its importance for hardly does one come across a case where the enquiry and trial of a rape case has been conducted by the Court in camera. The express that the inquiry into and trial of rape "shall be conducted in camera" as occurring in Sub-section (2) of Section 327 Cr.P.C. is not only significant but very important. It casts a duty on the Court to conduct the trial of rape cases etc. invariably "in camera". The Courts are obliged to act in furtherance of the intention expressed by the Legislature and not to ignore its mandate and must invariably take recourse to the provisions of Section 327(2) and (3) Cr.P.C. and hold the trial of rape cases in camera. It would enable the victim of crime to be a little comfortable and answer the questions with greater ease in not too familiar a surroundings. Trial in camera would not only be in keeping with the self respect of the victim of crime and in tune with the legislative intent but is also likely to improve the quality of the evidence of a prosecutrix because she would not be so hesitant or bashful to depose frankly as she may be in an open Court, under the gaze of public. The improved quality of her evidence would assist the Courts in arriving at the truth and sifting truth from falsehood. The High Courts would Therefore be well advised to draw the attention of the trial Courts to the amended provisions of Section 327 Cr.P.C. and to impress upon the Presiding Officers to invariably hold

the trial of rape cases in cameras, rather than in the open Court as envisaged by Section 327(2) Cr.P.C. when trials are held in camera, it would not be lawful for any person to print or publish any matter in relation to the proceedings in the case, except with the previous permission of the Court as envisaged by Section 327(3) Cr.P.C. This would save any further embarrassment being caused to the victim of sex crime. Wherever possible it may also be worth considering whether it would not be more desirable that the cases of sexual assaults on the females are tried by lady Judges, wherever available, so that the prosecutrix can make her statement with greater ease and assist the Courts to properly discharge their duties, without allowing the truth to be sacrificed at the altar of rigid technicalities while appreciating evidence in such cases. The Courts should, as far as possible, avoid disclosing the name of the prosecutrix in their orders to save further embarrassment to the victim of sex crime. The anonymity of the victim of the crime must be maintained as far as possible throughout."

(emphasis supplied)

8. For the forgoing reasons, in my view, no case for quashing the FIR is made out. However, the court is directed to hold the trial in camera and to maintain anonymity of the victim throughout the trial and take such measures as it deems fit for keeping the identity and address of victim secret. The trial court would avoid mentioning name and address of the victim in its order of judgment or any record of the case accessible to public. For this purpose, the court may after satisfying about the identity of the victim pass an order directing that the statement of the victim would be recorded under the assumed name "XYZ". Such an order can be kept in the sealed cover, after obtaining signatures of the accused/his counsel on the same to avoid any dispute on this account at the subsequent stage. Otherwise the trial court may evolve its own method to maintain anonymity of the victim.

9. The above restrictions are very necessary to avoid possible harassment to the witness and to restore their confidence. With these observations, petition stands disposed of.

10. dusty.