IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 10.02.2025

1. CRR No.5082 of 2015 (O&M)

Rajender Singh

....Petitioner

Versus

State of Haryana

....Respondent

2. CRR No.11 of 2016 (O&M)

Suresh Kumar

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. N.C. Kinra, Advocate
for the petitioner in CRR No.5082 of 2015.

Mr. Rajesh Lamba, Advocate
for the petitioner in CRR No.11 of 2016.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.
(in both the revision petitions)

HARPREET SINGH BRAR J. (Oral)

1. Vide this common order, I intend to dispose of CRR No.5082 of 2015 and CRR No.11 of 2016, as common questions of law and facts are involved for adjudication. For the sake of convenience, facts are taken from CRR No.5082 of 2015.

2. The petitioner(s) prays for setting-aside the judgment dated 25.08.2014, passed by learned Judicial Magistrate Ist Class, Rohtak vide

which they were convicted under Sections 294 and 357 of the Indian Penal Code, 1860 (in short 'IPC') and were sentenced to undergo rigorous imprisonment for a period of 06 months and to pay a fine of Rs.3000/- (Rs.1500/- each), as well as the judgment dated 22.12.2015, passed by learned Additional Sessions Judge, Rohtak dismissing the appeal preferred by the petitioner(s) against the judgment of conviction and order of sentence dated 25.08.2014.

3. As per the prosecution case, the complainant-Babita Sharma was employed as teacher in Government Senior Secondary School, Sarai Ahmad Naseerpur. Both the petitioners-accused were also employed, as teachers in the same school. On 16.05.2008, the complainant presented an application (Ex.PW2/A) before the Deputy Superintendent of Police submitting therein that earlier she had made a complaint to the police against both the accused for their obscene acts and the threats extended by them to her, time and again. Thereafter, petitioner-Rajender Singh threatened to implicate her and her husband in a false case under the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and petitioner-Suresh started calling on her mobile phone and uttered obscene words while threatening to kill her. Not only that, he also harassed her mentally by making multiple calls a day on her mobile phone.

4. On 13.05.2008, petitioner-Suresh Kumar took a photograph of the complainant from his mobile phone. When she made a complaint qua the same to Social Studies teacher and In-charge

namely Mahender Singh, the petitioner- Suresh Kumar pushed her into a room and tried to close the door, with the intention to outrage her modesty. However, the complainant managed to escape. At that time, the behavior of Mahender Singh, In-charge was also improper and immoral. In these circumstances, she made a complaint to the police. In the application, she had also disclosed her mobile phone number and that of petitioner- Suresh Kumar, from which the latter had made phone calls to her.

5. Learned counsel for the petitioner(s) *inter alia* contends that the alleged incident had taken place on 13.05.2008, however, the FIR (supra) was registered on 16.05.2008 on the basis of a complaint (Ex.PW1/A) made to the concerned Deputy Superintendent of Police on 16.05.2008. Moreover, this is the third version of events narrated by the complainant. The initial complaint was made by her to PW – Mahender Singh and the second one was made to the jurisdictional police authorities. This fact of having filed two complaints previously has been suppressed by the complainant. As such, it is very likely for the complainant to have made material improvements, after seeking legal advice. Therefore, the testimony of complainant cannot be treated as a credible piece of evidence.

6. Further, the complainant had allegedly made the first complaint to Mahender Singh, an independent witness examined as PW6, who has not supported the case of the prosecution. He has also denied having made any statement before the police under Section 161

Cr.P.C. The site plan relied upon by the prosecution also remains unproven as PW4-ASI Rajbir Singh, who prepared the site plan and produced the same as Ex.PW4/1, did not appear for his cross-examination. As such, whether the place of occurrence is a public place or not, remains unclear. It is further contended that the depositions of the complainant as PW2, PW3-Kailash, PW4-ASI Rajbir Singh and PW5-ASI Rajbir Singh are not signed by the Presiding Officer and therefore, in view of the provisions contained in Sections 275 and 276 Cr.P.C., no reliance can be placed upon them. In fact, this lapse would vitiate the entire proceedings as the trial against the petitioner(s) suffers from an incurable illegality. Learned counsel for the petitioner refers to the statement of PW2, available at page Nos.129 and 133 of LCR, the deposition of PW3-Kailash, available at page Nos.147, 105 and 106, and PW5-ASI Rajbir Singh available at page No.107, to buttress his claim. Learned counsel for the petitioner(s) has relied upon the judgment of this Court in ***"Rajinder Kumar vs. State of Haryana",*** **2008(3) R.C.R. (Criminal) 422**, wherein it has been categorically held that a deposition of a witness, unsigned by the Presiding Officer, cannot be considered as a mere curable irregularity.

7. He further submits that PW4-Rajbir Singh, who had partly investigated the matter, has not come present for his cross examination and as such, the part of the investigation carried out by him remains unproved. On this ground alone, the petitioner(s) are entitled to be acquitted of the charges framed against them. The details and ID of the

two mobile numbers are only proved as ‘Mark A’ and ‘Mark B’ and are not proven on record, in accordance with law. Finally, no staff member or student were joined during the investigation, to lend any credence to the case set up by the complainant.

8. *Per contra*, learned State counsel opposes the prayer made by the petitioner(s) on the ground that the complainant has duly proved that the petitioner(s) used to tease and harass her. The testimony of the complainant and her husband also prove that both the petitioner(s) did obscene acts in front of her and threatened to kill her. Further, the learned Courts below have correctly appreciated the evidence on record while passing their respective judgment(s) and as such, the same does not require any interference.

9. Having heard the learned counsel for the parties and perusing the record with their able assistance, it transpires that, indubitably, the provisions of Section 275 of Cr.P.C. would be applicable in the present case, keeping in view the punishment provided under Sections 294 and 357 of IPC. Section 275 Cr.P.C., which corresponds to Section 310 of the Bharatiya Nagarik Suraksha Sanhita, 2023, reads as follows:-

> ***Section 275. Record in warrant-cases.***
> *(1) In all warrant-cases tried before a Magistrate, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the Magistrate himself or by his dictation in open court or, where he is unable to do so owing to a physical or other*

incapacity, under his direction and superintendence, by an officer of the Court appointed by him in this behalf.

Provided that evidence of a witness under this sub-Section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence.

(2) Where the Magistrate causes the evidence to be taken down, he shall record a certificate that the evidence could not be taken down by himself for the reasons referred to in sub-Section (1).

(3) Such evidence shall ordinarily be taken down in the form of a narrative; but the Magistrate may, in his discretion take down, or cause to be taken down, any part of such evidence in the form of question and answer.

(4) The evidence so taken down shall be signed by the Magistrate and shall form part of the record.

(emphasis added)

10. A bare perusal of the aforementioned provision indicates that any evidence taken by the jurisdictional Magistrate, in written form, shall be signed by him for it to be considered as evidence and form a part of the record of the jurisdictional Court. As such, the drill of sub-section (4) of Section 275 Cr.P.C. is mandatory in nature and non-signing of the deposition of the witnesses, by a Magistrate would be fatal to the case of the prosecution. In fact, the failure to abide by Section 275(4) Cr.P.C. alone would be sufficient to suffocate the case of the prosecution since the same is not an inconsequential irregularity rather it impacts the entire prosecution. Any testimony recorded in a

warrant case, without following the drill of Section 275(4) Cr.P.C., cannot be read into evidence.

11. Further, it is trite law that all the evidence collected by the Investigating Officer during the course of investigation, is required to be proved in accordance with law. In the present case 02 Investigating Officers i.e. PW4 and PW5 both named Rajbir Singh, conducted the investigation. PW4 has not come forward for his cross-examination and consequently, the part of the investigation conducted by him and the evidence collected by him, remains unproved. Additionally, the deposition of the second Investigating Officer, who appeared as PW5, was not signed and endorsed by the jurisdictional Court, rendering the same unworthy of any reliance.

12. It is trite law that the testimony of a witness cannot be read into evidence till the opposite party is granted an opportunity to cross-examine him/her. Denial of such opportunity would prejudice the opposite party and hamper their ability to present best available evidence, which is in direct violation of the right to free and fair trial enshrined under Article 21 of the Constitution of India as well as the principles of natural justice. While it is true that the testimony in itself might have some probative value but it is the circumstances that would cause the Court to decide if cross-examination can shake the witness' credibility. A two Judge bench of the Hon'ble Supreme Court in ***Ekene Godwin & another Vs. State of Tamil Nadu 2024(3) R.C.R. (Criminal) 341***, speaking through Justice Abhay S. Oka, opined as follows:

> *"7. The learned Judge seems to have adopted this method only because the High Court had fixed a time-bound schedule for the disposal of the case. He could have always sought an extension of time from the High Court.* ***Therefore, recording only the examination-in-chief of 12 prosecution witnesses without recording cross-examination is contrary to the law.****"* (emphasis added)

Further, a Division Bench of the Orissa High Court in ***Sadan Bhalu & others Vs. State of Orissa 2010(45) Orissa CriR 231***, speaking through Justice L.K. Mishra, opined s follows:

> *"8. It is cardinal principle of law that any oral evidence to be used in a judicial proceeding must be tested by cross-examination. Otherwise the same cannot be called evidence. No doubt there are exceptions to the same such as statement made under section 32 of the Indian Evidence Act & under Section 299 of the Cr.P.C. Such statements are admissible in evidence without the maker being cross-examined. These are exceptions & not the rule. To provide an exception to the rule, a statutory provision is necessary & there can be no exception to that.* ***In other words, no statement of a witness can be utilized as evidence without cross-examination unless there is a statutory provision providing for the same.*** *There is no statutory provision making statement recorded under Section 164 of the Cr.P.C. admissible in evidence without the maker of the same being examined in the Court. The statement made under Section 164 of the Cr.P.C. can be used either to corroborate or contradict the maker thereof during trial. In cannot be used for any other purpose in a case. Thus, the Learned Trial Court committed grave error in law basing the conviction solely on the statement of the deceased witness recorded under Section 164 of the Cr.P.C."* (emphasis added)

13. In view of the above, both the revision petitions are allowed and the judgment dated 22.12.2015, passed by learned Additional Sessions Judge, Rohtak, along with the judgment dated 25.08.2014, passed by learned Judicial Magistrate Ist Class, Rohtak vide

which the petitioners were convicted under Sections 294 and 357 IPC, are hereby set aside qua the petitioner(s). Both the petitioner(s) are acquitted of the charges framed against them and their bail/surety bonds stand discharged.

14. Pending applications, if any, also stands disposed of.

15. A photocopy of this order be placed on the file of other connected case.

(HARPREET SINGH BRAR)
JUDGE

10.02.2025
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No