

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

CRR-1983-2013

Date of decision: 28.05.2015

Kailash Kumar

... Petitioner

Vs.

Amrit Singh @ Pappi

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sandeep Chhabra, Advocate for
Mr. Hitesh Pandit, Advocate
for the petitioner.

Mr. Rahul Gautam, Advocate
for the respondent.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present criminal revision petition is directed against the order dated 16.02.2013 passed by learned Addl. Sessions Judge, Palwal whereby appeal of the petitioner was dismissed, granting him the liberty to file the recovery suit against the respondent-accused for recovering the amount of compensation.

Notice of motion was issued.

The only argument raised by learned counsel for the petitioner is that the learned Addl. Sessions Judge has misdirected itself, while not advertng to the main ground taken by the petitioner in his appeal for enhancement of the compensation awarded by the learned trial Court. He further submits that the impugned order passed by the learned Addl. Sessions Judge is cryptic on the face of it. He prays for allowing the present petition.

Faced with the above, learned counsel for the respondent could

not deny the factual aspect of the statement made by learned counsel for the petitioner and rightly so, it being a matter of record. However, he prays for dismissal of the present petition, contending that the accused-respondent must have already undergone the total sentence long back.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant revision petition deserves to be allowed, for the following more than one reasons.

A bare perusal of the impugned order dated 16.02.2013 would show that the learned Appellate Court did not advert to the main plea raised on behalf of the appellant-petitioner herein, for enhancement of the compensation in his favour and against the accused-respondent. Thus, the main grouse raised by the petitioner in his statutory appeal before the learned Addl. Sessions Judge has gone totally unattended. This material aspect of the matter has rendered the impugned order unsustainable in law, being patently illegal.

It goes without saying that the petitioner had a statutory right of appeal. In such a situation, the learned Appellate Court was bound to examine, consider and appreciate at least the star argument raised on behalf of the appellant before the learned Appellate Court. Learned counsel for the petitioner has been found fully justified, to contend that the petitioner was not interested in enhancement of sentence of the respondent-accused but he was interested only in the enhancement of amount of compensation. Having said that, this Court feels no hesitation to conclude that the learned Addl.

Sessions Judge, Palwal has not proceeded on factually correct and legally justified approach, while passing the impugned order and the same cannot be sustained, for this reason also.

Learned Addl. Sessions Judge has also failed to assign any reason as to why the main plea raised on behalf of the appellant, petitioner herein, was not being dealt with. In this regard, the impugned order is cryptic on the face of it. A serious prejudice has been caused to the petitioner and the impugned order cannot be sustained, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned order dated 16.02.2013 passed by learned Addl. Sessions Judge, Palwal cannot be sustained and the same is hereby set aside. Matter is remitted back to the learned Addl. Sessions Judge, Palwal for deciding the appeal of the petitioner afresh, on merits but only qua enhancement of compensation. Parties are directed to appear before the learned Addl. Sessions Judge, Palwal on 16.07.2015. Since the matter is old one, learned Addl. Sessions Judge, Palwal is directed to make an endeavour to decide the appeal of the petitioner at an early date.

With the abovesaid observations made and directions issued, present petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

28.05.2015
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