
(2011) 09 P&H CK 0144

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M 28275 of 2011 (O and M)

Mandeep Singh Aujla @ Khushia

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision: Sept. 16, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 120B, 201, 315, 376, 420
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mahesh Grover, J.

This is a petition u/s 482 of the Code of Criminal Procedure where the Petitioner prays for quashing of FIR No. 148 dated 25.7.2009 under Sections 376, 420, 511, 315, 201, 120-B Indian Penal Code and Section 3(xi) and (xii) of SC/ST Act, 1989.

2. The complainant lodged FIR against few persons namely, Ashok Kumar Verma, Babita Rani Verma and Harpreet Singh @ Sonu. She alleged that she was working as a domestic help where Harpreet Singh @ Sonu committed rape upon her repeatedly as a result of which she became pregnant and delivered a child on 14.7.2009. Pursuant to the FIR the said accused faced the trial and were acquitted vide judgment dated 15.11.2010. During the pendency of the trial a supplementary statement was recorded by the prosecutrix in which she named the present Petitioner along with 5 other co CrI.Misc. No. M-28275 of 2011 (O&M) -2 accused stating that all these persons also had sexual inter course with her against her will. A supplementary challan was submitted on 15.5.2010 implicating the present Petitioner in the said case. During the course of investigation pursuant to the

supplementary statement, the blood samples of the Petitioner along with other co-accused were taken and sent to the Forensic Science Laboratory, Chandigarh for establishing the DNA profile with the child born to the prosecutrix. The DNA profile of the Petitioner matched with the child born to the prosecutrix.

3. Learned Counsel for the Petitioner states that the proceedings against him deserves to be quashed on three counts - one, that he was never named initially by the prosecutrix; two, that the persons named initially by the prosecutrix have been acquitted; and, third, that merely because his DNA profile matches with the child does not imply that he is the father of the said child in view of the fact that the science of DNA is at a developing stage and not reliable. He has placed reliance on the observations of the Gujarat High Court in *Premjibhai Bachubhai Khasiya v. State of Gujarat and Anr.* 2009 (4) R.C.R.(Cri) 186, wherein it was observed as follows:

15. The science of DNA is at a developing stage and when the Random Occurrence Ratio is not available for Indian Society, it would be risky to act solely on a positive DNA report, because only if the DNA profile of the accused matches with the foetus, it cannot be considered as a conclusive proof of paternity. Contrarily, if it is solitary piece of evidence with negative result, it Crl.Misc. No. M-28275 of 2011 (O&M) -3 would conclusively exclude the possibility of involvement of the accused in the offence.

16. The DNA Science and Report is founded on probability theory. When the profiles of accused and foetus/child are consistent, it only shows a probability as per Random Occurrence Ratio. Obviously, it cannot be treated as conclusive proof and cannot be made use of as sole basis of conviction in a criminal case, more so when the Random Occurrence Ratio is not available of India Society.

4. It has further been stated that an affidavit has been submitted by the prosecutrix saying that the Petitioner has not committed any offence.

5. I have considered the matter in its entirety. In the instant petition u/s 482 of the Code the Court is precluded from taking into account the evidence. The Petitioner is a proclaimed offender and is fugitive from law. The argument which has been raised before this Court that DNA is not a conclusive test of paternity, would be difficult to comment upon, more so when there is a possibility of other attending evidence coming on record. The contention of learned Counsel for the Petitioner that an affidavit has been submitted by the prosecutrix cannot also be commented upon at this stage because it is upto the trial Court to evaluate the testimony of the prosecutrix and the Court cannot dilute the testimony by commenting upon the affidavit of the prosecutrix which has been procured by the Petitioner. This would be giving a go by to the well Crl.Misc. No. M-28275 of 2011 (O&M) -4 established procedure of a criminal trial. It is also to be noticed that the Petitioner is the only person whose DNA profile has matched with the child delivered by the prosecutrix. Whether the relationship was consensual or was against the wishes of the

prosecutrix is a matter which is to be tested on the basis of the testimony of the prosecution even if the science of DNA profile is to be brushed aside on the ground of inclusivity, but the moot question still would remain even if the science of DNA may be conclusive enough to establish the essentials of paternity.

6. No ground to interfere.

7. Dismissed.

8. At this stage, learned Counsel for the Petitioner states that he is willing to submit himself to the process of law and to face the consequences.

9. Having regard to the aforesaid, the Petitioner is directed to submit himself to the jurisdiction of the learned trial Court within a week, and in case he does so, the trial Court shall consider the aspect of his being released on bail in the event of his making an application for bail within a period of two days. The Petitioner shall also be entitled to a transit bail and the arresting officer shall enlarge him on bail in the event of his arrest subsequent to his arriving in the country.