

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:25.2.2015

CRA-S-1872-SB of 2002

Amru

---Appellant

versus

The State of Haryana

---Respondent

CRA-S-1884-SB of 2002

Piru

---Appellant

versus

The State of Haryana

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.B.S.Saroja, Advocate
for the appellants**

**Mr. Rajesh Gaur, Addl. A.G.Haryana
for the respondent-State**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporter or not?**
- 3. Whether the judgment should be reported in the Digest?**

REKHA MITTAL, J.

This order will dispose of CRA-S-1872-SB of 2002 “Amru vs. State of Haryana” and CRA-S-1884-SB of 2002 “Piru Vs. The State of Haryana” as identical questions of law and facts are involved for adjudication.

Amru was convicted and sentenced for offence punishable under Section 25 of the Arms Act on the premise that he was found in possession of .315 bore country made pistol when the police party arrested him in FIR No. 153 dated 31.7.2001 registered at Police Station Sadar Kaithal for offence under Sections 399 and 402 of the Indian Penal Code (in short "IPC"). Similar allegations were levelled against Piru in regard to recovery of incriminating weapon from him pertaining to the aforesaid case in which both the appellants along with their co-accused were indicted for committing offence under Sections 399 and 402 IPC

The sole submission made by counsel for the appellants is that the appellants along with their co-accused were convicted and sentenced for committing offence punishable under Sections 399 and 402 IPC by the trial court. The appeal preferred by the convicts for the aforesaid offence was allowed by this Court on 7.1.2015 in CRA-S-1808-SB of 2002. It is vehemently argued that once story of the prosecution in regard to culpability of the appellants for the said offence has been held to be doubtful and the appellants have been acquitted thereof, their conviction and sentence in respect of alleged recoveries of incriminating weapons cannot be allowed to sustain, being part of the same transaction. In support of his contention, he has relied upon judgment of this Court ***Naresh Vs. State of Haryana 2013(4) RCR (Criminal) 895.***

Counsel for the State of Haryana, on the contrary, has supported the judgment passed by the trial court but has failed to cite any law contrary to what has been held in ***Naresh's case (supra).***

I have heard counsel for the parties and perused the records.

There is no dispute that the petitioners were implicated in FIR No. 153 dated 31.7.2001 registered at Police Station Sadar Kaithal for offence under Sections 399 and 402 IPC with the allegations that six young persons were sitting and talking to each other in Uttar Pradesh language that they would commit dacoity at Padla Shiv Shakti Petrol Pump, armed with deadly weapons. The appellants alongwith their co accused were convicted by the trial court for the said offence but the judgment of conviction passed by the trial court was set aside in appeal by this Court on 7.1.2015 holding the prosecution story to be highly improbable. The alleged recoveries of incriminating weapons were effected from the appellants during the course of investigation of the FIR registered under Sections 399 and 402 IPC. I find merit in the contentions of the appellants that once the story of the prosecution in regard to commission of offence under Sections 399 and 402 IPC by the appellants alongwith their co accused has been found to be unworthy of credence and reliance, the alleged recoveries from the appellants based upon the same evidence adduced in proceedings under Sections 399 and 402 IPC can not form the basis for conviction. In *Naresh's case (supra)*, a relevant extract from para 10 reads as follows:-

“From the evidence on record, I find that it is an admitted fact that Criminal Appeal No.698-SB of 2002, filed by appellant Naresh and others (co-accused) was accepted by this Court, vide judgment dated 30.08.2010 and appellant Naresh has been acquitted of the charges framed against him in the main case. When in the main case, the statements of same PWs have not been believed then in the present case registered under Section

25 of the Arms Act, the appellant cannot be convicted. The spring actuated knife has been recovered from the appellant during the investigation of the main case. Same Pws, who have been examined in the present case, have deposed in the main case but this Court has accepted the appeal and has acquitted the appellant. Therefore, the appellant is entitled to acquittal in the present case also.”

In view of what has been discussed hereinabove, the appeals are allowed, the conviction and sentence of the appellants are set aside. The appellants be set at liberty forthwith, if not required in any other case.

(REKHA MITTAL)
JUDGE

25.2.2015
PARAMJIT