

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

**Criminal Revision 300 of 2008
Date of Decision: August 1, 2016**

Rakesh Kumar		Petitioner
	Versus	
State of Haryana		 Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Sandeep K. Yadav, Advocate
for the petitioner.

Mr. Ashok S. Chaudhary, Addl. Advocate General., Haryana.

T.P.S.MANN, J. (Oral)

The petitioner was tried for committing an offence punishable under Section 377 IPC. Vide judgment and order dated 6/7.9.2006, the learned Additional Chief Judicial Magistrate, Narnaul, after holding that the prosecution had proved its case against the petitioner beyond reasonable doubt, convicted him for the aforementioned offence and sentenced him to under rigorous imprisonment for two years and to pay a fine of Rs.500/- and in default of payment of fine, to undergo simple imprisonment for a period of five days. The fine imposed was deposited by the petitioner there and then.

Aggrieved of his conviction and sentence, the

petitioner preferred an appeal. Vide judgement dated 11.1.2008, learned Sessions Judge, Narnaul, while finding no merit in the appeal, dismissed the same. Still not satisfied, the petitioner preferred the present revision, in which, he is currently on bail.

The case of the prosecution, in nutshell, is that on 15.2.2002 at about 9.00 p.m., the petitioner had committed carnal intercourse against the order of nature with a boy, aged 14/15 years. The occurrence was witnessed by the victim's brother, who was also returning home like the victim.

Learned counsel for the petitioner has not challenged the judgments passed by the learned Courts below while convicting the petitioner under Section 377 IPC. However, it is submitted that at the time of occurrence, the petitioner was about nineteen years of age. He is facing the agony of criminal prosecution for the last more than fourteen years. He is the only person responsible to maintain his aged parents besides his wife and a daughter. He is not a previous convict. After being released on bail pursuant to the order passed by this Court on 27.3.2008, he has not misused the concession. It is also submitted that out of the sentence of two years upon him, the petitioner has already undergone a period of about five months. Prayer has, accordingly, been made for reducing the substantive sentence of imprisonment of the petitioner to the one already undergone by

him.

Learned State counsel has vehemently opposed the prayer by submitting that the petitioner does not deserve any leniency in the matter of sentence as he had committed sodomy on the victim, who was about 14/15 years of age, and also dumb and handicap. Further, from the testimony of PW1 Dr. Ravi Sudan Sharma, Medical Officer, Government Hospital, Narnaul, it stood duly established that the victim, aged fourteen years had been subjected to sodomy. Learned State counsel has, however, produced the custody certificate, as per which, the petitioner has undergone an actual sentence of four months and twenty two days.

After hearing learned counsel for the parties and taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose is likely to be served by sending the petitioner behind the bars, once again, for undergoing his remaining sentence of imprisonment. Ends of justice would be suitably met, if his substantive sentence of imprisonment is reduced to the one already undergone by him. At the same time, the fine imposed upon him can be suitably enhanced.

Resultantly, the conviction of the petitioner under Section 377 IPC is upheld. His substantive sentence of

imprisonment is reduced to the one already undergone by him.
The fine of Rs.500/- imposed upon the petitioner is, however, enhanced by Rs.10,000/-. The enhanced amount of fine, i.e. Rs.10,000/- be deposited by the petitioner with the trial Court within three months from today, failing which, he shall be required to undergo simple imprisonment for three months.

The revision is, accordingly, disposed of.

August 1, 2016
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No