

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

**CRR No. 248 of 2015 (O&M)
DECIDED ON: FEBRUARY 19, 2016**

Sarabjit Singh and others

....Petitioners...

VERSUS

State of Punjab

....Respondent...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. RP Dhir, Advocate,
for the petitioners.

Mr. Varun Sharma, AAG, Punjab.

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

JASPAL SINGH, J.

Challenge in this criminal revision petition is to the order dated December 01, 2014 (Annexure P-1) passed by Id. Chief Judicial Magistrate, Hoshiarpur and judgment dated September 17, 2014 (Annexure P-2) passed by Id. Additional Sessions Judge (Adhoc), Fast Track Court, Hoshiarpur, by virtue of which, the petitioners have been summoned to face trial.

2. In response to the issuance of notice of motion, learned State counsel, Mr. Varun Sharma, AAG, Punjab appeared and represented the State.

3. Briefly stated the facts giving rise to the instant petition are that after the registration of FIR No. 99, dated 07.07.2003, under Sections 324, 323, 326, 148 and 149 IPC, Police Station Mahilpur, District Hoshiarpur, Pala @ Pal, Santokh Singh, Avtar Singh, Sarabjit Singh, Sukhwinder Singh and Harjap Singh were prosecuted to face trial, on the basis of evidence adduced by the prosecution and after hearing learned State counsel as well as defence counsel, Sarabjit Singh, Sukhwinder Singh and Harjap Singh (present petitioners) were acquitted of the charges framed against them whereas their co-accused namely Pala @ Pal, Santokh Singh and Avtar Singh were held guilty for the commission of offence under Sections 326, 324, 323 read with Section 34 IPC. All the three convicts challenge their conviction and sentence by way of an appeal bearing IPC Appeal No. 39 of 26.09.2013 and vide order dated September 17, 2014, Id. Additional Sessions Judge (Adhoc), Fast Track Court, Hoshiarpur set aside the judgment of conviction and order of sentence and the case was remanded to the trial court for hearing a fresh to the State and defence counsel and then to render a fresh judgment in accordance with law and evidence available on record.

4. On receipt of the record, Id. Chief Judicial Magistrate, Hoshiarpur issued summons to the petitioners also, who have earlier been acquitted by the Id. trial court vide judgment dated 30.08.2013.

5. Here, it would be pertinent to mention that no appeal has been preferred either by the State or by the complainant(s)/injured(s) challenging the acquittal of the petitioners but while passing the impugned order, Id. Additional Sessions Judge has set aside the entire

judgment, which is otherwise not legally permissible, especially, due to non-filing of any appeal to challenge the acquittal of the petitioners. The petitioners cannot be made to suffer and vexed penalize twice for the same offence, for which, they have already been acquitted. Thus, the impugned order dated September 17, 2014 (Annexure P-2) deserves to be modified by way of acceptance of instant petition.

6. Accordingly, impugned order dated September 17, 2014, is modified to the extent that it shall not be applicable to the petitioners and further that they cannot be tried along with the persons, who were earlier convicted by the Id. trial court. The petitioners were not before the Id. appellate court when the impugned order was passed. The impugned order qua petitioners is not sustainable. As such, the same is set aside qua petitioners by way of acceptance of instant petition.

FEBRUARY 19, 2016
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(JASPAL SINGH)
JUDGE