

CRR-742-2016 (O & M)

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

**CRR-742-2016 (O & M)
Date of Decision: 20.09.2016**

Vanit Kumar

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Vikram Jeet Singh, Advocate,
for the petitioner.

Ms. Shivali, AAG, Punjab.

INDERJIT SINGH, J.

Petitioner, Vanit Kumar, has filed this revision petition against respondent, State of Punjab, under Section 401 of the Code of Criminal Procedure, 1973 challenging the judgment of conviction and order of sentence dated 03.01.2015 passed by learned Principal Magistrate, Juvenile Justice Board, SAS Nagar, Mohali whereby the petitioner was convicted under Section 377 IPC and was sentenced to custody in Special Home for a period of 03 years under Section 15 (I) (g) of the Juvenile Justice (Care and Protection of Children) Act, 2000 and also challenging the judgment dated 29.01.2016 passed by learned Additional Sessions Judge, SAS Nagar, Mohali whereby appeal filed by the petitioner was dismissed.

It is stated in the revision that both the impugned judgments passed by the courts below are illegal, arbitrary, perverse and against the law and facts.

Notice of motion was issued in this revision. Learned State

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counsel put in appearance on behalf of the respondent-State and contested this petition.

The brief facts of the case, as noted down in the judgment passed by learned Principal Magistrate Juvenile Justice Board, SAS Nagar, Mohali, are as under:

“2. The brief facts of the prosecution case are that on 11.11.2012 complainant Jagtar Singh son of Joginder Singh, resident of village Bassian Brahmana, P.S.Sadar Kharar, District SAS Nagar (Mohali), had suffered a statement before the police to the effect that he is running a Karyana shop at village Dharak Kalan and as usual after closing his shop at about 8.15 P.M., he came to his house and found that his son victim.... aged about 13 years, who is studying in 8th class, was crying. On asking, his son victim.. disclosed that on that day i.e. 11.11.2012, at about 5.00 P.M., Vanit Kumar son of Narinder Kumar (i.e. juvenile in the present case) asked him to come with him to take wood pieces at canal, whereupon he went with him there. After reaching at canal, Vanit Kumar removed his clothes and committed sodomy with him, and on his raising alarm, Vanit Kumar fled away from there. Accordingly, on the basis of the above said statement made by the complainant, present case was registered, and thereafter, the investigation was pressed into service, during the course of which, rough site plan of the place of occurrence was prepared, and statements of witnesses were recorded. During investigation, Vanit Kumar was found to be juvenile, and after the completion of necessary investigation separate report was presented before the Principal Magistrate Juvenile Justice Board against the abovesaid juvenile.”

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Vide impugned judgment of conviction and order of sentence dated 03.01.2015, learned Principal Magistrate, Juvenile Justice Board, SAS Nagar, Mohali, after appreciating the evidence, convicted and sentenced the petitioner, as stated above. Aggrieved from the said judgment, the petitioner preferred an appeal which was dismissed by learned Additional Sessions Judge, SAS Nagar, Mohali vide impugned judgment dated 29.01.2016.

Aggrieved from the above said judgments, the present revision petition has been filed.

At the time of arguments, learned counsel for the petitioner has not argued qua the conviction of the present petitioner, passed by the courts below. He only prayed that the petitioner has now become major, therefore, he could neither be sent to remand home nor to jail. In support of his contentions, learned counsel relied upon *Sanjay alias Kala vs. State of Haryana* 2011 (2) R.C.R. (Criminal) 899, wherein it has been held by this Court that accused sentenced to 03 years; he was juvenile at the time of incident; he became major in the meantime; he could neither be sent to remand home nor to jail; he had already undergone more than 07 months and remaining sentence set aside.

Learned counsel for the petitioner further relied upon *Babban Rai and Anr. vs. State of Bihar* (2007) 13 SCC 88 wherein it has been held by the Hon'ble Supreme Court that if the age of accused persons on the date of occurrence is found to be below 16 years, they would be entitled to protection of Juvenile Justice (Care and Protection of Children) Act, 2000 and sentence of life imprisonment has been set aside and they being major, not be sent to remand home. On the same point, learned counsel for the

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petitioner also relied upon *Pardeep Kumar vs. State of U.P.* 1994 Cri.L.J. 148 and *Rajesh Kumar vs. State of Haryana* 2011 (1) R.C.R. (Criminal) 830.

Since learned counsel for the petitioner did not challenge the conviction of the petitioner, therefore, judgments of conviction passed by the courts below are upheld.

I have gone through the case law cited by learned counsel for the petitioner and ratio of law laid down in these case law (supra) fully applies to the facts of the present case.

Perusal of impugned judgment dated 29.01.2016 passed by learned Additional Sessions Judge, SAS Nagar, Mohali shows the age of petitioner-Vanit Kumar as 19 years, meaning thereby he became major at that time. Furthermore, the fact that the petitioner has become major, has not been contested by the State. The petitioner is stated to be in custody in Special Home since 29.01.2016.

Keeping in view the ratio of law laid down in judgments (supra) by the Hon'ble Supreme Court as well as this Court, sentence imposed upon the petitioner is reduced to the sentence already undergone by him. Petitioner Vanit Kumar, who is in Special Home, be set at liberty forthwith, if his custody is not required in connection with any other case.

Accordingly, present criminal revision stands partly allowed.

20.09.2016

parveen kumar

**(INDERJIT SINGH)
JUDGE**

Note:	Whether speaking/reasoned	:	Yes
	Whether reportable	:	No