

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

CRR-2509-2014

Date of decision : May 02, 2016

Sher Singh

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

1. To be referred to the Reporters or not? No / Yes
2. Whether the judgment should be reported in the Digest? No / Yes

Present : Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. Pawan Jhanda, A.A.G., Haryana.

GURMIT RAM, J.

1. This revision is preferred by the abovesaid petitioner against the judgment dated 09.05.2014 passed by the Court of learned Sessions Judge, Panipat, vide which appeal of appellant-Sher Singh (petitioner-herein) filed against the judgment and order of sentence dated 06.09.2013 passed by the Court of Judicial Magistrate Ist Class, Panipat, in criminal case bearing FIR No.146 dated 15.03.2010, Police Station, Chandni Bagh, Panipat under Section 174-A of the Indian Penal Code ("IPC"- for short) was dismissed.

2. Case of the prosecution in nut-shell as projected before the learned trial Court was that on 15.03.2010, S.I. Partap Singh along with A.S.I. Ratti Ram and other police officials was present in the area of G.T.

Road, Chautala Road turning Shiwah, in connection with patrolling and investigation of crime. There he received a secret information that the young man who is standing on the passage adjoining to stadium which leads to village Dahar is Sher Singh @ Sheru resident of village Shiwah who had been declared a proclaimed offender in criminal case bearing FIR No.270 of 2008 under Section 307 etc., IPC, Police Station, Chandni Bagh. On the basis of this information, the abovesaid accused-Sher Singh was apprehended. The instant case was registered against him. Statement of witnesses were recorded. On the completion of investigation, challan was presented before the Court of learned Illaqa Magistrate.

Charge was framed. Trial was conducted. On the completion of trial, accused-Sher Singh (petitioner-herein) was held guilty for the offence punishable under Section 174-A, IPC and sentenced thereunder by the learned trial Court vide judgment and order of sentence dated 06.09.2013. Then he preferred an appeal against this judgment and order of sentence passed by the learned trial Court which was dismissed by the Court of learned Sessions Judge, Panipat vide impugned judgment dated 09.05.2014, which necessitated to file the instant revision petition.

4. Notice of revision petition was given to the respondent-State. Record of both the Courts below was also requisitioned. Learned counsel for both the parties were heard. Record was also perused with their assistance.

5. The learned counsel for the petitioner has contended that there is an inherent legal defect in the case of prosecution of which both the learned Courts below have failed to take notice and hence the impugned judgments as well as the order under challenge in this revision petition are

not tenable. Herein he has contended that offence in question under Section 174-A, IPC, is embodied in Chapter X of the Indian Penal Code. Then he also contended that as per provisions of Section 195, Cr.P.C., no Court can take cognizance of the offences falling under Sections 172 to 178 (Chapter X of IPC) except on the complaint in writing of the Court concerned or by such Officer authorized to do so on its behalf.

6. The relevant part of provision of Section 195, Cr.P.C., is detailed as under:-

“(I) No Court shall take cognizance-

(a)(i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860),

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[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate].

Admittedly in the case in hand, no complaint in writing has been made by the Court or by any of its Officers authorized to do so of whose order has allegedly been disobeyed by the accused (petitioner-herein). As per the case of prosecution, the case in hand was registered against accused (petitioner-herein) on the basis of some secret information.

7. Some of the case laws pertaining to above point in issue are as under:-

i. ***Daulat Ram vs. State of Punjab, AIR 1962 Supreme Court 1206 (Full Bench).***

In this case the accused was tried for the offence under

Section 182, IPC. Report was made to Tehsildar with a view to take action against the accused which was found false. Tehsildar did not move any complaint as required under Section 195, Cr.P.C., for taking action against the accused. It was held that Section 195, Cr.P.C., contemplates that a complaint must be in writing by the public servant concerned. The cognizance of the case was held to be wrongly assumed by the Court, there being no complaint in writing of public servant namely Tehsildar. The trial was thus without jurisdiction ab-initio and the conviction cannot be maintained. The appeal was allowed.

The principles laid down in this case law were further followed by the Hon'ble Apex Court in another subsequent case law titled as ***C. Muniappan & Others vs. State of Tamil Nadu, 2010 AIR (SC) 3718.***

After discussing various case laws on the point in issue, the Hon'ble Apex Court further laid down as under:-

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“the law can be summarised to the effect that there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195, Criminal Procedure Code, are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab-initio being without jurisdiction.”

ii. ***Raj Singh vs. State of Punjab, 1997(2) R.C.R. (Criminal) 100, Punjab and Haryana High Court.***

In this case, a person obtained a decree of Civil Court by impersonation. The police registered a case under Sections 467, 468, 420/34, IPC. It was held that police cannot register the case and investigate the matter. Section 195, Cr.P.C., is a bar not only to the Court taking cognizance of the offence without a complaint in writing from the Court where the offence took place but the same is even applicable to the registration and investigation by the Police into the offence.

iii. ***Jagdish and Others vs. State of Haryana, 2015(4) R.C.R. (Criminal) 694, Punjab and Haryana High Court.***

In this case FIR was registered under Section 188, IPC, for disobeying the order lawfully promulgated by public servant. No complaint in writing as required under section 195(1) Cr.P.C. was moved by the public servant concerned. The FIR was consequently quashed.

6. On the other hand, learned State counsel did not produce any case law in order to show that the judgments and order under challenge in the instant revision petition are sustainable.

7. In the light of above discussion, this revision petition stands accepted. As a result thereof, the impugned judgments as well as order of sentence passed by both the Courts below are set aside. Petitioner-herein (accused) is acquitted of the charge under Section 174-A, IPC, in this case. He is on bail, and as such, he and his surety are also discharged from their liability of bail bonds and surety bonds respectively.

A copy of this order be sent to the quarter concerned for compliance.

May 02, 2016

Gaurav Sorot

**(GURMIT RAM)
JUDGE**