

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

234

CRR-694-2020

Date of decision: 23.02.2022

Victim "Y" (name withheld)Petitioner
Versus

State of Punjab and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Harvinder Singh Maan, Advocate
for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab
for respondent No.1-State.

Mr. B.S. Jattana, Advocate
for respondent No.2.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner/victim is impugning order dated 21.12.2019 passed by learned Judge, Children Court (Sessions Judge), Mansa, in case FIR No.193 dated 02.11.2019 under Section 376 IPC (Section 4 and 5 of the POCSO Act added lateron) registered at Police Station Boha , vide which respondent No.2 was declared a child in conflict with law and ordered to be tried by the Juvenile Justice Board in view of the fact that on the date when the petitioner/victim was first raped in the year 2016, he was a minor.

Learned counsel for the petitioner inter alia contends that the impugned order had been passed by the Court below without appreciating that respondent No.2 had continuously raped the victim, a minor, on a number of occasions on the pretext of marriage. He submitted that no doubt when the first occurrence took place, respondent No.2 was indeed a minor, however, the Court below failed

to appreciate that it was a continuing offence and the last incident of rape was committed upon the victim in 2019, when respondent No.2 had admittedly attained the age of majority. Learned counsel, thus, submitted that in the circumstances and as per various pronouncements of the Hon'ble Apex Court, the age of respondent No.2 on the date when the last incident of rape was committed, was to be considered for determining as to whether he had to be tried as a juvenile or as an adult. Therefore, it was urged that respondent No.2 being 20 years of age on the date when the last incident of rape was committed, be tried as an adult.

On being put to notice, learned counsel for respondent No.2 put in an appearance and vehemently argued that a perusal of the contents of the FIR and the sequence of events as reflected therein clearly hinted towards a consensual relationship between the parties. He further submitted that the Court below had rightly observed while passing the impugned order that since it was a continuing offence and admittedly when first incident of rape had taken place, respondent No.2 was a juvenile and hence entitled for being declared and tried as a child in conflict with law.

I have heard learned counsel for the parties and perused the relevant material placed on record.

A perusal of the allegations levelled in the FIR in question reveal that respondent No.2 allegedly committed rape upon the victim/petitioner for the first time in the year 2016 when respondent No.2 was a minor. However, thereafter he continued to rape the petitioner/victim on a number of occasions even after he had attained

the age of majority, the last alleged incident of rape being committed on 08.10.2019. Admittedly, the date of birth of respondent No.2 is 11.09.1999. The last incident of alleged rape took place on 08.10.2019 when respondent No.2 was thus 20 years of age. The Hon'ble Supreme Court in *Sri Ganesh Vs. State of Tamil Nadu and another : 2017(1) RCR (Criminal) 556* has categorically held that if the offence of rape is alleged to have been committed on multiple occasions, then the relevant date for determination of juvenility of the accused would be the date when last of such incidents of rape had occurred.

The contention of the learned counsel for respondent No.2 that it was a consensual relationship between the parties cannot be gone into at this stage while deciding the instant revision which has been preferred only to challenge the order vide which respondent No.2 was declared a juvenile. Whether it was a case of consensual relationship or not, would be a matter to be appreciated during trial by the trial Court.

As a sequel to the above discussion, the impugned order dated 21.12.2019 passed by learned Judge, Children Court (Sessions Judge), Mansa is set aside and respondent No.2 is ordered to be tried as an adult.

23.02.2022

(MANJARI NEHRU KAUL)
JUDGE

Vinay

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