

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

2026:PHHC:104466



CRM-M-37543-2018 (O&M)

Chander Dev alias Chand Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

Sr. No.	Particulars	Details
1	The date when the judgment is reserved	23.07.2026
2	The date when the judgment is pronounced	30.07.2026
3	The date when the judgment is uploaded on the website	30.07.2026
4	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. G. P. S. Bal, Advocate
for the petitioner.

Mr. A. K. Khubbar, Addl. A.G., Haryana.

Mr. Abhimanyu Singh, Advocate
for respondents No. 2 and 3.

MANISHA BATRA, J.

1. The present petition has been filed by the petitioner seeking setting aside/quashing of the order dated 08.08.2018 passed by the Court of learned Additional Sessions Judge, Jhajjar in case arising out of FIR No. 421 dated 11.05.2015, registered under Section 377 IPC at Police Station Jhajjar, District Jhajjar, whereby the application filed by the petitioner under Section

231 Cr.P.C. for recalling prosecution witnesses namely the victim and his father was dismissed. A further prayer has been made for setting aside the order dated 19.05.2018, whereby the application filed by the father of the victim under Section 296 Cr.P.C. seeking permission to place on record his affidavit was dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of a written complaint submitted by respondent No.2/complainant alleging therein that the petitioner, who was serving as an Upacharya (Teacher) in the Gurukul, had been committing unnatural sexual acts with the complainant continuously for about one year during his stay in the Gurukul. It was alleged that the petitioner used to threaten the complainant that if he disclosed the incident to anyone, he would be humiliated in the Gurukul and would also be failed in his examinations. The complainant further alleged that the last such incident had taken place about two months prior to the lodging of the complaint. On these allegations, the aforesaid FIR came to be registered.

3. During investigation, the statement of the victim was recorded under Section 164 Cr.P.C. After completion of investigation, the police presented the challan against the petitioner for offences punishable under Section 377 IPC and Section 6 of the POCSO Act, 2012. During trial, the victim and his father (respondent No.3 herein) appeared before the learned trial Court as prosecution witnesses and supported the prosecution case. Thereafter, on 16.05.2018, the father of the victim filed an application under Section 296 Cr.P.C. seeking permission to place on record his affidavit stating that the petitioner had committed no offence and that the FIR had been lodged

due to misunderstanding/tutoring. Simultaneously, the petitioner moved an application under Section 231 Cr.P.C. seeking recall of the victim and his father for further examination in the light of the affidavits. The application under Section 296 Cr.P.C. was dismissed on 19.05.2018 and thereafter the petitioner's application under Section 231 Cr.P.C. was also dismissed on 08.08.2018. Aggrieved against the said orders, the present petition has been filed.

4. It is argued by learned counsel for the petitioner that the impugned orders are not sustainable in the eyes of law as while passing the same, the learned trial Court had committed a patent illegality in declining permission to place on record the affidavits of the complainant and his father and in refusing to recall them for further examination. It is argued that after attaining majority, the complainant realised the true factual position and disclosed to his father that the petitioner had not committed any offence. Consequently, both the complainant and his father executed affidavits categorically stating that the petitioner was innocent and that the FIR had been lodged under a misunderstanding. Since these affidavits constituted a clarification of their earlier stand, the learned trial Court ought to have taken the same on record and permitted their examination. It is further argued that the object of a criminal trial is to discover the truth and the Court ought not to shut out evidence which may assist in arriving at a just conclusion. The complainant, being the victim of the alleged offence, is the best person to explain the true facts and cannot be prevented from placing the correct position before the Court.

5. It is further submitted that Sections 295 and 296 Cr.P.C. permit evidence by way of affidavit and the learned trial Court adopted an unduly technical approach in rejecting the application. It is submitted that the petitioner also had a valuable right under Section 231 Cr.P.C. to seek recall of the witnesses for clarification and denial of such opportunity has resulted in prejudice to the defence and violation of the petitioner's right to a fair trial guaranteed under Article 21 of the Constitution of India. With these broad submissions, it is urged that the petition deserves to be allowed and the impugned orders are liable to be set aside.

6. Reply has been filed by the respondent-State. Learned State counsel has argued that there is no infirmity or illegality in the impugned orders. The victim had consistently levelled allegations against the petitioner not only in the FIR but also in his statement under Section 164 Cr.P.C. as well as during his deposition before the learned trial Court. His father had also supported the prosecution case during trial. It is only after both witnesses had been thoroughly examined and cross-examined that affidavits retracting their earlier stand were procured by the petitioner. The said affidavits are nothing but an attempt to win over the prosecution witnesses and undo their sworn testimony already recorded before the Court. It is further argued that Section 296 Cr.P.C. applies only to evidence of witnesses of a formal character and has no application where substantive prosecution witnesses seek to retract their earlier testimony after their examination has concluded. Equally, Section 231 Cr.P.C. cannot be invoked to recall witnesses merely to enable them to withdraw or contradict their earlier testimony on the basis of subsequently procured affidavits. Learned State counsel has further argued that permitting

such a course would seriously prejudice the administration of criminal justice, particularly in a prosecution under the POCSO Act involving non-compoundable offences. Hence, the petition, being devoid of any merit, is liable to be dismissed.

7. On the other hand, learned counsel for respondents No.2 and 3 has submitted that respondent No.2 has now attained majority and has voluntarily sworn an affidavit stating that the petitioner has not committed any illegality against him and that the FIR came to be registered due to a mistaken complaint. It is submitted that respondent No.2 has no objection if the FIR and all consequential proceedings are quashed and has affirmed that the affidavit has been executed without any pressure, coercion, threat or undue influence.

8. This Court has heard the rival submissions.

9. The allegations against the petitioner are of committing repeated unnatural sexual assault upon a minor student (the complainant) while he was serving as an Upacharya in the Gurukul. The victim had not only set the criminal law into motion by making a detailed complaint but had also reiterated the allegations in his statement recorded under Section 164 Cr.P.C. Thereafter, during the course of trial, both the victim and his father entered the witness box and supported the prosecution case on oath. It is only after their examination and cross-examination stood concluded that affidavits came to be executed stating that the petitioner had not committed any offence and that the FIR had been lodged under a misunderstanding, followed by applications seeking permission to place such affidavits on record and for recalling the witnesses. In the considered opinion of this Court, the learned trial Court rightly declined the said prayers. The provisions of Section 296 Cr.P.C. are

applicable only to witnesses of a formal character and cannot be stretched to permit substantive prosecution witnesses to place on record affidavits retracting from their earlier sworn testimony. Similarly, the power to recall witnesses under Section 231 Cr.P.C. cannot be invoked merely to enable material witnesses to resile from the statements already made before the Court. If such a course were to be permitted, it would not only dilute the sanctity attached to evidence recorded during trial but would also open the door for witnesses to alter their stand after their testimony has been concluded, thereby seriously affecting the fairness and credibility of criminal trials.

10. The contention raised on behalf of respondent Nos.2 and 3 that the victim, after attaining majority, has now realised the true factual position and wishes to exonerate the petitioner, also does not persuade this Court to take a different view. The evidentiary value and credibility of the statements made by the witnesses are matters to be appreciated by the learned trial Court at the stage of final adjudication. However, the procedural safeguards prescribed by law cannot be bypassed by permitting substantive prosecution witnesses to substitute or neutralise their judicial testimony through subsequently executed affidavits. More so, the prosecution arises out of offences under the POCSO Act, which are grave in nature and non-compoundable, where the Court is required to ensure that the trial proceeds strictly in accordance with law and is not influenced by subsequent developments dehors the statutory procedure. In view of the above, this Court finds no perversity, illegality or jurisdictional error in the orders dated 19.05.2018 and 08.08.2018 passed by the learned trial Court. The impugned

orders reflect a proper exercise of judicial discretion and do not warrant interference in exercise of the inherent jurisdiction of this Court. Consequently, finding no merit in the present petition, the same is hereby dismissed.

30.07.2026
Wassem R. Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No