

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

(1)

**CRR No.1223 of 2015.
Decided on : 4.11.2015.**

Malkit Singh

...Petitioner

Versus

Punjab National Bank

...Respondent

(2)

**CRR No.1226 of 2015.
Decided on : 4.11.2015.**

Malkit Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

**Present : Mr. K.S. Boparai, Advocate,
for the petitioner in both the petitions.**

Mr. Mehardeep Singh, DAG, Punjab.

**Mr. R.S. Bhatia, Advocate,
for the respondent Bank.**

JITENDRA CHAUHAN, J.

This judgment shall dispose of aforementioned two revision petitions bearing CRR No.1223 of 2015 and CRR No. 1226 of 2015 as the same are filed against the common judgment dated 31.1.2015, passed by the Additional Sessions Judge, Ludhiana vide

which the judgment of acquittal dated 26.5.2011, passed by the Judicial Magistrate Ist Class, Ludhiana was set aside and the case was remanded to the trial Court for deciding afresh in accordance with law.

The brief facts of the case are that the present case was registered on the application of Sh. S.S. Arora, Senior Manager, Punjab National Bank on the allegation that Sh. Balwinder Singh son of Sh. Sarup Singh was having a saving account no. 6516 in Punjab National Bank, G.T. Road, Branch, Ludhiana and he used to deposit and withdraw money from the said account and on 22.9.1997 when said Balwinder Singh presented his passbook to the official of bank, he came to know about entries of withdrawal on 5.9.1997 for Rs. 60,000/- and on 12.9.1997 for the Rs.20,000/- and when he questioned the bank official that he had never withdrawn the above said amounts from his account, the bank official directed him to come on the following day. On the next day, Balwinder Singh came and moved application dated 23.9.1997. During inquiry, it came to the fore that Malkit Singh, Peon of the bank has withdrawn the above said amounts, after forging the signatures of Balwinder Singh and Jagdev Singh on the withdrawal forms. The case under Sections 420, 465, 467, 471, 120-B IPC was registered against Malkit Singh. After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court.

The provisions of Section 207 Cr.P.C were complied with and the accused was supplied the copies of challan and other documents, free of cost. Charges under Sections 465 etc. IPC were

framed against the accused to which the accused did not plead guilty and claimed trial.

On 26.5.2011, the trial Magistrate closed the prosecution evidence on the ground that prosecution has failed to conclude its evidence despite granting several opportunities. The prosecution produced two witnesses PW-1 Balwinder Singh and PW-2 Jagdev Singh, but their testimony remained incomplete and as such, the trial Magistrate after dispensing with the recording of statement of the accused under Section 313 Cr.P.C, vide the judgment dated 26.5.2011, acquitted the accused from the charges framed against him for want of evidence.

Aggrieved by the judgment dated 26.5.2011, the State of Punjab and the Punjab National Bank preferred two separate appeals before the Additional Sessions Judge, Ludhiana. The Additional Sessions Judge, vide the common impugned judgment dated 31.1.2015, set aside the judgment of acquittal dated 26.5.2011 and remanded the matter to the trial Magistrate for deciding the case afresh in accordance with law. It was observed by the Additional Sessions Judge that the trial Court has totally ignored the conduct of the accused while closing the prosecution evidence. It was the accused who was responsible for causing delay in proceeding the case.

Against the common judgment dated 31.1.2015, two revision petitions have been filed by the accused.

Learned counsel for the accused-petitioner contends

that once the trial Court has exercised its jurisdiction and closed the prosecution evidence, the appellate Court ought not to have set aside the well reasoned judgment of the trial Court. He further contends that the accused has the right of speedy trial which springs out from Article 21 of the Constitution of India. The trial was proceeding at a snail's pace. The prosecution could not conclude its evidence in a span of five years and as such, the trial Court has rightly closed the prosecution evidence and consequently, acquitted the accused. Learned counsel for the petitioner refers to the provision of Section 391 Cr.P.C and contends that the lower appellate Court ought to have directed the trial Court to take evidence or ought to have itself taken evidence but in any case, the remand of the case was not warranted at all. In this regard, learned counsel relies upon the judgments (i) Ukha Kolhe vs. The State of Maharashtra AIR 1963 SC 1531; (ii) Abinash Chandra Bose vs. Bimal Krishna Sen and another AIR 1963 SC 316; (iii) Chandra Lal Dass and others vs. State of Tripura 2003 CrL.L.J 2162 (Gauhati); (iv) Ramanlal Rathi vs. The State AIR 1951 Calcutta 305; (v) Charanjeet Gaba vs. Arjunlal Ahuja and another 2012(5) RCR (Criminal) 820 (Delhi); (vi) State of Andhra Pradesh through CBI vs. M. Durga Prasad and others 2012 (5) RCR (Criminal) 750 and; (vii) Machander vs. The State of Hyderabad AIR 1955 SC 792.

On the other hand, learned State counsel as well as

learned counsel for the respondent-Bank state that the wrong

committed by the trial Court has been corrected by the lower appellate Court. They support the judgment passed by the lower appellate Court. In support of the submission, reliance has been placed on the judgments **(i) Zahira Habibulla H. Sheikh and another vs. State of Gujarat and others 2004(2) RCR (Criminal) 836 and (ii) Mohd. Hussain @ Julfikar Ali vs. State (Govt. of NCT) Delhi 2013 AIR (SC) (Crl) 112.**

I have heard learned counsel for the parties and have gone through the record of the case.

The sole controversy involved in the present lis is whether the order passed by the trial Magistrate closing the prosecution evidence is justified or not. If the order is justified then the consequential judgment of acquittal is valid in law otherwise its not. In order to test the correctness of the order closing the prosecution evidence, this Court would like to go through the zimni (interim) orders passed by the trial Magistrate so as to be able to appreciate the proceedings in right perspective. The challan/report under Section 173 Cr.P.C was presented in the Court on 19.12.1998. On 30.3.1999 an application under Section 239 Cr.P.C (for discharging the accused) was moved by the accused and thereafter the case remained pending for consideration on that application. Thereafter, the adjournments were granted on the request of the defence counsel. On 15.11.2000 an application under Section 173(8) Cr.P.C (for further investigation) was moved. The same was decided on 2.10.2003. Thereafter, the case was

again fixed for consideration on the application under Section 239 Cr.P.C. On 12.7.2005 that application was disposed of and the charge against the accused was framed. On 12.12.2005 PW Jagdev Singh and Balwinder Singh were present before the Court but they could not be examined on the request of the defence counsel. The case was adjourned to 20.2.2006 and again on that day, both the aforesaid witnesses were present but the trial Magistrate did not examine them. Thereafter, on 19.4.2006, the file of the case was sent to the Court of Additional Sessions Judge, Ludhiana in Criminal Revision No.149 of 2005 filed by the accused. After a gap of four years, the original file was received by the trial Court on 24.5.2010 and the trial Magistrate directed its Ahlmad to issue process for 13.7.2010. However, no summons were issued for 13.7.2010. The matter was adjourned to 25.8.2010. On 28.9.2010 PW Balwinder Singh, Jagdev Singh and Amrik Singh, Customer Care Officer, Punjab National Bank appeared in the Court but the defence counsel requested for an adjournment. The case was adjourned without examining those witnesses. On the next date of hearing i.e. 18.10.2010 PW Balwinder Singh appeared in the Court but again, he was not examined. On the next date of hearing on 29.11.2010, PW-1 and PW-2 again appeared in the Court and were examined partly and they were again bound down by the Court for 4.1.2011. On 4.1.2011 PW Balwinder Singh and Jagdev Singh were present in the Court but the defence counsel requested for an adjournment and the case was further adjourned without examining the

witnesses. On the next date of hearing, again, PW Balwinder Singh and Jagdev Singh appeared in the Court but both the witnesses were bound down for 31.3.2011. The same thing happened on 31.3.2011, PW Balwinder Singh and Jagdev Singh were present in the Court but on the request of the defence counsel, they were bound down for 12.5.2011. On 12.5.2011 ld. Duty Magistrate again adjourned the case whereas PW Balwinder Singh and Jagdev Singh were present in the Court. On 19.5.2011 PW Balwinder Singh and Jagdev Singh were present however, ld. trial Magistrate observed that they had not brought the relevant record, and as such, last opportunity was granted to the PWs to bring the relevant record on 26.5.2011. Whereas none of the previous zimni (interim) orders contain any direction to the PWs to bring relevant record. On 26.5.2011, no PW was present and due to the single default by the PWs, the prosecution evidence was closed by the trial Magistrate on 26.5.2011.

This Court does not need any microscope to see as to who was at fault. The prosecution witnesses remained attending the Court for eleven dates. The case was however, adjourned by the trial Magistrate on the request of the defence counsel. The accused sought adjournments on one ground or the other. The trial Judge adjourned the matter without examining the prosecution witnesses. On one single date i.e. 26.5.2011 when the prosecution witnesses did not appear, the trial Magistrate closed the prosecution evidence. It pains this Court in observing that the trial Magistrate did not act judicially and judiciously.

The trial Magistrate instead of giving opportunity to the prosecution to lead evidence, adopted a short cut way and scuttled the prosecution case. No doubt, justice delayed is justice denied but justice hurried is justice buried. Before closing the prosecution evidence, the trial Magistrate ought to have given a glance to the earlier zimni orders to find out as to who caused delay in leading the prosecution evidence. No doubt, the prosecution witnesses were supposed to be present on 26.5.2011, but in the light of the fact that the witnesses remained present earlier for eleven dates, a case for grant of adjournment to the prosecution was made out. The principle of natural justice has been given a go-bye by the trial Magistrate. The direction contained in the zimni order dated 19.5.2011 is strange. Prior to 19.5.2011, the witnesses attended the Court for ten times but no direction was given to bring record but on 19.5.2011, the trial Magistrate granted last opportunity to the witnesses to bring the record. The matter does not end here. It is a warrant case instituted on a police report, therefore, Section 242 Cr. P.C would be applicable in this case. The aforesaid provision mandates that the Magistrate may issue a summons to any of its witnesses directing him to attend or to produce any document or other thing. So, it was duty of the Court to issue summons to the remaining prosecution witnesses also. The trial Magistrate did not issue summons to the remaining witnesses and abruptly closed the prosecution evidence. The Code of Criminal Procedure is a complete code. It guides a Judge at every stage of the case. If a witness is bound

down for a particular date, in the event of his non-appearance on the subsequent date, the default consequences have been well enumerated in the Code. The trial Magistrate ought to have issued bailable/non-bailable warrants of the witnesses but the Magistrate without taking into consideration the fact that the witnesses remained attending the Court for eleven dates and the case was being adjourned at the request of the accused only, closed the prosecution evidence. The prosecution evidence could not be recorded on earlier dates due to the fault of the accused. The closure of prosecution evidence was nothing but a bonanza for the accused for his misdeeds.

Now adverting to the judgments cited by the learned counsel for the petitioner, in **Ukha Kolhe's case (supra)**, the Hon'ble Apex Court held that retrial is not to be ordered merely to enable prosecution to adduce additional evidence for filling up lacuna.

In **Abinash Chandra Bose's case (supra)**, it was observed that in the absence of anything to show that the Magistrate has refused to give an opportunity to the complainant to adduce the necessary evidence, the High Court was not justified in ordering retrial simply because the prosecution did not adduce all the evidence that could have been produced in support of its case.

In **Chandra Lal Dass's case (supra)**, the Hon'ble Gauhati High Court held that for taking additional evidence on record, the Court has to fall back upon provision of Section 391 Cr.P.C.

In **Ramanlal Rathi's case (supra)**, it was held by

the Hon'ble Calcutta High Court that retrial cannot be ordered on the ground that the prosecution did not produce the proper evidence and did not know how to prove their case or because it is serious one.

In Charanjeet Gaba's case (supra), it was held by the Delhi High Court that while allowing application under Section 391 Cr.P.C., the Appellate Court should keep conviction order in abeyance by staying its operation and to either record evidence itself or to direct it to be recorded by trial Court and dispose of main appeal in light of such additional evidence.

In M. Durga Prasad's case (supra) the Hon'ble Supreme Court dealt with the scope of appeal against acquittal and held that interference in acquittal is permissible only if the view taken by the trial Court for acquitting accused is not a possible view on the facts and evidence on record.

In Machander's case (supra), the Hon'ble Supreme Court sounded a bell of caution that it is incumbent on the Court to see that the guilty do not escape, it is even more necessary to see that persons accused of crime are not indefinitely harassed.

The aforesaid judgments do not deal with a case where the principle of natural justice has been violated and the prosecution has not been given a full opportunity to present its case. The judgments either deal with the power of Court to take additional evidence in terms of Section 391 Cr.P.C or the procedure of taking

additional evidence. The Hon'ble Supreme Court has also laid down

that retrial cannot be ordered to fill up the lacuna of the case of prosecution. The judgments are not applicable on the facts of the present case because it is a case where the prosecution has not been given a full and complete opportunity to lead its evidence. The right of the prosecution to lead evidence has been curtailed without any fault on its part. It is a case where the basic right to lead evidence has been denied. The point of leading additional evidence is not involved in the present case.

In view of what has been observed above, this Court is of the opinion that the lower appellate Court was well within its right in setting aside the judgment of acquittal. The judgment passed by the lower appellate Court is in consonance with the law. The same does not call for any interference. Consequently, both the revision petitions are dismissed.

Keeping in view the fact that the matter pertains to the year 1997 and eighteen years have elapsed, the trial Court is directed to proceed with the matter expeditiously and decide the case within a period of nine months from the date of receipt of copy of the judgment.

4.11.2015.
SN

(JITENDRA CHAUHAN)
JUDGE