

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

CRR No.2917 of 2016

Date of decision: 19th March, 2019

Gandhi

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Harinder S. Sandhu, Advocate for the petitioner.

Mr. Amrik Narwal, Dy. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J.

A case by way of FIR No.419 dated 25.08.2013 under Sections 292(2), 294, 354-D, 452 and 506 IPC was registered at Police Station Baldev Nagar, Ambala on the statement of complainant Murti Devi. The precise allegations levelled by the complainant are that the complainant along with her family were residing in village Dhulkot and that the present petitioner accused Gandhi of their village had clicked photographs of her daughter-in-law and on that pretext started defaming her and often use to make unsolicited telephonic calls and would also use abusive language. The complainant brought the matter to the knowledge of the family of the accused but who did not desist from doing so. It is alleged that on 25.08.2013 the accused went to the house of the complainant and on the threat of knife to her son, uttered obscene words and asked daughter-in-law of the complainant to accompany him upon

which the accused was assaulted and who managed to escape but was arrested subsequently the same very day.

Upon completion of investigation, challan against the accused was presented. At the trial, the prosecution examined PW1 Satish Kumar, PW2 Reetu and thereafter PW3 complainant detailed the events leading to the occurrence followed by the testimony of PW4 ASI Suresh Kumar who proved the investigation. HC Sanjeev Kumar PW5 and DSP Pawan Kumar PW6 detailed the investigations and formalities undertaken during the same. The prosecution in the process proved documents Ex.PA, Ex.PB (wrongly stated as Ex.PA), Ex.PW3/A, Ex.PW4/A to Ex.PW4/E, articles MO-1 to MO-4 and thereafter prosecution evidence was closed.

The accused when confronted with the incriminating evidence denied the allegations but did not opt to lead any defence evidence. The Court of learned Addl. Chief Judicial Magistrate, Ambala through judgment and order dated 27.01.2016 convicted the accused petitioner under Sections 292(2), 294, 354-D, 452 and 506 IPC and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.200/- each under Sections 292(2), 354-D, 452 and 506 IPC whereas under Section 294 IPC the accused was sentenced to undergo rigorous imprisonment for one month and to pay a fine of Rs.200/- and in default of payment of fine to further undergo imprisonment for a period of one month.

The convict challenged his conviction before the Court of learned Additional Sessions Judge, Ambala and the victim too filed appeal against these findings for enhancement of the sentences so awarded. The learned first appellate Court vide impugned findings dated 26.07.2016 dismissed the appeal by the victim whereas partly modifying the appeal of the convict had set aside conviction under Section 292, 294 IPC and sentenced him only under Sections 354-D, 452 and 506 IPC.

The revisionist still aggrieved over these findings has come up in this revision challenging the judgment and order passed by the learned first appellate Court.

Heard Mr. H.S. Sandhu, Advocate for the petitioner, Mr. Amrik Narwal, Dy. Advocate General, Haryana and perused the records of the case.

Learned counsel for the revisionist at the very onset had prayed that the revisionist who has been sentenced to undergo maximum rigorous imprisonment for a period of one year, out of the same has actually undergone incarceration for more than eight months and six days and therefore, prayed that having undergone substantial incarceration his prayer for grant of probation be considered which has never been looked into by the two courts below.

Learned State counsel though does not dispute the fact that neither the trial Magistrate nor the learned first appellate Court gave any reasoning for not granting concession of probation to the petitioner but has opposed the prayer of learned counsel for the petitioner on the

grounds of nature of offence for which he has been found guilty and argued that if allowed the concession he might misuse the same, though accepts that the petitioner is the first time offender.

Appreciating the submissions, the petitioner has as per the stand of the State already undergone more than eight months of sentence and the same includes concession of remissions granted during this period. The offences for which the petitioner has been found guilty and convicted and his sentence of maximum rigorous imprisonment for one year besides the sentence of fine is certainly an extenuating circumstance to consider his plea for this concession. More so, the petitioner is a young first offender and the courts below have not recorded any reasons for not affording him the concession of probation, whereas, the provisions of Section 360 Cr.P.C. have been specially enacted with a purpose to prevent first time offenders from choosing the path of criminality. Sending the petitioner behind bars would invite him to the world of crime and thus, commensurate to the theory of Reformation such a concession in view of the nature of the offences and the circumstances of having undergone substantial incarceration, needs to be given to him especially in the light of his young age which was never taken into account by the two courts below.

In the light of the same, 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 Rs.20,000 with one surety of the like amount to the satisfaction of the

trial Court 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 petition stands disposed off with these modifications. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

March 19, 2019
rps

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