

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8981 of 2013
Date of Decision: 22.01.2015

HC Tarsem Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Jagjit Singh, Advocate,
for the petitioner.

Mr. Anshul Gupta, AAG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

A cumulative reading of the statements of Constable Sukhwinder Singh in the departmental proceedings against the petitioner and Constable Jasvir Singh in the case of co-delinquent Baljinder Singh, disclose that Constable Sukhwinder Singh was present in Police Station and is a direct witness to a mobile phone call exchanged between the petitioner Tarsem Singh and Darshan Singh, Munshi, Head Constable Subhanpur informing that X-ray reports of the complainant Daljit Kaur have been received in the Police Station and Darshan Singh should arrange to obtain the same. However, the statement of Jasvir Singh, defence witness in the case of Baljinder Singh is based on hearsay evidence and, therefore, when he

deposes that no MLR/X-ray report regarding additional injuries to complainant Daljit Kaur, was received in Police Station, Subhanpur from Police Station Sadar, Kapurthala or that no information was provided to the Police Station, in the investigations will remain subservient to direct evidence being indirect and hearsay in nature.

On a query put by the Court, Mr. Anshul Gupta has filed a short affidavit of Mukesh Kumar, P.P.S, Deputy Superintendent of Police, Sub Division Bholath, District Kapurthala which reveals that there are no specific instructions regarding sending of MLR/X-ray reports. However, it is pleaded that there is a practice that the same are sent to the Police Station concerned. The reply to query 3 has been caveated in the short affidavit with the caution words that in the present case, MLRs/X-ray reports were sent to Police Station, Sadar, Kapurthala instead of Police Station Subhanpur inadvertently. If this is the position then there cannot be any dispute that the relevant material was not sent at all and if it was sent to the wrong quarters then that was not the charge laid against the petitioner. It was well settled that a man cannot be punished for a charge not framed against him.

Therefore, there is merit in the contention of the learned counsel for the petitioner that the impugned order awarding major punishment of withholding of one increment with cumulative effect is not justified nor is it proportionate to the charge laid.

It may be mentioned that co-delinquent Baljinder Singh was exonerated at the inquiry and was not punished in the same transaction, while adverse consequences were visited upon the petitioner by way of infliction of major punishment.

Darshan Singh was not produced in the witness box by the prosecution to establish that no call was exchanged between the petitioner Tarsem Singh and Baljinder Singh regarding status of information regarding the MLR/X-rays of the injured complainant in the criminal case for additional injuries falling under Section 326 IPC in addition to commission of offences under Section 323 IPC. It may be mentioned that finally the police after investigations filed a cancellation report before the Magistrate with respect to the FIR. Obviously, no final report under Section 173 was presented in the case.

However, Mr. Gupta has pointed out to page 32 of the paper book regarding statement of Prosecution Witness No.3 (Darshan Singh). Darshan Singh was put the following question by petitioner Tarsem Singh which was answered as below:-

"Question: Whether on receipt of Medicolegal Report/Injury report, I had told you on telephone, in this behalf? At this, what you replied.

Answer: I received no telephone, in this behalf."

On this statement, Mr. Gupta asserts that Darshan Singh denied making of telephone call [if that included and meant a mobile call] but what is important to be noted is that the question was asked by none other than the petitioner himself in cross-examination.

Even if this were true then the question still remains as to the official duty of ASI Baljinder Singh the Investigating Officer in the criminal case filed by Daljit Kaur and whether he made any genuine effort to obtain the MLR/X-ray of the injured party since he was named the Investigating Officer and was incharge of conduct of investigations in the case.

It is contended by Mr. Jagjit Singh, learned counsel for the

petitioner that the episode involved in the domestic proceedings were two sides of the same coin, and one side cannot be seen independently of the other. When the two are put together then in all probability the version of the petitioner cannot be discarded, by accepting, at the same time, the case of Baljinder Singh IO who in the inquiry was exonerated in a common proceedings held against both the co-delinquents. It may be mentioned that both were tried together in the departmental proceedings and were, therefore, in the position of becoming witnesses against each other and protecting themselves against incrimination.

In these circumstances, and looking to the short affidavit filed in Court today that there are no specific instructions with respect to sending of MLR/X-ray reports then it cannot be said with certitude that the petitioner is guilty of any misconduct, much less major. Besides, it is disclosed in the short affidavit that the two reports in question were sent to Police Station Sadar, Kapurthala instead of Police Station Subhanpur inadvertently. It is not specified in the affidavit as to who sent the reports inadvertently leaving the matter vague.

This raises sufficient doubt in the mind of the Court as to the existence of facts against the petitioner. Therefore, interference is called for in this case to save the petitioner from injustice.

In view of the above, this Court has no hesitation in allowing the petition and quashing the impugned orders dated December 19, 2011 (P-6), March 22, 2012 (P-7) and June 26, 2012 (P-8), that is, from punishment up to the appellate order rejecting the appeal, which three orders are set aside.

This petition is allowed with all consequential benefits flowing

from setting aside the aforesaid orders, to be calculated and paid within a period of two months from the date of receipt of certified copy of this order.

(RAJIV NARAIN RAINA)
JUDGE

22.01.2015
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