

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

CRR No.897 of 2011 (O&M)
Date of decision: 2nd April, 2019

Gagandeep Singh

... Petitioner

Versus

State of UT Chandigarh & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sarwinder Goyal, Advocate for the petitioner.

Mr. Deepinder Brar, Addl. PP UT Chandigarh
for the respondent/State.

FATEH DEEP SINGH, J.

This criminal revision by revisionist Gagandeep Singh by the aid of Section 401 Cr.P.C. is directed against judgment dated 08.04.2011 dismissing the appeal of the then appellant Gagandeep Singh by the Court of learned Additional Sessions Judge, Chandigarh upholding the findings of the Court of learned Judicial Magistrate 1st Class, Chandigarh dated 13.01.2010 whereby the then accused present petitioner was found guilty of commission of offences under Sections 294, 354 IPC and sentenced to undergo rigorous imprisonment for three months and to pay a fine of Rs.500/- and in default of fine to undergo rigorous imprisonment for ten days under Section 294 IPC, whereas under Section 354 IPC he was sentenced to undergo rigorous imprisonment for a period of one year

along with fine of Rs.1000/- and in default of payment of fine to further undergo rigorous imprisonment for ten days.

Heard Mr. Sarwinder Goyal, Advocate for the petitioner; Mr.Deepinder Brar, Addl. PP UT Chandigarh for the respondent/State and perused the records of the case.

A written complaint was received by SI Rajpal while on patrolling duty from the complainant girl alleging that on 15.06.2008 around 7:15 p.m. while she had gone for walk at the lake at Chandigarh and when she was coming out of the toilet the accused who was also using men toilet too came out and patted the bottom of the girl and used obscene/foul words meaning that he wanted to defile her. Meanwhile, the police swung into action and apprehended the petitioner leading to registration of the case bearing FIR No.121 dated 15.06.2008 under Sections 294 & 354 IPC pertaining to Police Station Sector 3, Chandigarh.

At the trial, the prosecution examined complainant as PW1 proving her complaint as Ex.PW1/A and who reiterated her allegations followed by the testimony of SI Rajpal PW2 who proved the endorsements on the complaint Ex.PW2/A and Ex.PW2/B and the FIR Ex.PW2/C proving further the site plan of the place of occurrence Ex.PW2/D and personal search memo of the accused Ex.PW2/F and

arrest memo Ex.PW1/B. The accused denied the allegations but did not lead any evidence in defence. It was subsequent thereto the judgment of conviction was passed.

Learned counsel for the petitioner at the very onset had prayed for grant of concession of probation as the courts below did not have resort to the provisions of Section 360 Cr.P.C. arguing further that the petitioner has since undergone 11 years of trauma and thus has suffered enormously and that at the time of alleged occurrence he was a young boy and is now mature having his own family and is not a previous offender.

On behalf of the State, the plea for probation is sought to be opposed with much vehemence however, learned State counsel accepts that the petitioner happens to be the first offender.

Appreciating the submissions, admittedly as is there in the evidence, the petitioner at the time of commission of offence in the year 2008 was 24 years old and for a period of eleven years has suffered the travails of this trial and conviction totalling to almost eleven years. The petitioner by now, must have grown up reasonably mature with family and kids and as is accepted by the State is the first time offender. The offences for which the petitioner has been convicted are not of very heinous nature though have social implications. For the commission of

offence under Section 294 IPC, maximum sentence of imprisonment is extendable upto three months or with fine or both, whereas Section 354 IPC prescribes punishment for a term which may extend upto two years or with fine or with both. As is there, even accepted by the learned State counsel out of this sentence of imprisonment, the petitioner has already undergone incarceration for a period of 3 months and 13 days, a substantial one, besides the fact that at the time of suspension of the sentence vide orders dated 21.07.2011 this Court has awarded a sum of Rs.15,000/- as compensation to the victim of this crime. The petitioner, if sent to custody, would certainly create more complications for the family of the petitioner convict besides causing irreparable damage to all the aspects of the life of the family. Besides, he might be forced to give up the path of rectitude and may become hardened criminal. Therefore, putting to best use the reformatory theory of criminal jurisprudence in view of the totality of circumstances brought to the notice of this Court and the fact that provisions of Section 360 Cr.P.C. are for extending such benefits to the first time offenders and therefore, it would subserve the ends of justice if the petitioner is allowed concession of probation in terms of Section 4 of the Probation of Offenders Act, 1958 for a period of one year on his entering into a bond in the sum of ₹20,000/- with one surety of the like amount to the satisfaction of the trial Court within two

months from the receipt of copy of this order undertaking therein that he shall keep peace and maintain good behaviour and shall appear and receive sentence as and when called upon to do so during the said period.

The revision stands disposed off in those terms.

(FATEH DEEP SINGH)
JUDGE

April 2, 2019
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No