

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl.Misc. No.4186-M of 2008

Date of Decision: 15.2.2008

Sanjeev Kumar & Ors.

...Petitioners

Vs.

State of Punjab & Anr..

...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Parminder Singh-I, Advocate,
for the petitioners.

Vinod K.Sharma, J. (Oral)

This Criminal Misc. under Section 482 of the Code of Criminal Procedure has been moved for quashing of complaint Annexure P.2 as well as the summoning order and subsequent proceedings in a complaint pending in the Court of Sub Divisional Judicial magistrate, Talwandi Sabo, wherein the petitioners have been summoned under sections 376/506 IPC.

The allegations against the accused read as under:-

“ It is submitted as under:-

1. That I am resident of Village Tandurwali, P.S.Tibbi,

District Hanumangarh and am doing labour work.

2. That my blood pressure used to rise and I used to have pain in my back. Mahinder Singh brother-in-law (Sadu) of my husband's brother, who resides in Talwandi Sabo told me that all wishes were fulfilled by Gurdwara Talwandi Saboo, Due to this I along with my husband Raja Ram came to Gurdwara Sahib on 10.11.2004 to pay obeisance at Talwandi Sabo.
3. That on 10.11.2004 myself and my husband reached Bus stand Talwandi Sabo after paying obeisance at the Gurdwara Sahib and were waiting for the bus. Three persons with a black colour car, called my husband by his name and asked him as to what they were doing there. At the telling of my husband that we were going towards village, they said that they were also going towards the village and there were vacant seats in the car and they would drop us in the village. We sat in their car with them.
4. That when we reached near canal minor after crossing village Bagha via Rama Mandi, it was about 5.30 p.m., they stopped the car and after opening its Bonnet said that the car was out of order and a mechanic was to be called and we would start after repair. They all three kept taking liquor.

5. That at about 7 p.m., said persons started the car and stopped it in the ditches on the right side of the canal. My husband asked them as to why they had stopped the car now. One person took out a 'kappa' from the car and brought my husband out of the car. Second person stood with him and said that if we raised alarm, we would be done to death. Driver of the car forcibly opened my salwar and threw me on the back seat of the car and forcibly raped me. My bangles were broken and my kameej (shirt) was torn. My face and cheeks were bitten. Then the other 2 persons raped me turn by turn against my wishes. All the three persons told us that in case we told any one then we would be done to death. They sat in the car and left from there. My husband later told me that car driver was Sandeep Kumar @ Bobby s/o Birbal Ram, second person was Manoj @ Monu s/o Birbal Ram Bania r/o Tibbi, District Hanumangarh and third person was Goa who was running a Ply shop at Pilia Barg Road Hanumangarh and was son of Sandeep Kumar's aunt (Bua).
6. That then myself and my husband were walking towards the police station for information, we met H.C. Darshan Singh, whose name we came to know later on, near Railway Crossing Bagha Road. I got recorded my

statement before the police and put my right thumb impression on it.

7. That then on the same night police of police station Raman took me to Civil Hospital Bathinda where I was medically examined by the doctor and my clothes Salwar, Kameej and Chunni were taken in possession by the doctor.
8. That above persons were influential and highly rich persons and were giving threats to me – complainant that either we should withdraw the case and should stop all proceedings against them or they would kill my complainant family and they would involve us in false case in other state and would not allow us to get bailed out.
9. That then I complainant filed an application on 21.12.2004 before Hon'ble Chief Justice Punjab & Haryana Chandigarh via fax and one application dated 21.12.2004 to D.G.P., Punjab Chandigarh in person, who marked this application to S.S.P.Bathinda for action and gave it to me – complainant. The said application was given to SSP Bathinda by me – complainant on 22.12.2004 in person. S.S.P. Bathinda directed me – complainant to appear before S.P.(D) Bathinda. After 10/12 days S.P.D. Bathinda summoned me in his office

and I complainant told him the entire facts. He took my thumb impression on a paper and told me to leave. They would themselves take further action. Copy of application is attached.

10. That on 21.12.2004, I – complainant had sent one telegram to Hon'ble Chief Justice Punjab & Haryana, Chandigarh from Chandigarh, Sessions Judge Bathinda and to your honours Court and there attested copies are attached.
11. That about a month back myself – complainant was called by S.S.P. Bathinda that my application from Punjab State Human Rights Commission had been received for enquiry. Myself complainant and my complainant's husband told him every fact about occurrence, who got our signature thumb impression, statements were not read over.
12. That Daulat Ram Sarpanch r/o Saliwala and Madan Lal s/o Nand Lal, r/o Tandoor Wali came to my complainant's husband. They told that Manoj Kumar accused had come to them along with his father Veerbhan and Manoj Kumar had confessed before them that they i.e. Manoj Kumar, Sanjeev and Gaurave had forcibly raped his wife Mukhtiaro Bai.”

In support of the allegations made against the petitioners

doctor as well as independent witness have been examined and it was thereafter that the learned Sub Divisional Judicial Magistrate has been pleased to summon the petitioners by passing the following order:-

“ The complainant has closed the preliminary evidence. I have heard the learned counsel for the complainant on summoning and learned APP for the State on cancellation report. As per the allegations leveled in FIR and in the complaint that Mukhtiaro wife of Raja Ram was suffering from high blood pressure as well as pain in back. Her husband's brother's Sandu Mohinder Singh told them to pay obeisance in Gurudwara Sahib, Talwandi Sabo and they may get relief, then her husband took her to Gurudwara Sahib, Talwandi Sabo. They prayed in Gurudwara Sahib and when they reached bus stand, Talwandi Sabo three persons having a black colour car, were standing there and called her husband by his name and asked the reason of their standing in the bus stand. Her husband disclosed that they are going to their village, then accused said that seat of their car is lying vacant, they can sit with them and will leave them in their village. They sit in the car when they reached at a minor canal after crossing Bagha. It was about 4.30 PM they stopped the car and open bonnet and said some defect occur in the car and they have to call the mechanic after that they will go to village. At about 7.00 p.m., they started the car and stopped the same near the pits on the right side of road.

Her husband inquired about it, one person took a Kapa from the car and made her husband down from the car and said if he raised alarm they will kill him. The driver of the car put off her Salwar and raped her on the back seat of the car. He torn her Kamiz and bites upon her cheeks, the two other persons also raped her turn by turn. FIR was lodged. After completion of investigation cancellation report was submitted. As per the report of Medical Examiner Spermatozoa were seen on the contents of exhibits i.e. Salwar Kamiz and on the vaginal swab. The complainant remained with the accused till 7.00 p.m., after that they went to the police station for lodging the FIR and she was medico legally examined at 12.15 a.m. She remained with the accused up to 7.00 p.m. After that with the police officials but the chemical report shows that spermatozoa on the Salwar as well as on the Kamiz. She supported these allegations when she appeared as CW 1 and her evidence has been further supported by PW 2 Daulat Ram and evidence of doctor PW 6, so evidence led by complainant is sufficient to summon the accused, u/s 376 and 506 IPC, so cancellation report is not accepted and accused be summoned for 30.10.2007 by non-bailable warrants u/s 376, 506 of IPC, on filing copies of complaint, PF/list of witnesses. File of cancellation report be returned to quarter concerned.”

Learned counsel for the petitioners has challenged the

proceedings as well as summoning order and subsequent proceedings on the plea that earlier to the filing of complaint on the same allegations FIR was registered in which three inquiries were held by the police officials and the allegations were found to be incorrect and cancellation report was submitted. It is the case of the petitioner that even recommendations were made for initiation of proceedings under section 182 IPC against the complainant. It is further contended that para No.5 of the complaint referred to above shows that there were some injuries caused to the prosecutrix in the present case. However, said allegations do not find support in the medico legal report as no injury is shown in the said case. It is also the case of the petitioners that such allegations can be made against any body and in the present case allegations have been made on behalf of Sahab Ram with whom the petitioners have civil litigations.

For quashing, the allegations made in the complaint have to be taken on their face value and the defence of the petitioners cannot be looked into in a petition under section 482 Cr.P.C. Serious allegations have been made in the complaint and the complainant has supported her allegations in preliminary evidence.

No merit. Dismissed.

18.2.2008
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(Vinod K.Sharma)
Judge

