

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

**Criminal Revision No.2446 of 2017 (O & M)
Date of Decision:-17.7.2017**

Babbu Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Parvesh Sachdeva, Advocate
for the petitioner.

HARI PAL VERMA J.

CRM No.21909 of 2017

This is an application seeking condonation of delay of 118 days in filing the revision petition.

Learned counsel for the applicant-petitioner has argued that the petitioner was juvenile and doing the labour work. Since 7.12.2016, he is behind the bars and possessed no means to engage a counsel so as to prefer revision petition before this Court. It is only when some relatives of the petitioner have come forward and arranged money in the first week of July 2017, the present revision petition has been filed though with a delay of 118 days.

For the reasons mentioned in the application, the same is

allowed and the delay of 118 days in filing the revision petition is condoned.

CRR No.2446 of 2017

The petitioner has filed the revision petition against the judgment dated 7.12.2016 passed by learned Additional Sessions Judge, Fazilka whereby criminal appeal filed by the petitioner against the judgment dated 1.5.2014 passed by the Principal Magistrate, Juvenile Justice Board, Fazilka was dismissed.

Briefly stated on 24.6.2011 on receipt of MLR No.PKG/199/11 pertaining to Rajan son of Veer Singh, resident of Mohalla Rathoran, Jalalabad, Civil Hospital, Jalalabad, ASI Manjit Singh along with some other police officials visited Civil Hospital, Jalalabad for recording the statement of victim Rajan, who was 7 years of age and a student of 2nd standard at Jalalabad. As per the victim on 23.6.2011 at about 7 PM petitioner-accused, who was residing adjoining to their house came and asked his parents that they (accused) have to go to Baba Khaki Shah temple and he took away the complainant with him. The petitioner-accused has taken away the complainant to an unknown place, which was secluded house and then after removing his underwear he committed carnal intercourse with the complainant. However, on return to his house, the complainant narrated the entire incident to his mother Manjit Kaur. Manjit Kaur has further narrated the entire occurrence to her husband Veer Singh. The complainant was admitted to Civil Hospital, Jalalabad, where he was medico legally examined. After registration of the case, the police

conducted the investigation and other formalities. Accordingly, challan against the petitioner-accused was presented in the Court. After having inquiry about the age of the petitioner, he was declared juvenile vide order dated 1.6.2012 by the Juvenile Justice Board, Fazilka.

Finding a prima facie case under Section 377 IPC against the petitioner-accused, charge was framed against him to which he pleaded not guilty and claimed trial.

The prosecution examined the complainant Rajan as PW1, his mother Manjit Kaur as PW2, Dr. P.K. Garg, Medical Officer as PW3, SI Om Parkash as PW4, ASI Manjit Singh as PW5. Report of the Chemical Examiner as Ex.PX was also tendered into evidence.

The petitioner-juvenile denied all incriminating material put against him and claimed innocent.

In order to assess whether the complainant, who is aged about 7 years is able to depose in the case, the trial Court in its wisdom put certain questions to him, which he replied with due diligence. It is only after recording the satisfaction that the complainant is able to depose, his testimony was recorded by the Court. This witness PW1 has stated that the accused is residing adjoining to their house and on the day of occurrence he came to their house. The accused asked his parents to go to Baba Khaki Shah Temple. The accused took away the complainant-Rajan (victim) along with him. He took away the victim to a secluded house and after removing his underwear he misbehaved and committed unnatural offence with him. On returning home, he (complainant) disclosed the whole matter

to his mother, who further narrated to his father. His father got him admitted in the hospital. PW2 Manjit Kaur has supported the version of the complainant. PW3 Dr. P.K. Garg, Medical Officer has proved the MLR pertaining to complainant Rajan as Ex.PW3/A and pictorial diagram as Ex.PW3/B. The doctor has proved that on 24.6.2011 when he was posted at Civil Hospital, Jalalabad, at about 9 AM, he medico legally examined Rajan, a male child, and found the alleged history of sodomy. He has reported the injury on his person i.e. "small multiple abrasions and lacerations were present around the anal region, clotted blood was present". PW4 SI Om Parkash proved arrest of the petitioner, whereas PW5 ASI Manjit Singh has proved the endorsement Ex.PW5/A and police proceedings Ex.PW5/B on the basis of which FIR Ex.PW5/C was registered. He has further proved on file the site plan Ex.PW5/D.

Thus considering the evidence as available on record and more particularly the testimony of the complainant, who is 7 years of age, the chance of falsely implication of the juvenile in such an act are very rare, still the testimony of prosecution witnesses is required to be carefully scrutinized. But as the defence counsel was not successful in settling his credibility, the trial Court convicted the petitioner as the prosecution has proved its case beyond shadow of reasonable doubt that petitioner has committed carnal intercourse with complainant Rajan, which is against the order of nature. He was held guilty for commission of offence under Section 377 IPC and petitioner was convicted by the Juvenile Justice Board vide judgment dated 1.5.2014.

The petitioner being juvenile, who can be sent to Juvenile Home for a maximum period of 3 years as imprisonment cannot be passed on juvenile, he was directed to be sent to Special Juvenile Home, Hoshiarpur for a period of 1 year and 6 months. Since the juvenile has stated that he is about 19 years of age and doing the labour work, therefore, the juvenile was sentenced to pay fine of Rs.1000/-, which he paid.

Against the judgment of conviction dated 1.5.2014 passed by the Juvenile Justice Board, Fazilka, petitioner filed an appeal. However, the said appeal was dismissed by learned Additional Sessions Judge, Fazilka vide judgment dated 7.12.2016. In these circumstances, the petitioner has filed the present revision petition impugning the judgments of the Courts below.

Learned counsel for the petitioner has argued that apart from the fact that the Courts below have not appreciated the evidence led by the petitioner, unnecessary weightage was given to the prosecution evidence. The story projected by the prosecution is concocted. There is discrepancy in the statement of PW1 Rajan and PW2 Manjit Kaur. The Courts below have failed to appreciate the fact that there are contradictions in relation to the examination of the victim by a private doctor in the locality whereas the MLR was prepared by the doctor of the Civil Hospital, Jalalabad. He further contends that the petitioner is first time offender and, therefore, he should be extended the benefit of probation under Section 4(i) of the Probation of Offenders Act, 1958.

I have heard learned counsel for the petitioner.

Statement of PW1 (complainant) inspires confidence and there was no reason to disbelieve his statement as he has made specific allegation that the accused has committed carnal intercourse with him on the day of occurrence. PW1 despite being of tendered age, has given specific reply to the lengthy cross-examination put to him. The statement made by PW2 also stands corroborated with the statement of PW1 and with the medical evidence on record where the doctor had found abrasion and lacerations around the anal region of the complainant and even clotted blood was present. Therefore, there is no ambiguity and the Courts below have rightly convicted the accused on the basis of evidence. There is consistency and complete corroboration in the evidence of PW1 and PW2.

Since the petitioner-accused has committed an inhuman act with a 7 years old boy and considering the trauma and agony, which the petitioner must have undergone, this Court does not find any reason to reduce the sentence of the accused. Therefore, in the offence like the present one, no benefit of probation can be extended.

Dismissed.

July 17, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No