

CRR-210-2014

[1]

In the High Court of Punjab and Haryana at Chandigarh.

CRR-210-2014 (O&M)

Date of Decision: 04.09.2015

Deepak Kansal

...Petitioner

Versus

Khazan Dass and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. B.S. Bhalla, Advocate,
for the petitioner.

Mr. Deepak Gupta, Advocate,
for respondent No.1.

Mr. R.P.S. Sidhu, AAG, Punjab.

SABINA, J.

Petitioner has filed this petition challenging the order dated 29.10.2013.

Petitioner had faced trial in FIR No.35 dated 07.05.2000, under Section 406 of the Indian Penal Code, 1860 (for short 'IPC) and Section 7 of the Essential Commodities Act, 1955 ('of the Act' for short), registered at Police Station Mehna along with co-accused Khazan Dass, respondent No.1.

Trial Court vide judgment dated 23.08.2010 ordered the acquittal of the petitioner and conviction of respondent

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No.1 under Section 406, IPC and Section 7 of the Act. Aggrieved against his conviction and sentence, respondent No.1 preferred an appeal.

The Appellate Court vide order dated 29.10.2013 allowed the appeal and remanded the case to the trial Court for the fresh decision on the ground that no order was passed qua M/s Luxmi Enterprises, G.T. Road, Moga, although, charges had been framed against the said firm. The Appellate Court further directed the trial Court to summon the petitioner and to decide the matter afresh.

Learned counsel for the petitioner has submitted that so far as petitioner is concerned, he was acquitted by the trial Court. The State had not filed any appeal challenging the acquittal of the petitioner. The Appellate Court has ordered for fresh trial against the petitioner as well, without affording an opportunity of hearing to the petitioner.

Learned counsel for respondent No.1 and the learned State counsel, on the other hand, have opposed the petition.

In the present case, admittedly, petitioner had faced the trial along with respondent No.2 qua commission of offence punishable under Section 406 IPC and Section 7 of the Act, but the trial Court had ordered the acquittal of the petitioner vide order dated 23.08.2010. So far as the acquittal

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of the petitioner is concerned, the order passed by the trial Court was not challenged by way of an appeal by the State. Since the order of acquittal passed against the petitioner had not been challenged, the Appellate Court could not have set aside the acquittal of the petitioner in an appeal filed by respondent No.1, challenging his conviction and more so without affording an opportunity of hearing to the petitioner. So far as the Appellate Court is concerned, the matter before the said Court was as to whether respondent No.1 had been rightly convicted and sentenced by the trial Court or not. The fact that no order had been passed by the trial Court with regard to firm was not even under challenge before the Appellate Court. The Appellate Court has directed the trial Court to summon the petitioner, although, no opportunity of hearing was given to the petitioner by the Appellate Court before passing the impugned order.

Accordingly, this petition is allowed. Impugned order passed by trial Court dated 29.10.2013 is set aside. Appellate Court is directed to pass a fresh order in accordance with law.

September 04, 2015
kapil

(SABINA)
JUDGE