

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

**Crl. Misc. No. M-21692 of 2014
Date of decision : 05.10.2016**

Harjit Singh and ors.

.....Petitioners

versus

Davinder Kaur

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Bhanu Pratap Singh, Advocate
for the petitioners

Mr. D.K. Nagar, Advocate
for the respondent

RITU BAHRI, J.

The present petition under Section 482 Cr.P.C is for setting aside order dated 10.02.2014 (P-4) passed by learned Judicial Magistrate 1st Class, Ludhiana and order dated 02.05.2014 (P-6) passed by learned Addl. Sessions Judge, Ludhiana in Crl. Complaint No. RBT 96/1, dated 03.10.2006.

Brief facts of the case are that a complaint was filed by the complainant against the petitioners under Sections 406/498-A/506 IPC and the petitioners were summoned to face the trial, vide order dated 23.07.2007. Thereafter, all the accused appeared before the trial Court and the trial Court ensued but the complainant did not give the name of witnesses to be examined by the complainant. Suddenly, on 01.10.2013, the complainant examined Sh. Kulwant Singh as C.W.3 for the reason that his

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person has acted as a go-between for arranging this engagement. The petitioners then filed a revision petition on 23.10.2013 for striking of evidence of said Kulwant Singh-C.W.3 on account of the same being unnecessary. The petition was allowed and vide order dated 04.12.2013, the learned Magistrate who was seized with the matter struck off the evidence of said Kulwant Singh. The respondent preferred an application under Section 313 Cr.P.C for recalling the said Kulwant Singh-C.W.3 so that this witness may be cross examined. This application was allowed on 10.02.2014 and this order was challenged by the petitioners by filing revision petition against that order, which was also dismissed on 02.05.2014. Hence the present revision petition.

Learned counsel for the petitioners submits that the second order of the trial court dated 10.2.2014, allowing Kulwant Singh to be examined as a witness, amounts to a review of its earlier order dated 4.12.2013 by which it was held that the evidence of Kulwant Singh cannot be read against the accused. That order dated 4.12.2013 not having been challenged by the respondent-complainant, could not have been recalled/reviewed by the trial court. He further submits that this aspect has not been dealt with adequately by the first Revisional Court.

Learned counsel for the petitioner submits that the learned Court below vide order dated 04.12.2013 has rightly allowed the petition of the petitioners and the learned Magistrate who was seized with the matter struck off the evidence of said Kulwant Singh. Further even after 09 years of filing of the complaint, the complainant has not provided list of witnesses, as is evident from the summoning order. Further the complainant

can challenge the order dated 04.12.2013 by filing the revision petition against that order but instead of filing revision petition, she preferred an application under Section 311 Cr.P.C for recalling of the said witness i.e Kulwant Singh and also for reviewing of order dated 04.12.2013, which was wrongly allowed as the learned JMIC Ludhiana has observed vide order dated 04.12.2013 that the evidence of Kulwant Singh is not necessary. Once the learned predecessor Court has struck off the evidence of the witness by observing that the same is not necessary, then the same Court could not recall the same witness under the garb of Section 311 Cr.P.C and that too when the complainant has preferred not to challenge the order whereby the evidence was struck off. The learned Court below has wrongly relied upon the judgment of this Court in a case of ***Raj Kumar vs. State of Haryana and others, 2013(4) RCR (Crl) 109.***

This judgment is not applicable to the facts of the present case, as in the present case the question for determination is that once the learned predecessor Court has struck off the evidence of the witness by observing that the same is not necessary, thereafter, the same Court could recall the same witness under the garb of Section 311 Cr.P.C.

Reference has been made to a judgment of Hon'ble the Supreme Court of India in a case of ***Surendra Singh vs. State of Bihar, 2006(2) RCR (Crl) 199*** wherein the Magistrate accepted the police report which stated truth un-accepted but by its subsequent order, Magistrate took cognizance and reviewed its earlier order. The appellant challenged the order before Hon'ble the Supreme Court and Hon'ble the Supreme Court quashed the order and held that the Magistrate cannot review its order.

On the other hand, learned counsel for the respondent has argued that even the application for re-examination of witness can be entertained even after 22 years of the incident as held by Hon'ble the Supreme Court in a case of ***Mannan Sk. and others v. State of West Bengal and another, 2014(13) SCC 59.***

The judgment referred to by learned counsel for the respondent is not applicable to the facts of the present case, as they do not deal with the situation where the earlier passed by JMIC has been recalled.

Reference at this stage can be made to the judgment of Hon'ble the Supreme Court of India in a case of Bindeshwari Prasad Singh vs. Kali Singh, 1997 (1) SCC 57 wherein it was held that the Magistrate has no jurisdiction to recall/review order. Even if the Magistrate had any jurisdiction to recall the order, it could have been done by another judicial order after giving reasons that he was satisfied that a case was made out for recalling of order. However, there is no provision in Cr.P.C empowering a Magistrate to review or recall an order passed by him. Code of Criminal Procedure does contain a provision for inherent powers, namely, Section 561-A which however, confers these powers on the High Court and the High Court alone.

Applying the ratio of the above mentioned judgment to the facts of the present case where once the learned predecessor Court has struck off the evidence of the witness by observing that the same is not necessary, thereafter, the same Court could not recall the same witness under the garb of Section 311 Cr.P.C. Once order dated 4.12.2013 not having been challenged by the respondent-complainant, the same could not

have been recalled/reviewed by the trial court.

For the reasons discussed above, order dated 10.02.2014 (P-4) passed by learned Judicial Magistrate 1st Class, Ludhiana and order dated 02.05.2014 (P-6) passed by learned Addl. Sessions Judge, Ludhiana are set aside.

The petition stands allowed accordingly.

05.10.2016

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes