

Can't Quash POCSO Act Offence On The Basis Of Compromise/ Matrimony Between Accused & Victim: Punjab & Haryana High Court

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

CRM-M-2270-2020; 07.09.2022

Nardeep Singh Cheema @ Navdeep Singh Cheema versus State of Punjab and others

Present:- Mr. P.S.Punia, Advocate for the petitioner. Mr. Vipin Pal Yadav, Addl. A.G., Punjab for State-respondent No.1. Mr. G.S.Bains, Advocate for respondents No.2 and 3.

SUVIR SEHGAL, J.

Instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of FIR No.145 dated 23.07.2019, registered for offences under Sections 363 and 366-A of the Indian Penal Code, 1860 (for short "IPC"), however, later on Section 376, IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act") were added, at Police Station Dehlon, District Ludhiana, Annexure P-1, on the basis of the affidavits dated 16.12.2019, Annexure P-2 (colly).

FIR, Annexure P-1, has been registered on the basis of statement of father of two school going minor girls, "J" (date of birth 13.09.2001) and "M" (date of birth 20.06.2004), names withheld, on the allegation that in the evening on 22.07.2019, they went to a market in connection with some school work, but did not return and despite search, they could not be located. Nardeep Singh Cheema @ Navdeep Singh Cheema, present petitioner, wanted to get married to "J", but she refused and he often used to trouble her along with his friend, Gurpreet Singh, who was interested in marrying "M". Complainant's daughters had told him of these facts and he suspects that they have been enticed by Nardeep Singh Cheema @ Navdeep Singh Cheema and Gurpreet Singh.

While referring to the Marriage Certificate dated 19.09.2019, Annexure P-3, counsel for the petitioner submits that petitioner has performed marriage with "J" after she attained majority. He submits that "J" as well as her father-complainant have executed affidavits, Annexure P-2 (colly), which reflect a compromise between the parties. He submits that the married couple is living together and their statements have been recorded in support of the compromise pursuant to order passed by this Court.

Status report by way of an affidavit of Assistant Commissioner of Police (South), Ludhiana has been filed on behalf of State-respondent No.1, which is taken on record. Upon instructions received from ASI, Balvir Singh, State counsel has opposed the petition and has submitted that the petitioner is accused of sexually exploiting a minor. However, counsel representing the complainant-respondent No.2 and victim-respondent No.3 has supported the prayer made in the petition.

Heard counsel for the parties.

In the status report filed by the State, it has been submitted as under:-

"5. That on 24.07.2019 the present petitioner and his co-accused Gurpreet Singh were arrested and both the prosecutrix were recovered from the petitioner and his coaccused. Statements u/s 161 Cr.P.C. of both the prosecutrix were recorded in which they stated that on 22.07.2019 the petitioner had taken respondent No.3 whereas co-accused Gurpreet Singh had taken the other girl "M" in a Gurudwara at Patiala where during the night the petitioner committed sexual intercourse with respondent No.3 and his co-accused committed sexual intercourse with the other

girl. Statements u/s 164 Cr.P.C. of both the prosecutrix were got recorded before the Ld. Magistrate on 25.07.2019.

Examination of both the prosecutrix were got conducted from Civil Hospital, Ludhiana on 26.07.2019 and vaginal swabs were taken and were sent to the Chemical Examiner and in the reports of the Chemical Examiner of both the girls, it was mentioned that “spermatozoa were detected in the contents”. Accordingly, offences u/s 376 IPC and 4 POCSO Act were added on 31.10.2019.

6. That after completion of the investigation, challan/Final Report u/s 173 Cr.P.C has been presented against the present petitioner on 08.01.2020 and charges were framed on 29.02.2020. There are total 12 prosecution witnesses in this case, but no evidence has been led as yet and now the trial is pending in the Court of Ms. Ravi Inder Kaur Sandhu, Ld. Addl. Sessions Judge, Ludhiana and is now fixed for 21.09.2022. However, now on 19.09.2019, the petitioner and the prosecutrix/respondent No.3 have performed marriage as mentioned above.”

Facts reveal that prosecutrix was admittedly a minor when she was enticed and has been recovered from the custody of the accused-petitioner. Material placed on the record by the State shows that she has been subjected to sexual assault by the petitioner.

Subsequent marriage of the accused with the prosecutrix would not dilute the offence under POCSO Act or under Section 376, IPC. POCSO Act has been incorporated with the objective of protecting children from offences of sexual assault, sexual harassment, pornography. If an accused is absolved of committing sexual excesses with a minor on the basis of settlement with victim on her attaining majority, this would encourage an unhealthy trend and defeat the objective and spirit behind the legislation of POCSO Act.

Consequently, offence under POCSO Act, which is a special statute, cannot be quashed on the basis of any compromise or matrimony between the accused and the prosecutrix.

Finding no merit in the prayer made, petition is dismissed.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case and the Trial Court shall conclude the trial uninfluenced by any observation made hereinabove.

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