

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

CRM No. M-9974 of 2014 (O/M)

Date of decision : May 25, 2016

Tarlochan Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Pratham Sethi, Advocate for the petitioner.

Mr. Sidakmeet Sandhu, AAG, Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present petition filed under Section 482 Cr.P.c. is the judgment dated 18.02.2014 passed by learned Sessions Judge, Sri Muktsar Sahib, vide which while dealing with the appeal against acquittal, the judgment of acquittal dated 05.02.2010 passed by learned Chief Judicial Magistrate, Sri Muktsar Sahib, the case was remanded to the lower court with the following observations:

“30. In the light of discussion made above, no doubt prosecution adduced incomplete evidence to prove the charge against the accused for the offence under Section 406 IPC but, prosecution was not allowed to lead evidence and the trial court acted in haste in closing evidence of the prosecution by order without going through the judicial file. Accordingly, the appeal is allowed. The impugned judgment of acquittal dated 5.2.2010 is set aside and the case is remanded back to

the trial court for fresh decision with direction to the learned trial court to grant due opportunities to the prosecution to lead evidence.----”

I have heard learned counsel for the parties and have also carefully gone through the case file.

A perusal of the interim orders shows that in this case challan was presented before the lower court in the year 2006. The charges under Section 406 IPC were framed on 23.10.2006. As many as 14 opportunities were given to the prosecution to conclude its evidence. Out of which on three occasions, last opportunity was given and intimation was sent to the concerned Senior Superintendent of Police. Ultimately, on 09.11.2009, when no evidence was produced despite last opportunity, the learned Magistrate passed the following order and closed the prosecution evidence by order:

“Despite last and final opportunity no prosecution evidence produce nor summons received back. The case is pending since 31.10.2003 and after framing the charge on 23.10.2006, the prosecution has availed numerous opportunity till today but the prosecution has failed to conclude its evidence today again. There is no reasonable explanation is coming forth for non prosecution of prosecution evidence. It is closed by order.

The case is adjourned to 18.11.2009 for statement of accused under Section 313 Cr.P.C.”

Ultimately after examining the evidence adduced by the prosecution, in support of the case and hearing both the parties, the petitioner was acquitted.

A perusal of judgment of lower court further shows that the prosecution has examined four witnesses in support of its case. The adjournments discussed above clearly show that the observations of the first appellate court to the effect that the prosecution adduced incomplete evidence and that prosecution was not allowed to lead evidence and the trial court acted in haste in closing prosecution evidence by order are contrary to the record. In fact, it comes out that sufficient opportunities were granted to the prosecution to conclude its evidence. 14 opportunities were given and at least on three occasions, last opportunity was granted. The trial tethered over more than three years. Only thereafter, the lower court closed the prosecution evidence by order. Such act of the lower court cannot be called to be acted in haste or denial of the opportunity to prosecution to lead evidence. The first appellate court cannot act in a manner to assist the prosecution to fill up the lacunae and make up for the lapses made by it. There has to be some end to the trial.

In this case, sufficient opportunities were granted to the prosecution to conclude its evidence. If the prosecution failed, then the prosecution itself is to be blamed. Moreover, it is a case of paddy in milling for which execution was executed between the parties. For which the arbitration clause enabling the complainant to recover the cost is there but deficient the paddy.

As such, the impugned judgment passed by the first appellate court is contrary to record and is not sustainable in the eye of law. The same is, accordingly, set aside. The learned Sessions Judge, Sri Muktsar Sahib is directed to decide the appeal, in accordance with law after going through

whatever evidence is available on file. It is expected that now the appeal is to be decided within six month.

Accordingly, the present petition is allowed.

May 25, 2016

sarita

(KULDIP SINGH)
JUDGE