

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 06.12.2023

Pronounced on: 22.12.2023

1. Union Territory of Jammu and KashmirAppellant(s)/Petitioner(s)
Th. Police Station, Ramnagar,
District Udhampur.

Through: Mr. Dewakar Sharma, Dy. AG.

Vs

..... Respondent(s)

Through: Mr. Rajat Gupta, Advocate.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. Learned counsel for the respondents submits that the delay be condoned.
2. Accordingly, the delay in filing the appeal is condoned.
3. The appellant has assailed the order dated 29.11.2021 passed by the Court of learned Principal Sessions Judge, Udhampur (hereinafter to be referred as "the trial court") by virtue of which the learned trial court has refused to take action against the respondents under section 340 Cr.P.C for perjury, as they had resiled from their earlier statements.
4. The appellant has impugned the order passed by the learned trial court on the ground that as per the provisions contained in Section 340 Cr.P.C, the

learned trial court should have either made enquiry to the truthfulness of the version given by the hostile witnesses or made complaint to the court for initiating proceedings against the hostile witnesses but could not have rejected the prayer of the appellant without assigning any plausible reason.

5. Mr. Dewakar Sharma, learned counsel for the appellant vehemently argued that the respondents were required to be prosecuted for perjury as they had resiled from their earlier statements.
6. Per contra, Mr. Rajat Gupta, learned counsel for the respondents submitted that the respondents had not made any false statement before the learned trial court, as such, there is no illegality in the order impugned.
7. Heard and perused the record.
8. A perusal of the record reveals that the respondent No. 1 who was minor on 25.03.2020 accompanied by her father lodged a written complaint at Police Station, Ramnagar that while she was returning back to her village from Ramnagar on matador after buying the practical notebook, the accused-Des Raj caught her, dragged her into the nearby jungle and sexually assaulted her. During the course of investigation, the Investigating Officer recorded the statements of the material witnesses-the prosecutrix, her mother and father and charge-sheet for commission of offences under Sections 376 and 341 IPC and Section 4 of POCSO Act was filed against the accused-Des Raj. During the course of trial, the statements of three material witnesses i.e. the prosecutrix, her father and mother were recorded, but they did not support the prosecution case and were declared hostile. The learned trial court vide order dated 29.11.2021

dismissed the charge-sheet and refused to prosecute the witnesses for perjury for resiling from the earlier statements made during the course of investigation before the learned Magistrate. A perusal of the statement of the respondent No. 1 reveals that she has stated in her examination-in-chief that the accused slapped her thrice and she denied the allegations of her sexual assault by the accused. The respondent No. 2. i.e. the mother of the prosecutrix has also deposed in the similar manner that the accused slapped her daughter. To same extent, the father of the prosecutrix has deposed in his statement before the trial court. The respondent No. 1 has stated in her cross-examination that the application was written by one person who was sitting outside the Police Station and he advised her to make certain additions, as the Police could not arrest the accused in a simple case of slapping.

9. So far as the respondent No. 2 i.e. the mother of the prosecutrix is concerned, she has simply narrated what was told to her by the prosecutrix, as such, it cannot be said that she made a false statement before the Court. So far as the prosecutrix is concerned, she in her cross-examination stated that she was not aware about offence of rape. She was minor when her statement was got recorded by the Police and she has given the justification for making the statement before the Court in respect of slapping only because the person who had drafted her application for registration of FIR told her to make additions, as the Police could not arrest the accused in case of allegations of slapping only.

10. A perusal of the record reveals that the accused was charged for commission of offences under Sections 376/506 IPC and Section 4 of Protection of Children from Sexual Offences Act.
11. Section 22 of Protection of Children from Sexual Offences Act is reproduced as under:
- (1) Any person who makes a false complaint or provides false information against any person, in respect of any offence committed under Section 3, 5, 7 and Section 9 solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.
 - (2) Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child.
 - (3) Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimising such child in any of the offences under this Act, shall be punished with imprisonment which may extend to one year or with fine or with both.
12. A perusal of the Section 22(2) of the Protection of Children from Sexual Offences Act would reveal that if a false complaint has been made or false information has been provided by a child, no punishment shall be imposed upon such child. In the present case, the prosecutrix was admittedly 17 years of age, meaning thereby she was a minor child and because of this reason only the accused was prosecuted for commission of offence under Section 4 of POCSO Act. Once, the special Act prohibits the punishment of a child in respect of false information provided by a child, the child cannot be prosecuted for commission of offence of perjury.
13. Otherwise also, in order to prosecute and punish a witness for offence of perjury, it must be established that the statement was made by him deliberately and consciously, which subsequently, was found to be false

as a result of comparing it with other un-impeachable evidence on record. So far as the instant case is concerned, there is absolutely no other evidence on record which may establish the fact that the witnesses made false statements deliberately before the trial court contrary to the statements made during investigation before the learned Magistrate. In **Aarish Asgar Qureshi v. Fareed Ahmed Qureshi, (2019) 18 SCC 172**, the Hon'ble Supreme Court of India has held as under:

“10. It is clear therefore from a reading of these judgments that there should be something deliberate — a statement should be made deliberately and consciously which is found to be false as a result of comparing it with unimpeachable evidence, documentary or otherwise. In the facts of the present case, it is clear that the statement made in the anticipatory bail application cannot be tested against unimpeachable evidence as evidence has not yet been led. Moreover, the report dated 12-11-2011 being a report, which is in the nature of a preliminary investigation report by the investigating officer filed only two days after the FIR is lodged, can in no circumstances be regarded as unimpeachable evidence contrary to the statements that have been made in the anticipatory bail application. Further, as has been correctly pointed out by the learned counsel appearing on behalf of the appellant, that though the submission recorded by the High Court in para 3 of the order dated 30-11-2017 is from the aforesaid paragraph in the anticipatory bail application, yet, the High Court made it clear that it was granting anticipatory bail principally because the FIR annexed to the bail application does not show that there was sexual intercourse of the applicant with his wife during the course of their separation as a result of which it was not possible to assess whether the averment regarding the offence punishable under Section 377 IPC is or is not substantiated. The High Court also recorded that considering that the husband and wife had resided together after marriage only for a very brief period, and that the husband was granted interim anticipatory bail, decided to grant final anticipatory bail on these grounds. **It is clear, therefore, that both the grounds stated by the High Court would not suffice to initiate prosecution under Section 340 read with Section 195(1)(b) CrPC.”**

14. The respondent No. 1 being a minor cannot be prosecuted at all, whereas the respondent No. 3 has never made any statement before the Magistrate during the course of investigation, as such, he too cannot be prosecuted.

So far as the respondent No. 2 is concerned, she had stated what was told to her by her daughter. Once the respondent No.1 cannot be prosecuted being minor, then the respondent No.2 also cannot be prosecuted as she had deposed before the Magistrate only, what was disclosed to her by her daughter and she was not an eye witness at all.

15. In view of the above, this Court is of the considered view that the present appeal is without any merits, as such, the same is, accordingly, **dismissed**.

(RAJNESH OSWAL)
JUDGE

Jammu
22.12.2023
Sahil Padha

Whether the order is speaking: Yes/No.
Whether the order is reportable: Yes/No.

