

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

**Criminal Revision No.4216 of 2015(O&M)**

**Date of Decision: November 19, 2015**

Naresh Kumar

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI**

*1. Whether Reporters of Local papers may be allowed to see the judgment? Yes*

*2. To be referred to the Reporters or not? Yes*

*3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr.Deepak Gupta, Advocate,  
for the petitioner.

**Naresh Kumar Sanghi, J.**(Oral)

Challenge in the present criminal revision petition is to the judgment dated 30.09.2015 passed by learned Additional Sessions Judge, Ludhiana, whereby the appeal filed by the petitioner challenging the judgment of conviction and sentence for the offences punishable under Sections 468 and 471, IPC, recorded by learned Judicial Magistrate First Class, Ludhiana, was partly accepted and the case was remitted to learned trial Court for reconsidering the matter after hearing both the sides on the law and facts of the case and then pass fresh judgment in terms of what has been discussed by the Appellate Court.

Learned counsel for the petitioner has primarily raised the contention that in view of the provisions contained in Section 386, Cr.P.C., i.e powers of the Appellate Court, learned Additional Sessions Judge while exercising the jurisdiction as Appellate Court could not remit the matter to learned trial Court for passing the fresh judgment only. In fact, the Appellate Court could direct for fresh trial. In support of his contention, learned counsel has placed reliance on the matters of **Md.Bashir Ahmad vs. State** 1961 AIR (Patna) 252 (Division Bench, Patna); **Pratul Chaudhari and others vs. The State (Delhi)**, 1979 Criminal Law Journal 103 (Single Bench, Delhi); **Mohinder Singh and Ors. vs. State of Punjab and anr.**, 1985(1) RCR(Criminal) 462 (SC); **Naurang Singh vs. State of Haryana**, 1985(2) RCR (Criminal) 187 (P&H); **Ashok Kumar vs. State**, 1990(1) RCR (Criminal) 165 (Delhi); **Inderbhan Ahuja & others vs. State of Rajasthan**, 2008(2) Rajasthan Criminal Cases 602 (Rajasthan); and **M/s Maruthi College of Engineering and Technology & another vs. State of A.P. & Anr.**, 2011(7) RCR (Criminal) 1916 (Andhra Pradesh).

I have heard learned counsel for the petitioner and with his able assistance gone through the material available on record.

The detailed narration of the facts is not necessary in view of the controversy involved. However to be clear on the issue, the brief facts of the case are that the petitioner was booked vide FIR No.76 dated 06.05.2004, for the offences punishable under Sections 420, 467, 468 and 471, IPC, registered at Police Station, Focal Point, Ludhiana, on the premise that in the year 2000, in the revenue estates of Jalandhar and Ludhiana, the petitioner committed cheating with the Custom Department by not paying custom duty of ₹3,40,295/- (Rupees three lacs forty thousand two hundred and ninety five only) and further forged a valuable security in the shape of shipping bill No.002277 dated 31.03.2000, with an intention to commit cheating and used the said forged bill as genuine. After thorough investigation, the charge-sheet (report under Section 173, Cr.P.C.) was presented for prosecution of the petitioner for the offences punishable under Sections 420, 467, 468 and 471, IPC.

Finding a prima-facie case, the petitioner was charge-sheeted for the above-stated offences to which he pleaded not guilty and claimed trial.

In order to substantiate its case, the prosecution examined as many as six witnesses and also proved certain

documents.

Vide order dated 07.02.2014, learned trial Court closed the prosecution evidence since it failed to examine all the witnesses.

The petitioner was examined under Section 313, Cr.P.C. No evidence in defence was led. After hearing the learned counsel for the parties, learned trial Court held the petitioner guilty for the offences punishable under Sections 468 and 471, IPC, and awarded rigorous imprisonment for two years under Section 468, IPC, and rigorous imprisonment for three years for the offence punishable under Section 471, IPC. Both the sentences were ordered to run concurrently.

The operative part of the judgment of conviction passed by learned trial court is as under:-

*“15. Now, in the present case, accused has been charged with the offences under Section 420, 467, 468 & 471 of IPC and the basic offences involved are cheating and forgery which have been described under Section 415 and 463 of IPC respectively. In the offence of cheating, there are two basic elements i.e. deception and dishonest inducement to do or omit to do something. Mere dishonesty is not a criminal offence and it would have caused damage to either of the four cardinal assets of humanity i.e. body, mind, reputation or property. The main ingredients of offence*

*of cheating are*

*(1) Deception of any person.*

*(2) (a) Fraudulently or dishonestly inducing that person*

*(i) to deliver any property to any person; or*

*(ii) to consent that any person shall retain any property;*

*or*

*(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceive, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.*

*And thus, the act alleged to be performed by the accused falls under part-b of the Section 415 as accused intentionally induced some of the custom officials and got prepared a forged shipping bill in order to obtain a duty entitlement pass book (DEPB) for credit of Rs.4,62,889/- whereas he was entitled to Rs.1,22,594/- only. The finances of the State are property of the people of the country as a whole and thus, in connivance with the custom officials and by forging the documents, accused has caused damage to the public property. From the evidence discussed above, it is very much clear that the prosecution has fully proved its case against the accused and although, learned defence counsel has cross examined above mentioned witnesses at length but nothing has come on record which could have shatter their veracity and if we look into the facts and circumstances of the present case and the material produced on record, it is very much clear that the accused in connivance with the*

*custom officials got prepared a forged shipping bill no. 002277 dated 30.01.2000 and obtained a duty entitlement pass book no.3010005808 dated 18.09.2000 for duty credit of Rs.4,62,889/-. However, in reality the goods were received in the custodian godown on 04.04.2000 and containers were stuffed and sealed on the point that in the present case complainant and investigation officer of the case have not been examined and therefore, evidence against the accused which has come on record is not at all reliable but this court is not in consonance with the submissions made by learned defence counsels as admittedly, the complaint against the accused has been lodged by Dy. Director General of Foreign Trade who is a public servant and the said complaint Ex.P1 has been proved on record by PW5 on the basis of which entry in DDR was made and present FIR was got registered against the accused and it is a settled proposition of law that if a complaint is being filed by public servant in writing and that is too in his official capacity, then the Magistrate need not examine the complainant. When the public servant acting or purporting to act in discharge of his official duty has made a complaint and if from the perusal of the documents brought on record and from the depositions of other witnesses it appears that accused is guilty of the offences with which he has been charged, then non-examination of complainant is not fatal to the case of the prosecution. Further, it is also a settled principle of law which has been recently reiterated by*

*Hon'ble Apex Court in **Lahu Kamlakar Patil vs. State of Maharashtra, 2013 (6) SCC 417** that if there appears no material contradictions in the evidence of witnesses already brought on record, then non-examination of the investigation officer as a witness for prosecution is of no consequence and no prejudice can be said to have been caused to the accused. Now reverting back to the facts of the present case it is very much clear that the present case was based on documentary evidence and all the required documents have been exhibited by competent and material witnesses of the prosecution and moreover, throughout his case accused has failed to depose about the fact that if he sent his consignment through shipping bill no. 002277 dated 31.03.2000 then how goods were stuffed into the containers on 04.04.2000 and regarding this, gate pass of export is also on judicial file which is dated 05.04.2000 (although not exhibited). Prosecution has proved on record the application form of the accused Ex. P5 for grant of Duty entitlement pass book on post export basis which was on Appendix 11-C (Ex. PW5/1) in duplicate along with required documents which included copy of Shipping Bill dated 31.03.2000 Ex. PW5/6 and bank certificate of export and realisation dated 22.05.2000. Further Ex. PW5/8 and PW5/10 shows that DEPB credit was given to accused on the basis of shipping bill no. 002277 dated 31.03.2000, however, Ex. PW6/3, which is 'statement of container stuffed, shows that containers were stuffed on 05.04.2000 and shipping bill no. has*

*been mentioned as 002277 dated 31.03.2000 issued on the name of M/s. Jamba Exports and vide Ex. PW5/5 identity of accused has also been established on record being the proprietor of said firm. It is pertinent to mention here that some other documents are on judicial file pertaining to this case but as those are not exhibited, this court is not taking note of the same but even then rest of the documents, unanimously, are pointing towards the guilt of the accused. Accused has not put forward his case while cross examining the witnesses of prosecution and in fact he has not asked anything material in order to shatter the veracity of the witnesses of the prosecution. He has not denied this fact that he is the proprietor of the said firm and in fact he has nowhere stated that why custom official would lodge a complaint against him. He had ample opportunity for putting forward his defence but he has been unable to explain about the fact that how he got shipping bill no. 002277 dated 31.03.2000 for the goods which were stuffed on 05.04.2000. His silence on these points is also pointing towards his guilt.*

*16. In sequel to my above mentioned findings on record, this court is constrained to hold that accused is guilty of commission of offences under Section 468 and 471 of IPC and he is accordingly convicted thereunder. Let the convict be heard on quantum of sentence.*

*17. Before parting with Judgment, this court deems it necessary to detect the root cause of the incident happened herein above as culprits*

*behind the veil cannot escape from the clutches of the law especially in cases like this, wherein acts of individuals done for the sake of their personal gains at the cost of financial health of the State cannot be treated as a mere eye-wash. Also, investigation agency has also not performed its duty sincerely and has remained silent about the persons who joined their hands in commission of offence along with main accused and therefore, this court finds itself duty bound to bring this fact in the knowledge of concerned authorities and hence, Criminal Ahlmad of this court is hereby directed to send the copy of this judgment to the Commissioner of customs and Commissioner of Police, Ludhiana to look into the matter and do the needful by initiating departmental inquiry against the persons responsible for it, through proper channel. Ordered accordingly.”*

Dissatisfied with the judgment of conviction and order of sentence passed by learned trial Court, the petitioner filed an appeal which was heard and decided by learned Additional Sessions Judge, Ludhiana, in the manner stated in the initial part of the judgment.

Perusal of the judgment passed by learned trial Court would reveal that the petitioner was charge-sheeted for having

committed the offences punishable under Sections 420, 467, 468 and 471, IPC. While passing the judgment of conviction, there is no whisper of discussion regarding the offences punishable under Sections 420 and 467, IPC. At the conclusion of the judgment of conviction (para No.16), learned trial Court held that the petitioner was guilty of commission of offences under Sections 468 and 471, IPC. There was no finding regarding Sections 420 and 467, IPC.

Section 354, Cr.P.C., deals with language and contents of judgment. It is essential to reproduce the same:-

*“354. Language and contents of judgment.*

*(1) Except as otherwise expressly provided by this Code, every judgment referred to in section 353,-*

*(a) shall be written in the language of the Court;*

*(b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;*

*(c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860 ) or other law under which, the accused is convicted and the punishment to which he is sentenced;*

*(d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.*

*(2) When the conviction is under the Indian Penal Code (45 of 1860 ), and it is doubtful under which of two sections, or under which of two parts of the same*

*section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.*

*(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.*

*(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of this Code.*

*(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.*

*(6) Every order under section 117 or sub-section (2) of section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision.*

In the judgment titled as **State of A.P. vs. Gowthu Ranghunayakulu and others**, 1987 AIR (SC) 40, Hon'ble the Supreme Court held that a judgment which is not in accordance

with the mandatory requirements as laid down under Section 354, Cr.P.C., has to be set aside and thereafter, the matter was remitted to the Appellate Court for deciding afresh in accordance with law.

Perusal of Section 354, Cr.P.C., reproduced hereinabove would reveal that the Court passing judgment has to specify the offences and the section of IPC or other law under which the accused is convicted and the punishment to which he is sentenced.

Learned Appellate Court while concluding its order held as under:-

*“Thence, as per provisions in terms of Section 354 of the Cr.P.C as discussed aforesaid, an obligation has been cast over the Court to specify the offence intermingled with the section either of the Indian Penal Code or other law where under an accused is found guilty as well as the sentence having inflicted therefore. That means to say, the section explicit clear-cut finding followed with infliction of sentence independently. However, perusal of the impugned judgment reveals that there is no finding of learned trial Court under Sections 420 and 467 of IPC which is not in consonance with the aforesaid provisions as such the impugned judgment is liable to be set aside.”*

There is no doubt that in the cases cited supra by

learned counsel for the petitioner (as narrated in the present order while discussing his arguments) Hon'ble Courts have held that the Appellate Court should not remit the case to learned trial Court for passing the judgment afresh. In fact, the case can be remanded for fresh trial.

Perusal of the above judgments would reveal that Section 233, Cr.P.C. (entering upon defence), 243, Cr.P.C. (evidence for defence), 313 Cr.P.C (power to examine the accused) and 391, Cr.P.C. (Appellate Court may take further evidence or direct it to be taken) were not brought to the notice of the Hon'ble Courts.

In **K.Moidu vs. State of Kerala 2009(4) RCR (Criminal) 958**, Hon'ble Full Bench of Kerala High Court held that compliance of Section 233, Cr.P.C., was mandatory however, the non-compliance would not ipso facto vitiate the proceedings but keeping in view the substantial prejudice against the accused, the Appellate Court would be justified in setting aside the final order and directing the Sessions Court to continue trial from that stage afresh.

In **State of Mizoram vs. Abdul Jalil and Ors., 2008 Cr.L.J.2484 (Division Bench, Gauhati)** the matter was remanded back to the District Magistrate, for adjudicating the

same afresh from the stage of Section 313, Cr.P.C., in the special facts of the case.

In the matter of **State of Bihar** vs. **Sanjay Tiwary** **2008 Criminal Law Journal 4410 (Division Bench, Patna)** held that the accused was not afforded an opportunity to submit the Finger Print Bureau Report and even his statement under Section 313, Cr.P.C., was not properly recorded and as such, the matter was remitted to learned trial court by observing as under:

*“16. It will serve no useful purpose to refer to a large number of judgments cited by the parties in respect of scope of Section 293, Criminal Procedure Code and the effect of omission to put relevant circumstances to the accused under Section 313, Criminal Procedure Code as the law on these points is quite clear. Under Section 293, Criminal Procedure Code if the Court has exercised its discretion properly on relevant facts and circumstances then the report of the expert can be used as evidence without calling for the expert. But as discussed earlier, in the facts of the case, after objection raised by the defence, the trial Court ought to have summoned the expert. So far as Section 313, Criminal Procedure Code is concerned, judgments are*

*clear that the circumstance not put to the accused cannot be used against him but then the appellate Court has further responsibility of looking into the facts and finding out whether any prejudice has been caused to the accused or not and in case of necessity, the appellate Court can also put questions to the accused or his counsel for seeking explanations. This is evident from judgment of the Apex Court in the case of **State (Delhi Administration) v. Dharampal, 2003 SCC (Cri) 1012: (2001 Cri.LJ 4748)**. In case of **Rautu Bodra v.State of Bihar 1999 SCC (Cri) 1319** the Apex Court in context of Section 313,Criminal Procedure Code held that circumstances not put to the accused must be excluded from consideration. But it further, observed that considering the ghastly nature of the crime the matter required a consideration for remanding the matter to the trial Court after setting aside the conviction of the accused, for further and proper examination under Section 313, Criminal Procedure Code and then proceed with the trial from that stage. Such option was however not exercised in that case in view of the fact that more than 15 years had elapsed*

*and the appellants had served more than four years of imprisonment.*

*17. On the basis of aforesaid judgments of the Apex Court and power of the appellate Court available under Section 386 of the Criminal Procedure Code we are of the considered view that in the facts of the case the judgment of conviction against appellant, Sanjay Tiwary and the death sentence awarded to him need to be set aside only for the purpose of remitting the matter to the trial Court for a limited retrial from the stage of considering prayer of the prosecution to bring on record Exhibits-14 and 15 series as documentary evidence on behalf of the prosecution. The trial Court will apply its mind to the said prayer of the prosecution in the light of observation in this judgment and for taking the documentary evidence on record it may order for summoning the experts or other related officials as witnesses for the prosecution. After these documents are brought on record and the experts are examined the trial will proceed as per law and the accused would be again examined under Section 313, Cr.P.C in which all the circumstances appearing*

*against him must be put to him to seek whatever explanation he may have to offer in respect of such circumstances. Thereafter the trial Court shall decide the trial by a fresh judgment and order in accordance with law.*

*18. Accordingly, the judgment and order under appeal relating to Sanjay Tiwary are set aside. In the result, Cr.Appeal No.1169 of 2006 is allowed in part to the extent indicated above and the trial of Sanjay Tiwary is remitted back to the trial Court to be conducted from the stage pointed out above. As a result the Death Reference No.9 of 2006 in respect of Sanjay Tiwary is answered in negative. As discussed earlier the Government Appeal No.11 of 2006 stands dismissed.”*

Similarly in the matter of **Shishan Kumar vs.State of Himachal Pradesh**, 2010(1) All India Criminal Law Journal 135 (Single Bench, Himachal Pradesh) while finding that there was irregularity in complying with the mandate of Section 233, Cr.P.C., the matter was remitted to learned trial Court for proceeding afresh from that stage.

Similar view has been taken by Hon'ble the Supreme

Court in the matter of **Nar Singh vs. State of Haryana, 2014(4) RCR(Criminal) 929 (SC)** and Hon'ble Kerala High Court in the matter of **Lakshmanan Sundaram vs. State of Kerala, 1990 Criminal Law Journal 1800.**

It is apposite to mention here that during course of arguments, it was conceded by learned counsel for the petitioner that vide order dated 05.10.2015 learned trial Court has already decided the case afresh.

In view of what has been discussed it cannot be said that learned Appellate Court had gone wrong in remitting the matter to learned trial Court for passing the judgment afresh in view of the peculiar facts and circumstances of the case.

Finding no merit in the present case, the same is hereby dismissed.

**November 19, 2015**  
seema

**(Naresh Kumar Sanghi)**  
**Judge**

