IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

Criminal Appeal No. 5202-SB of 2014(O&M)

Date of Decision: October 10 , 2017.

Vijay Kumar ..... APPLICANT/APPELLANT (s)

Versus

State of Haryana ..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rahul Gautam, Advocate
for the applicant/appellant.

Mr. Anmol Malik, AAG, Haryana.

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LISA GILL, J.

The appellant has been convicted for the offences punishable under Section 354 IPC and Sections 8/10 of the Protection of Children from Sexual Offences Act, 2012 (for short, the 'POCSO Act') vide judgment dated 31.10.2014 passed by the learned Sessions Judge, Panipat. By a separate order dated 01.11.2014 passed by the learned trial court, the appellant has been sentenced to undergo rigorous imprisonment for five years, besides, pay a fine of ₹25,000/- for the offence under Section 354 IPC. He has been sentenced to undergo rigorous imprisonment for five years, besides, pay a fine of ₹25,000/- for the offence under Sections 8/10 of the POCSO Act. In default for payment of fine, the appellant is to undergo further rigorous imprisonment for three years. However, both the sentences are ordered to run concurrently.

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The present appeal has been filed through the High Court Legal Services Committee impugning the said judgment of conviction and order of sentence.

Criminal Misc. No.6392 of 2017 was moved by the appellant seeking suspension of sentence during pendency of the appeal on the ground that substantial period of the sentence imposed upon him has been undergone. Record of this case was called for. As per the custody certificate dated 15.08.2017, it transpires that the applicant/appellant has undergone the sentence imposed upon him. The applicant/appellant is stated to be undergoing imprisonment for a period of six years w.e.f. 25.05.2017 for default in payment of fine of ₹50,000/- imposed upon him by the learned trial court. The matter was adjourned on the request of learned counsel for the applicant/appellant.

Learned counsel submits that the applicant/appellant does not wish to challenge his conviction in view of the fact that he has already undergone substantive sentence imposed upon him. However, it is urged that the sentence imposed upon him for default in payment of fine is in contravention of specific provisions of Section 65 IPC.

With the consent of learned counsel for the parties, the present appeal is taken up for hearing today.

Brief facts of the case are that, FIR No.1104 dated 26.09.2013 under Section 354 IPC and Sections 8/10 of the POCSO Act was registered on a written application submitted by the complainant, who is the aunt of the victim. It is stated that the complainant's sister and her husband died in the year 2011. Two daughters of her deceased sister and brother-in-law were residing with the

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complainant's mother. Younger daughter of the complainant's sister aged about three years was playing in the street on 26.03.2013. When the child was not seen in the vicinity for some time, the complainant went looking for her. She saw the appellant, a tenant in the house opposite, sexually assaulting her niece in an adjoining dilapidated house. When the complainant raised a hue and cry, the appellant tried to flee. However, people of the vicinity attracted to the spot, tried to apprehend him. He fell down in the hustle and sustained injury on his left eye. Charges for the offences punishable under Section 354 IPC and Section 10 of the POCSO were framed against the appellant to which he pleaded not guilty and claimed trial.

The prosecution examined as many as five witnesses to prove its case. The appellant in his statement under Section 313 Cr.P.C. denied the incriminating evidence put to him. He stated that the victim in this case came to his rented premises on 26.09.2013 to play with the white rats kept by his wife. When he objected to the same, his wife retorted loudly. Sister of the complainant on hearing the noise arrived and gave brick-bat blows to him, due to which he sustained injuries. The complainant, it is submitted, lodged a false complaint against him only with a view to save her own sister. He further stated that he had three children. One of his sons passed away and he was residing with his wife and other two children. It was argued on behalf of the appellant that there was no medical evidence on record to prove the allegations against the appellant. Injuries were caused to him by the complainant's sister.

The learned trial court on appreciating the evidence on record and keeping in view the facts and circumstances of the case, concluded that the

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prosecution successfully proved its case beyond reasonable doubt against the appellant. Thereby the appellant was convicted and sentenced as detailed above.

As mentioned earlier, learned counsel for the appellant does not challenge the conviction of the appellant vide impugned judgment dated 31.10.2014 in view of that fact that he has already undergone the entire sentence imposed upon him. It is vehemently argued that the maximum sentence provided for the offence punishable under Section 354 IPC is five years and for the offence punishable under Section 10 of the POCSO Act, the maximum punishment prescribed is seven years. Thus in view of Section 65 IPC, the imprisonment of three years each for default in payment of fine is not permissible. Moreover, both the sentences are ordered to run concurrently, there is thus no question of the appellant undergoing rigorous imprisonment for six years (three years each) for default in payment of fine payable for the offences under Section 354 IPC and Section 10 of the POCSO Act. It is further submitted that the appellant is not involved in any other criminal case either before or after the registration of the present FIR. He is the only bread winner in his family. The appellant, it is urged, is in such dire financial straits that he did not even have the wherewithal to prefer the present appeal which has been filed through the High Court Legal Services Committee. It is thus prayed that the rigorous imprisonment imposed upon him for default in payment of fine be accordingly reduced.

Heard learned counsel for the parties.

Section 65 IPC prescribes the limit to imprisonment for non-payment of fine when both imprisonment and fine are awardable. It is

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specifically provided that the imprisonment in default of payment of fine shall not exceed 1/4th of the term of maximum imprisonment fixed for the offence. Section 65 IPC reads as under:-

> "**65. Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable**.— The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine."

The maximum imprisonment for the offences punishable under Section 354 IPC and Section 10 of the POCSO act is five years and seven years, respectively. Accordingly, the imprisonment of three years imposed upon the appellant by the learned trial court for default in payment of fine is not sustainable.

Learned counsel for the State is unable to deny that the present appeal has been filed through the High Court Legal Services Committee. There is nothing on record to dispute the factum of the appellant being a poor person and the sole bread-winner of his family.

Custody Certificate dated 09.10.2017 of Mr. Jaswant Singh, Deputy Superintendent, District Prison, Karnal indicating the period of custody of the appellant, filed in Court today, with a copy thereof to learned counsel for the appellant, is taken on record subject to just exceptions.

As per the said custody certificate, the appellant is not reported to be involved in any other criminal case. He has admittedly undergone the substantive sentence imposed upon him for the offences punishable under Section 354 IPC and Section 10 of the POCSO Act on 24.05.2017. He has

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2017.10.14 15:11
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further undergone rigorous imprisonment of nearly six months thereafter in default for payment of fine.

The Hon'ble Supreme Court in **Shanti Lal v. State of M.P., *(2007) 11 SCC 243*** while considering the inability of the appellant in depositing the fine of ₹1,00,000/- under the NDPS Act, reduced the imprisonment in default of payment of fine from a period of three years to six months.

Keeping in view the peculiar facts and circumstances of the case, while upholding the conviction and fine imposed upon the appellant, it is considered just and expedient to reduce the period of imprisonment imposed upon the appellant in default of payment of fine to the one already undergone by him while upholding the conviction of the appellant under Section 354 IPC and Section 10 of the POCSO Act vide judgment dated 31.10.2014 passed by the learned Sessions Judge, Panipat as well as the sentence imposed upon him for the commission of the said offences vide order dated 01.11.2014

Accordingly, with the abovesaid modification in the period of imprisonment imposed upon the appellant in default of payment of fine, this appeal is disposed of.

Consequently, the appellant be released forthwith, in case not required in any other case.

(LISA GILL)
JUDGE

October 10 , 2017.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

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