

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

**CRR No.553 of 2016
DECIDED ON: October 30, 2018**

AVTAR KUMAR @ TARI AND ANR. ..PETITIONERS

VERSUS

STATE OF PUNJAB ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Lakhwinder Singh Mann, Advocate,
for the petitioner.

Mr. A.S. Gill, DAG, Punjab.

RAMENDRA JAIN, J. (ORAL)

Through this revision petition, the petitioners lay challenge to impugned judgment and order dated 12.01.2016 passed by Sessions Judge, Shaheed Bhagat Singh Nagar, Nawanshahr, whereby judgment of conviction and order of sentence dated 08.10.2015 of the Principal Juvenile Justice Board, Shaheed Bhagat Singh Nagar was upheld, holding the petitioner guilty under Section 377 IPC, but was modified ordering the petitioners to sent to Special Home for a period of 1 and half year.

Briefly, on 21.01.2012 at about 10:00 a.m., the petitioners did carnal intercourse with Satwinder Kumar, aged about 7 years, studying in first class. After holding trial, they were held guilty under Section 377 IPC vide judgment of conviction and order of sentence dated

08.10.2015 of the Principal Magistrate Juvenile Justice Board, SBS Nagar. Consequently, petitioners were ordered to be sent to observation home for a period of two years with fine of Rs.2000/- each and, in default thereof, to further remain in observation home for one month.

Being aggrieved, the petitioners approached the Sessions Judge, Shaheed Bhagat Singh Nagar, Nawanshahr, who dismissed the appeal vide judgment dated 12.01.2016, but with modification in the order of sentence, thereby reducing the period of 2 years to 1½ year.

Learned counsel for the petitioners contends that the prosecution has failed to prove on record any carnal intercourse or unnatural intercourse allegedly done by the petitioners with minor Satwinder Kumar. Moreso, the petitioners have now attained the age of majority. Therefore, they cannot be sent to observation home or to jail, because at the time of commission of offence they were minors. In support of his contention learned counsel for the petitioner has placed reliance upon the judgment of Hon'ble Supreme Court captioned as ***“Matibar Singh v. State of UP”, 2015(3) RCR (Criminal) 82,*** ***“Babban Rai and anr. v. State of Bihar”, 2007(13) SCC 88*** as well as of this Court, captioned as ***“Rajesh Kumar v. State of Haryana”, 2011(1) RCR (Criminal) 830*** and ***“Parveen v. State of Haryana”,*** dated 14.01.2016 passed in CRR No.2147 of 2011.

On the other hand, learned State counsel has vehemently opposed the submission made by learned counsel for the petitioners.

Having given anxious thought to the rival submissions made

by learned counsel for the parties, I find merit in the instant petition. In view of the proposition of law laid down by the Hon'ble Apex Court in ***Matibar Singh's*** case (supra), ***Babban Rai's*** case (supra) and judgments passed by this Court in ***Rajesh Kumar's*** cases (supra) and ***Parveen Kumar's*** case (supra), that accused after attained the majority, neither they can be sent to observation home nor can be sent to jail.

Resultantly, impugned judgment of conviction dated 08.10.2015 of the trial court as also dated 12.01.2016 of the First Appellate Court, holding the petitioners guilty under Section 377 IPC are maintained. However, sentence of his imprisonment is ordered to be reduced to the period already undergone.

With the above modification in the matter of sentence, revision petition stands disposed of.

October 30, 2018

sonika

**(RAMENDRA JAIN)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes/No
Yes/No**