

Maninder Kaur

Vs

Rajinder Singh and Others

Criminal Appeal No. 583 of 1991

06.09.1991

ORDER

1. Special leave granted.

2. This is an appeal against an order of a learned Single Judge of the Punjab and Haryana High Court dated March 22, 1991 passed in Criminal Miscellaneous No. 14319 of 1991.

3. The appellant filed a complaint against the accused respondents and two others for offences under Sections 363, 366, 376 and 368 read with Section 34 of the India Penal Code before a Judicial Magistrate I Class, Hoshiarpur. In support of her complaint the appellant, besides herself, examined her father Kartar Singh and a neighbour Dasondhi Ram as witness. The learned Magistrate issued process against the accused-respondents for he was of the opinion that there was sufficient ground for proceeding. The two others afore-referred to could not be served and were proclaimed absconders. Statedly they came from the State of Uttar Pradesh and their whereabouts were not known. The accused respondents, however, were served. Instead of facing the enquiry at the pre-charge stage, they straightaway moved the High Court invoking its powers under Section 482 of the Criminal Procedure Code alleging that the complaint filed against them was false, that the prosecutrix had made a statement before a Magistrate under Section 164 of the Code of Criminal Procedure during investigation in which she had named those two absconders, Karan and Badama besides one Chhotu as the culprits belying the culpability of the accused respondents. Otherwise as well some probabilities statedly of an inherent nature were pressed into service to disbelieve the word of the appellant, which appealed to the High Court and the complaint was quashed. Thus this appeal.

4. The appellant in person has pleaded before us that grave injustice has been done to her cause and that she was under pressure in the past when she was made by the police to make a statement before a Magistrate under Section 164 CrPC and was under pressure even now from the accused-respondents in prosecuting this appeal. That is the way she would put her case. We on our own sought assistance from Mr R. K. Garg, learned counsel who was present in the Court and he willingly has assisted us. The matter is plain and simple as on the statement of complainant and her two witnesses, the learned Magistrate came to the opinion that there was sufficient ground for proceeding in the complaint and he issued process against the accused-respondents. Now at that stage to judge the sufficiency or otherwise of the ground for proceeding was beyond the power of the High Court so as to quash the proceedings under Section 482, CrPC. The value to be attached to the statement made by the appellant under Section 164, CrPC was to be examined at the enquiry at the pre-charge stage and possibly at the trial, if charge was to be framed. The steps in investigation could also be commented upon likewise at the said two stages. From the facts and circumstances of the case, we are of the view that the High Court was not justified in quashing the proceedings at the initial stage so as to strangle it at its inception. The accused-respondents have all their rights

preserved under law at the stage of the enquiry as also at the trial, if there is one, eventually. For this reason we set aside the impugned order of the High Court and direct the Magistrate to proceed further in the complaint in accordance with law. The complainant, in person, and the accused-respondents through their counsel are directed to put in appearance before the learned Magistrate on October 4, 1991. The appeal is allowed accordingly.

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