

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-8855 of 2016(O&M)
Date of Decision: March 15, 2016

Deepak Sharda

...Petitioner

VERSUS

Sh.Harsharan Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.K.S.Jetley, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioner has filed this petition under Article 215 of the Constitution of India read with Section 482 Cr.P.C. against Harsharan Singh and S.S.Gurm, Inspectors CBI for curing the error apparent on the record of this Court by way of quashing/recalling the order dated 13.07.2015 passed in CRM No.M-20067 of 2010 with a prayer for issuance of necessary directions for concluding the trial of complaint No.545 dated 21.08.1998 titled as 'Deepak Sharda vs. Harsharan Singh etc.', which was pending in the Court of Chief Judicial Magistrate, Ambala, but was quashed by virtue of order dated 13.07.2015.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that in CRM No.M-20067 of 2010

filed by Harsharan Singh and another against Deepak Sharda and another, Co-ordinate Bench of this Court, after hearing the parties, by a detailed order, allowed the petition and order dated 19.07.2008 vide which the charge was drawn up against the petitioners of that case and also order dated 21.05.2010, dismissing the revision petition of the petitioners of that case, were quashed and petitioners of that case stood discharged.

The perusal of the order dated 13.07.2015 passed by Co-ordinate Bench shows that this is a final order. As per Section 362 Cr.P.C., the final order cannot be reviewed or recalled. It can only be modified to correct arithmetical or clerical mistake. It is admitted, at the time of arguments that a SLP has been filed against the order dated 13.07.2015 before the Hon'ble Supreme Court, which was also dismissed.

Learned counsel for the petitioner argued that Co-ordinate Bench while considering the statements and other record, has not correctly appreciated the evidence and has not passed the correct order. I find that the correctness of the order can only be looked by the larger Bench or by the Hon'ble Supreme Court and the remedy has already been availed by the present petitioner by filing SLP before the Hon'ble Apex Court, which has been dismissed.

Learned counsel for the petitioner further argued that any order can be set aside if it has been obtained by fraud but nothing substantial has been argued as to what fraud has been played by the party. In the petition, it is stated that judgment procured by the

respondents is said to be a judgment obtained by fraud in the legal sense, since, they were under obligation to tell the Court about the evidence on record, whereby the entire case made by this Court shatters. Even if it is taken as it is, it does not amount to fraud. The present petitioner was also there and he would have told the Court if any evidence was in his favour. These averments, in no way, amount to fraud.

Learned counsel for the petitioner cited judgments passed by the Hon'ble Supreme Court in ***Hamza Haji vs. State of Kerala and another, 2006 AIR (SC) 3028, Kunhayammed vs. State of Kerala, 2000(3) RCR (Civil) 671*** and judgment passed by this Court in ***Sher Mohd. Khan vs. Madan Lal and another, 2013(4) RCR (Criminal) 5***. I have gone through all the above-cited judgments and the same having distinguished facts, will not apply in the present case.

Therefore, finding no merit in the present petition, the same is dismissed.

March 15, 2016
Vgulati

(INDERJIT SINGH)
JUDGE