

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

CRR-4109-2017(O&M)

Date of decision:- 23.8.2018

Barfina

...Petitioner

Versus

Aslam and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.P.R. Yadav, Advocate for the petitioner.

None for respondent No.1.

Mr.Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

Briefly stated facts of the case as per the prosecution story are that on 26.2.2015 at about 1:30 p.m., when the complainant along with her younger sister had gone to the fields to answer the call of nature, then accused Aslam Khan came there, overpowered the complainant gagged her mouth and raped her; that younger sister of the complainant, namely, Arshida raised an alarm, which attracted some persons, thereafter, the accused ran away.

After registration of formal FIR regarding the incident the matter was investigated. Accused was arrested in this case. He was got medically examined. He was found fit to perform sexual act. The complainant prosecutrix was also medically examined. After completion of investigation, accused was challaned.

Judicial Magistrate Ist Class, Ferozepur Jhirka vide order dated 15.7.2016 declared accused Aslam Khan as a juvenile. The order was challenged before the Court of Sessions but learned Additional Sessions Judge, Mewat, who vide order dated 11.8.2017 confirmed the said order.

Feeling aggrieved the complainant has approached this Court by way of filing a revision petition, notice of which was given to accused as well as State of Haryana, who put in appearance through counsel.

I have heard learned counsel for the parties, besides going through the record.

During the course of hearing, since it was contended on behalf of the complainant that accused is major having three children, which fact was disclosed to the investigating agency but investigating agency did not investigate the matter from that angle, the State counsel was directed to get the matter inquired by local police and to report whether the accused is married and if so when he got married, whether he has got any children, if so their ages. He was also directed to collect the documentary proof regarding age of Aslam Khan, if available. The said report was filed in the Court.

I have heard learned counsel for the parties and perused the authorities referred to by learned counsel for the petitioner i.e. **Parag Bhati (Juvenile) through Legal Guardian – mother Smt.Rajni Bhati Versus State of Uttar Pradesh and another, 2016(2) RCR(Criminal) 1031** and **Om Parkash Versus State of Rajasthan and another, 2012(2) RCR(Criminal)770** and I find that the revision petition lacks merit and it

is doomed for failure.

Two courts below have returned a concurrent finding regarding accused being a juvenile keeping in view the evidence available on the file and other facts and circumstances of the case. Since the complainant had raised a plea that accused is the major and he is having three children, which facts were brought to the notice of investigating agency but the investigating agency did not pay proper attention to that aspect. The State counsel was directed to get the matter inquired by local police and submit report in that regard. A perusal of the report goes to show that the local police had conducted an inquiry, during the course of which father of the petitioner namely Zakir son of Ramjan was associated and his statement was recorded. It is further contended in the report that local police went to Primary School village Rahna, District Nuh and collected the documents regarding the date of birth of accused Aslam Khan duly signed by Headmaster, Government Primary School, Rehna and in terms of such document issued by the school, the date of birth of Aslam Khan is 16.1.1999; that the local police also received a copy of admission and withdrawal from the school as per register maintained there and it came out that Aslam Khan was admitted in the school on 7.12.2006 at Serial No.3430 mentioning his date of birth as 16.1.1999; that father of accused Aslam Khan, namely, Hasan Mohammad was also joined in the inquiry, during the course of which, he produced the Aadhar Card, PAN Card and one School Leaving Certificate issued by Government Primary School on 17.3.2015 and in all the documents the date of birth of Aslam Khan is mentioned as 16.1.1999. It is further mentioned that copy of

certificate issued by Department of Forensic Medicine, SHKM Government Medical College, Nalhar, District Nuh was also taken into possession. Furthermore, during the inquiry, it came out that Aslam Khan is married and his marriage was performed about one year back and he is having a baby with age of 25 days only.

From the inquiry report, the allegations of complainant – petitioner that accused is a major and he is having three children stand nullified. There is enough documentary evidence available on record, the authenticity of which cannot be doubted, to show that the date of birth of accused is 16.1.1999. As such, at the time of incident on 26.2.2015, his age comes out to be less than 18 years, therefore, the Courts below have rightly come to the conclusion that he was a juvenile at the time of incident.

As regards the authorities referred to by learned counsel for the petitioner, those are not helpful to her in any way since from the oral and documentary evidence available on record, it stands established that accused was aged less than 18 years at the time of incident and it is not a question of two views with regard to age of accused being possible.

The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by the Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment/order is to be done. The impugned orders do not suffer from any such defect or infirmity.

Therefore, revision petition challenging that orders cannot be allowed and is dismissed accordingly.

23.8.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No