

229 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No. 4271 of 2016 (O&M)

Date of decision : May 08, 2017

Ratnesh Kumar and anotherPetitioners

Versus

State of PunjabRespondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Naveen Bawa, Advocate
for the petitioner.

Mr. Deep Singh, AAG, Punjab.

LISA GILL, J.

The petitioners have challenged judgment and order dated 23.12.2013 passed by the Principal Magistrate, Juvenile Justice Board, Ludhiana as well as order dated 24.10.2016 passed by learned Additional District and Sessions Judge, Ludhiana.

The petitioners were found guilty of the offence punishable under Section 376 IPC. As they were juvenile at the time of commission of the offence, they were ordered to sent to the Special home for a period of three years by the Principal Magistrate, Juvenile Justice Board, Ludhiana vide order dated 23.12.2013.

As per the allegations in FIR No. 124 dated 21.10.2012 under Section 376 IPC registered at Police Station Machhiwara, Ludhiana, the petitioners violated the daughter of the complainant aged about ten (10)

years. The complainant (PW1) has clearly stated that his wife was working as a maid servant at the house of the owner of the marriage palace. Their daughter used to visit the house of the owner due to this reason and would often take meals when functions were being held at the marriage palace. His two daughters went to the marriage palace on 21.10.2012 at about 5/6 p.m. to take their meals at the marriage palace. They came back at about 7.15 p.m. One of his daughters (the victim) aged 10 years was weeping. Her clothes were bloodstained. She revealed on inquiry that two boys had taken her in one of the rooms in the marriage palace to serve her some eatables. They bolted the room from inside. Both of them violated her one after the other. The medical evidence on record cogently proves the commission of offence. The petitioners were duly identified. The petitioners on the basis of evidence on record were, accordingly, found guilty of the offence in question.

It is to be noted that the petitioners did not assail their conviction on merits in the appeal preferred by them before the learned lower appellate Court. The challenge was laid in regard to the quantum of sentence only. Learned Additional District and Sessions Judge, Ludhiana observed that the appellants have attained majority in the interregnum, therefore, they cannot be sent to the Special Home. The order of the Principal Magistrate, Juvenile Justice Board, Ludhiana qua the sentence was modified. Both the petitioners were placed under the control and protection of Civil Surgeon, Civil Hospital, Ludhiana to be deputed with the Senior Medical Officers, Civil Hospital, Ludhiana for a period of two years to render community service. The Senior Medical Officer would provide suitable work as per their age and eligibility from 9.00 a.m. to 5.00 p.m. It

was further directed that the attendance of the convicts would be taken as per law. The Senior Medical Officer was directed to report before the Court regarding the acts, conduct and behaviour of the convicts every month. The Senior Medical Officer was afforded liberty to grant gazetted holidays/leaves to each of the convicts in two years to be forwarded to the Board.

Learned counsel for the petitioners at the very outset submits that he does not impugn the conviction of the petitioners and would not address arguments on the merits of the case. It is, however, submitted that keeping in view the fact that the petitioners are permanent residents of Uttar Pradesh, the period of community service be reduced from two years to that already rendered by them till date.

This prayer has been opposed by learned counsel for the State.

I have heard learned counsel for the parties and have gone through the file.

It is noted that the petitioners are guilty of violating a ten year old child. They have been convicted for the offence punishable under Section 376 IPC. The learned Additional District and Sessions Judge, Ludhiana has directed them to render community service for two years at the Civil Hospital, Ludhiana instead of being sent to the Special Home for a period of three years.

The Hon'ble Supreme Court in **State of Madhya Pradesh versus Saleem @ Chamaru and another 2005 (5) SCC 554** has specifically observed that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not endure under such threats.

Similarly, Hon'ble Supreme Court in **State of Madhya Pradesh versus Sheikh Shahid 2009 (12) SCC 715** has observed that any liberal attitude by imposing meagre sentences or taking too sympathetic a view merely on account of lapse of time in respect to such offences will be counter productive in the long run and against societal interest, which needs to be taken care of and strengthened by string of deterrence inbuilt in the sentencing system.

In the facts and circumstances of the case, I do not find any mitigating circumstances to further reduce the period of community service directed to be rendered by the petitioners. The fact that the petitioners are residents of Uttar Pradesh cannot be a ground for reduction of this period.

Accordingly, this petition is dismissed.

May 08, 2017
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes/No