

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Revision No. 3895 of 2018

Date of Decision: 17.05.2019

Yadwinder Singh
... Petitioner(s)

Versus

State of Haryana
... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. Munish Kamboj, Advocate
for the petitioner(s).

Mr. Aashish Sanghi, Deputy Advocate
General, Haryana for the respondent.

Shekher Dhawan, J.

Present revision petition against the judgment of conviction dated 06.02.2015 and order of sentence dated 07.02.2015, passed by the learned Judicial Magistrate Ist Class, Sirsa, whereby petitioner was held guilty and convicted for the commission of offence punishable under Sections 323 & 377/511 IPC and was sentenced as under:-

Sr. No.	Offender under Section	Sentence awarded
1.	323 IPC	To undergo rigorous imprisonment for a period of six months.
2.	377/511 IPC	To undergo rigorous imprisonment for a period of two years and to pay fine of Rs.2,000/-. The amount of fine was ordered to be given to the victim after the expiry of period of appeal.

All the sentences were ordered to run concurrently.

Petitioner preferred an appeal before the learned Sessions

Judge, Sirsa, who maintained the judgment of conviction vide judgment dated 29.08.2018, but modified the order of sentence to the extent that sentence of two years rigorous imprisonment, awarded to the petitioner, would be reduced to that of one year rigorous imprisonment for the commission of offence under Section 377/511 IPC. However, the sentence of fine remained intact.

At the time of arguments, learned counsel for the petitioner contended that he does not challenge the judgment of conviction and the revision petitioner against the same be dismissed. However, learned counsel contended that lenient view on the point of sentence be taken as petitioner has already undergone actual sentence of more than nine months by now.

While arguing on this point, learned counsel for the respondent-State contended that judgment of conviction has been recorded on the basis of material evidence having been available on the file, otherwise, the order of sentence also does not require any further leniency because both the learned Courts below have already taken more lenient view and the offence alleged against the petitioner includes the offence under Section 377/511 IPC and present revision petition be dismissed in toto.

Having considered the submissions made by learned counsel for the parties and appraisal of the record of the case, this Court is of the considered view that as per prosecution case, on 17.06.2010, complainant-Sukhvir Singh had received a phone call at about 2.15 pm. and he rushed to his house. At that time, his son Ramandeep, aged about nine years, told him that in the afternoon, when he was playing in the street, at that time Bhola Singh, resident of Gurteg Bahagur Nagar took him away by inducement to

his house, where nobody was present. After that, Bhola Singh kissed him on both sides of his cheeks and put off his trouser (nicker). Then he put oil on the buttocks of Ramadeep and when Bhola Singh was putting off his clothes, Ramadeep ran away. After that, Ramadeep was afraid. As per complainant, Bhola Singh had attempted to intercourse with Ramadeep. The police investigated the matter and after investigation, challan was presented before the learned trial Court. During the course of trial, prosecution examined PW.1 Ramadeep, victim, who had detailed the same facts before the learned trial Court. PW.2 Balbir Singh had recorded formal FIR Ex.PW.2/A. Dr. Arush Arora was examined as PW.3 and he proved the medicolegal report Ex.PW.3/B. However, this witness admitted that he could not comment upon penetration or attempt to penetrate by the person examined by him. Sukhvir Singh, complainant, was examined as PW.4 and he also made statement in terms of the complaint having been made by him before the police. PW.5 Ram Kumar, Sub Inspector, had investigated the matter. The defence version is the plea of denial only. In view of the statements of the above prosecution witnesses and there being no defence to the same except plea of denial in the statement of accused, recorded under Section 313 Cr.P.C., the learned trial Judge has rightly held the petitioner guilty and convicted him for the commission of offence under Sections 323/377/511 IPC and sentenced him thereunder. The learned Sessions Judge, Sirsa dismissed the appeal by upholding the judgment of conviction, but modified the order of sentence to the extent that sentence of two years rigorous imprisonment, awarded to the petitioner, would be reduced to that of one year rigorous imprisonment for the commission of offence under

Section 377/511 IPC. There is absolutely no ground to interfere with the judgment having been recorded by the learned trial Judge and the decision rendered by the learned Sessions Judge, Sirsa as regard to judgment of conviction.

As regard to order of sentence, since the petitioner has already undergone more than nine months against the awarded sentence of one year and he is not a previous convict, certainly the order of sentence can be modified to the extent that sentence of one year rigorous imprisonment is reduced to that of period already spent by him in custody during investigation, trial and appeal of this case.

As such, present revision petition is partially accepted. The judgment of conviction stands dismissed and sentence of fine shall remain intact. However, the order of sentence is modified to the extent that sentence of one year rigorous imprisonment, awarded to the petitioner, is reduced to the sentence which he has already spent while remaining in custody during the course of investigation, trial, conviction, pendency of appeal before the learned lower Appellate Court as well pendency of revision petition before this Court.

(Shekher Dhawan)
Judge

May 17, 2019
“DK”

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