

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-4319-2016 (O&M)

Date of decision: 25.08.2017

Azad

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. BS Tewatia, Advocate for the petitioner.

Mr. Surender Singh, AAG, Haryana.

RAMENDRA JAIN, J. (ORAL)

1. Through the instant revision petition, order dated 23.08.2016 of the First Appellate Court, Faridabad, has been challenged, modifying the judgment of conviction dated 11.06.2013 of the trial Court, thereby convicting the petitioner under Section 511 read with Section 377 IPC instead of Section 377 IPC.

2. Learned counsel for the petitioner contends that the Courts below did not consider the writing Ex. D-1 in between the father of the petitioner and the complainant-Sham Lal. In fact, there was a money dispute in between the father of the petitioner and complainant. The impugned FIR under Section 377 IPC, was falsely got registered against the petitioner to settle score in the money transaction. The MLR Ex. PW-6/A signed by PW-6 Dr. Ram Bhagat, was a fabricated document, inasmuch as the same was prepared in two parts. In the initial part of it, "*no external*

Contrary to it, in the second part of it, in connivance with the complainant “slight reddened and tenderness” was shown in the area around anus, besides a superficial abrasion in 2 O'clock position which on examination and insertion of finger was observed painful. More so, there was a delay of six hours in lodging the FIR which is fatal to the prosecution case.

3. On the other hand, learned State counsel, while pleading the legality and validity of the impugned judgments of both the Courts below, has refuted the above submissions made by learned counsel for the petitioner and prayed for dismissal of the instant revision petition.

4. I have given my anxious consideration to the submissions made by learned counsel for the parties.

5. As far as delay of six hours in lodging the FIR is concerned, in the considered opinion of this Court, the same was not fatal to the prosecution. According to the prosecution story, the alleged occurrence took place around 5.00 P.M. on 28.07.2006. The FIR was registered at 11.30 P.M. PW-3 Sham Lal (complainant), had specifically mentioned in his complaint (Ex. PW-2/A) that the delay in lodging the FIR occurred on account of consultation with the neighbours before lodging the same. The above fact was also stated by victim PW-5 Brijesh. Even otherwise, in such type of offence under Section 377 IPC, the honour and reputation of the family and the victim is at stake. Due deliberations and consultations are also made before adopting any legal recourse or any criminal action. The victim, in the instant case, was 5 years old, at the time of occurrence. His entire life, career and reputation was at stake, therefore, the complainant (PW-3) being his father, might have deliberated the matter with his

neighbours and other relatives before lodging the FIR. More so, the aforesaid delay of six hours in lodging the FIR is quite negligible which otherwise, does not go to the root cause, more particularly, when the prosecution has been fully able to prove the guilt of the petitioner beyond any shadow of reasonable doubt. The writing Ex. D-1, relied upon by learned counsel for the petitioner, is nothing, but a waste paper and, thus, the same has rightly not been discussed and discarded by both the Courts below. By drawing attention of this Court to the said document, learned counsel for the petitioner has made a futile effort to create a confusion, but when he was specifically asked as to why the petitioner did not take the aid of writing Ex. D-1 in his statement under Section 313 Cr.P.C., he had no answer.

6. Perusal of MLR Ex. PW-6/A shows that there is no interpolation or fabrication in the same, inasmuch it was proved by its author PW-6 Dr. Ram Bhagat. Accordingly, the submissions of learned counsel for the petitioner being devoid of any merit are turned down.

7. The prayer for reduction in the sentence of the petitioner is also declined, because the petitioner has committed a very heinous crime of carnal intercourse with a minor child of 5 years of age which is a crime against the society. In the considered opinion of this Court, the sentence awarded to the petitioner taking into account the nature of offence committed by him is on the lower side.

8. I have carefully gone through the impugned judgments of both the Courts below and find no illegality or perversity in the same. There are concurrent findings against the petitioner recorded by both the Courts

below. Accordingly, the instant revision petition, being completely devoid of any merit, is dismissed.

August 25, 2017
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No