

In the High Court of Punjab and Haryana at Chandigarh

CRM-A-1069-MA-2013

Date of decision: 14.08.2015.

Prem Chand Sharma

..... Appellant

Vs.

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present: Mr. Preetinder S. Ahluwalia, Advocate and
Ms. Soumya Ahluwalia, Advocate
for the appellant.

Ms. Manjari Nehru Kaul, Additional Advocate General, Punjab

Mr. Shashi Kant Gupta, Advocate
for respondents No.2 to 7.

RAJ RAHUL GARG.J.

Prem Chand Sharma, complainant of complaint case No. 126 of 2006, instituted this appeal against the judgment of acquittal dated 04.10.2013 rendered by the learned Additional Chief Judicial Magistrate, Amritsar. Vide aforesaid impugned judgment, the learned trial Magistrate decided two cases, one criminal case No. 136 of 2007 titled as State Vs. Prem Chand Sharma, s/o Kishan Lal, Jagjit Kumar s/o Bua Dutt, and Rinku s/o Tirath Ram, bearing FIR No. 8 dated 06.02.2006, under Sections 341/323/506/427/34 IPC. The second case is complaint case as mentioned above filed by Prem Chand Sharma against respondents No.2 to 7 of this appeal.

As learned trial Court acquitted the accused of both the

aforementioned cases, therefore, Prem Chand Sharma, complainant of complaint case, filed this appeal. However, the State did not file any appeal against acquittal of Prem Chand Sharma, Jagjit Kumar and Rinku. As such, now in this appeal, we are taking up complaint case alone.

After hearing learned counsel for the appellant, we find that the order of the learned Trial Court is not sustainable. Shri Preetinder S. Ahluwalia, Advocate, counsel for the appellant argued that the procedure adopted by the learned trial Court in deciding both the aforementioned cases is not correct. He relied upon the judgment of Hon'ble Supreme Court reported as *State of M.P. Vs. Mishrilal (Dead) and others, 2003 (3) RCR (Criminal) 287*, following the earlier judgment reported as *Nathi Lal Vs. State of U.P., 1990 Supp SCC 145*, wherein it has been observed as under:

“2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.”

It was contended that in the aforecited judgment, the procedure

has been prescribed as to how the Court should proceed with the case where two FIRs are lodged regarding same incident. This judgment says that in cross-cases (1) Judge must try both cases one after the other; (2) after recording evidence and hearing arguments of the first case, Judge must reserve the judgment; (3) thereafter, the Judge should proceed to record evidence and hear arguments in second case and (4) the same Judge must dispose of the matters by two separate judgments. Cross cases be tried together by same Court to avoid conflicting judgment over the same incident. It was also observed in the aforesaid judgment that in deciding each of the case, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.

In view of the aforesaid case judgment, it is evident that the aforesaid procedure has not been followed by the learned trial Court while deciding the aforementioned two cases.

Since, the State is not in appeal against acquittal in a case arising out of police report, therefore, the impugned judgment is ordered to be set aside only respecting the complaint case filed by the appellant Prem Chand Sharma.

The learned trial Court is directed to record the separate judgment in the complaint case only on the basis of the evidence which has

been placed on record in that case without being influenced in any manner by the evidence and arguments of the police case. The case is, thus, remanded to the learned trial Court for deciding it afresh strictly in accordance with the aforecited procedure as laid down in **State of M.P. Vs. Mishrilal (Dead) and others' case (supra).**

Disposed of accordingly.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

14.08.2015
smriti/vimal