

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2338-2013 (O&M)
Date of Decision: February 24, 2015

Paramjit Kaur

...Petitioner

Versus

Mohanjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Amardeep Singh Gill, Advocate,
for the petitioner.

Mr. K.S. Dadwal, Advocate, and
Ms. Neha Jain, Advocate,
for respondent Nos. 1 to 4.

Mr. Shilesh Gupta, Addl. AG, Punjab,
for respondent No. 5.

NARESH KUMAR SANGHI, J (Oral)

Challenge in this criminal revision petition is to the judgment dated 10.1.2013, passed by learned Additional Sessions Judge, Hoshiarpur, whereby the appeal filed by the petitioner/victim challenging the judgment of acquittal passed by learned Judicial Magistrate Ist Class, Hoshiarpur, dated 19.9.2011, was dismissed.

Learned counsel for the petitioner/victim submits that the occurrence was of August, 2002. After registration of the FIR, the charge-sheet (report under Section 173, Cr.P.C.) was submitted

before learned Area Judicial Magistrate on 9.6.2004 and thereafter the charges were framed on 14.1.2005. The victim and other material witnesses had shifted from Hoshiarpur to Jalandhar and, as such, they were never served. Perusal of the interim (*zimni*) orders passed by learned Trial Court would reveal that the accused/respondent, Kulwinder Singh, remained absent on several dates and, as such, he was ultimately declared as a proclaimed offender. Thereafter, one more accused did not appear before learned Court below and, as such, learned Trial Court had to adjourn the case on several dates. It was also pointed out that the case during course of trial was transferred to various Presiding Officers on one count or the other. The interim (*zimni*) orders would further reveal that on several dates the Presiding Officers were not holding the Court and, as such, the witnesses could not be examined. It has also been pointed out that for the first time it was brought to the notice of the learned Trial Judge that the witnesses had shifted to Jalandhar from Hoshiarpur and, as such, on 1.7.2011 it was directed that summons be issued to Paramjit Kaur, Resham Singh, Jasvir Kaur and Shingara Singh at their address at Jalandhar. But on the next date, there was no reference with regard to issuance of summons to the witnesses. Thereafter on 27.8.2011, the evidence of the prosecution was closed by order of the Court. He

further pointed out that sufficient opportunities were not afforded to the witnesses for suffering their statements and, as such, the judgment of acquittal passed by learned Trial Court cannot be sustained. He further pointed out that as soon as the petitioner/victim came to know about the judgment of acquittal, then he immediately filed the appeal before learned Sessions Judge, Hoshiarpur, and the same has also been dismissed without according cogent reasons.

Learned counsel for the State as well as Mr. K.S. Dadwal, learned counsel for respondent Nos. 1 to 4, submit that after framing of the charges on 14.1.2005, the trial remained pending for more than six years and when the prosecution witnesses did not appear, then learned Trial Court was well within its jurisdiction to close the prosecution case.

In addition, learned counsel for respondent Nos. 1 to 4 had also pointed out that from the facts and circumstances of the case, the ingredients of Sections 323 and 452, IPC, are not attracted.

I have heard learned counsel for the parties and with their able assistance gone through the lower Court record.

Undoubtedly, the charges were framed on 14.1.2005 and till 27.8.2011, when the prosecution evidence was closed by order of the Court, only one prosecution witness was examined by the

prosecution. At the first blush it appeared that sufficient opportunities were afforded to the prosecution for leading its entire evidence, but when the interim (*zimni*) orders were perused, then it transpired that the case was adjourned for several dates on account of absence of one or the other respondent/accused. The interim orders further revealed that the case was adjourned several times on account of the fact that Trial Judge was not holding the Court.

It has also come to the notice that the case was adjourned several times since it was transferred many a times from one Court to another. It was only on 1.7.2011 when it was brought to the notice of learned Trial Court that the witnesses, namely, Paramjit Kaur, Resham Singh, Jasvir Kaur and Shingara Singh, had shifted from Hoshiarpur to Jalandhar. The summons were never served upon them at their new address. After 1.7.2011, only one opportunity was afforded to the prosecution to serve the material witnesses. This Court is of the considered view that the victim and his material witnesses were never served for making their depositions before learned Trial Court and, as such, the judgment of acquittal passed by learned Trial Court cannot be sustained.

The argument of learned counsel for the respondent Nos. 1 to 4 that no case for conviction under Sections 323 and 452,

IPC, is made out, would be considered by learned Trial Court on the basis of the evidence to be led by the parties.

As a sequel to the above discussion, the present criminal revision petition is allowed. The order dated 27.8.2011, whereby the prosecution case was closed as well as the judgment of acquittal, dated 19.9.2011 passed by learned Trial Court and the judgment dated 10.1.2013, passed by learned Additional Sessions Judge, Hoshiarpur, are hereby set aside. The case is remitted to the learned Trial Court with a direction to afford three effective opportunities to the prosecution witnesses to appear and depose and thereafter to proceed with the trial in accordance with law.

The affected parties would appear before learned Trial Court on 25.3.2015. The record received from both the Courts below be returned immediately. A copy of this order be sent to the learned Trial Court.

(NARESH KUMAR SANGHI)
JUDGE

February 24, 2015
Pkapoor