



CRM-M-43424-2018 (O&M)

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**204 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-43424-2018 (O&M)**

Date of Decision:- 10.09.2025

Vipin @ Vipin Kumar @ Tinku and others ...Petitioners

Versus

State of Haryana ...Respondent**CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI**Present:- Mr. Sant Pal Singh Sidhu, Advocate
for the petitioners.

Mr. Viney Saini, AAG, Haryana.

AMARJOT BHATTI, J. (Oral)

1. Petitioners Vipin @ Vipin Kumar @ Tinku, Bijender @ Vijender and Satish have filed petition under Section 482 Cr.P.C. for quashing of impugned order dated 11.09.2018 (Annexure P-8) vide which criminal revision filed by prosecutrix was allowed by learned Additional Sessions Judge, Bhiwani and being prima facie case under Section 376/506 IPC, Section 3 of SC/ST Act and Section 4 of POCSO Act, learned trial Court was directed to commit the case to the Court of Sessions for further trial, in case FIR No. 80 dated 15.03.2013 under Section 323/506/34 of IPC registered at Police Station Bawani-Khera, District Bhiwani (Annexure P-1), by setting aside the order dated 12.10.2017 (Annexure P-6) vide which learned trial Court dismissed the application under Section 216 Cr.P.C. for making amendment in charges in aforementioned FIR.



2. Brief facts of the case as narrated in FIR No. 80 dated 15.03.2013 (Annexure P-1) (supra) are that prosecutrix 'K' aged about 14 years belonging to caste 'Chamar' gave her statement that she was student of 6th class in Government Primary School of her village. On 14.03.2013, at about 03:00-04:00 pm, she was going towards the fields where her mother was present and on the way, Tinku caste Brahmin of her village abused her and quarreled with her. He followed her and when she reached in the fields, she disclosed this fact to her father. Accused came there alongwith 4-5 other boys on motorcycle. They abused her father and threatened to kill him.

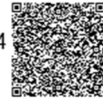
3. After registration of FIR, statement of victim was recorded before Judicial Magistrate Ist Class on 20.04.2013 (Annexure P-2), where she stated that on 13.04.2013, when she was going in the fields, Tinku came from her backside and started teasing her. When she was cutting grass, he outraged her modesty (in vernacular "*izzat loot li*"). He further threatened her that in case she disclosed about this fact to anybody he would kill her. On 14.04.2013, he again tried to catch hold of her but she rescued herself and ran away from there. She was saved by the persons of neighbouring fields. Matter was disclosed to her family who brought her to police station. After completion of investigation, challan was presented in Court under Section 506, 323, 34 of IPC (Annexure P-5).

During the pendency of trial, application was filed by complainant under Section 216 Cr.P.C. for amendment of charges, which was declined by Judicial Magistrate Ist Class, Bhiwani vide order dated



12.10.2017 (Annexure P-6). Victim filed Criminal Revision No. 166 of 2017 which was allowed by passing impugned judgment dated 11.09.2018 (Annexure P-8) vide which trial Court was directed to commit the case to the Court of Sessions for further trial, as prima facie there was offences under Section 376, 506 of IPC and Section 3 of SC/ST Act and Section 4 of POCSO Act. Feeling aggrieved of this order, present petition has been filed.

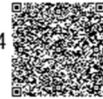
4. Learned counsel for petitioners argued that false and frivolous FIR has been registered against petitioners with improved version. Stand taken by victim at the time of registration of FIR (Annexure P-1) is different from the facts narrated by her when her statement was recorded under Section 164 Cr.P.C. (Annexure P-2). During investigation application was moved for Polygraphy Test of petitioner Vipin to which he had given his consent. Application was allowed vide order dated 05.08.2013 (Annexure P-3). Report of Forensic Science Laboratory, Haryana Madhuban, Karnal is Annexure P-4, according to which it was found that petitioner Vipin was telling truth about the occurrence. Accordingly, challan was presented under Section 323, 506/34 of IPC (Annexure P-5). During the trial of this case, prosecution filed one application for alteration/addition of charge-sheet which was rightly declined by learned Judicial Magistrate Ist Class, Bhiwani vide order dated 12.10.2017 (Annexure P-6). Thereafter, another application was filed under the provisions of Section 323 Cr.P.C. which was also declined by learned Judicial Magistrate Ist Class, Bhiwani vide order dated 09.04.2018



(Annexure P-7). Victim/prosecutrix filed revision against order dated 12.10.2017 (Annexure P-6) which was accepted by passing impugned order dated 11.09.2018 (Annexure P-8). Investigating Agency had conducted thorough investigation. Polygraphy Test was also conducted and it was rightly concluded that only offences under Section 323/506/34 of IPC were made out. Learned Additional Sessions Judge while passing impugned order has failed to consider the improved version given by prosecutrix during the investigation proceedings. Apart from this, learned counsel for petitioner has also referred to Compromise Deed dated 01.11.2019 (Annexure P-9) as well as affidavit of victim (Annexure P-10) confirming the compromise arrived at between the parties during the pendency of present petition. There is no evidence on record to show that rape was committed with prosecutrix. Investigating Agency did not find any offence under the provisions of SC/ST Act. Charges can be amended only if there is prima facie case. Without considering the aforesaid factual position, order passed by learned Judicial Magistrate Ist Class, Bhiwani dated 12.10.2017 (Annexure P-6) has been wrongly set aside by passing impugned order dated 11.09.2018 (Annexure P-8) in revision. In the light of this, it is submitted that impugned order referred above may kindly be set aside.

5. On the other hand, learned counsel representing State confirmed the factual position about the trial as referred above.

6. I have considered the aforesaid factual position. I have also gone through the contents of documents annexed with present petition.



Petitioners have challenged impugned order dated 11.09.2018 (Annexure P-8) vide which trial Court was directed to commit the case to the Court of Sessions since prima facie there was case under the provisions of Section 376/506 of IPC, Section 3 of SC/ST Act and Section 4 of POCSO Act. I have also gone through the contents of FIR No. 80 dated 15.03.2013 (Annexure P-1) (supra) in which prosecutrix/victim has narrated the incident of 14.03.2013 when she was chased by Tinku but she rescued herself and disclosed about the occurrence to her father. Thereafter, Tinku accompanied by other boys came on motorcycle and threatened her father to kill him. On the registration of this FIR, investigation proceedings started and in that course prosecutrix was produced before Judicial Magistrate Ist Class, Bhiwani for recording of her statement under Section 164 Cr.P.C. where she narrated the incident of 13.04.2013 when she was raped by Tinku in the fields and thereafter, on the next day i.e. 14.04.2013, he again chased her in fields but victim managed to rescue herself. Therefore, on the basis of recital in FIR as well as statement of prosecutrix recorded before the Magistrate, it is evident that victim belongs to Schedule Caste community and at the time of said occurrence she was about 14 years of age. Therefore, considering the aforesaid documents, it is evident that provisions of Section 376 of IPC, Section 4 of POCSO Act coupled with SC/ST Act were attracted. However, learned Judicial Magistrate during the proceedings of trial firstly declined application under Section 316 Cr.P.C. for amendment of charge vide order dated 12.10.2017 (Annexure P-6). Prosecution again filed application under Section 323 Cr.P.C. which was



again declined by learned Judicial Magistrate vide order dated 09.04.2018 (Annexure P-7). Learned trial Court time and again failed to appreciate the statement of victim recorded under Section 164 Cr.P.C. as well as her first version when FIR was registered. There is no reason to ignore the statement of victim. Learned counsel representing petitioner has given undue emphasis to Polygraphy Test. Relevancy of result of Polygraphy Test can be seen at a later stage during the course of trial. Considering the aforesaid factual position, facts of the case were rightly considered by learned Additional Sessions Judge, Bhiwani and I do not find any reason to interfere in impugned judgment dated 11.09.2018 (Annexure P-8) and same is, accordingly, upheld.

7. Learned counsel for petitioner has referred to one Compromise Deed dated 01.11.2019 (Annexure P-9) and affidavit of prosecutrix/victim (Annexure P-10). At this stage, aforesaid documents cannot be looked into as present petition is against impugned order dated 11.09.2018 (Annexure P-8) passed in criminal revision. Petitioners are at liberty to refer aforesaid documents during the proceedings of trial.

8. With aforesaid observation, present petition stands disposed of.

9. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

10.09.2025

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No