

CRR No. 2707 of 2014 (O&M)
DECIDED ON: MAY 03, 2016

RAJESH SONI AND ORS

.....PETITIONERS

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Mani Ram Verma, Advocate
for the petitioners.

Ms. Neelam Kashyap, DAG, Haryana.

Mr. Amit Sheoran, Advocate
for the complainant.

JASPAL SINGH, J (ORAL)

Challenge in this revision petition is to the order dated August 06, 2014 passed by learned Additional Sessions Judge, Bhiwani whereby, while disposing of the appeal preferred by the petitioners against their conviction and sentence awarded to them vide judgment of conviction dated January 31, 2012 and order of sentence dated February 01, 2012 passed by learned Sub Divisional Judicial Magistrate, Loharu. Learned Additional Sessions Judge, Bhiwani has set aside the judgment of learned trial Court vide order dated August 06, 2014 holding that from the evidence available on record an offence under Section 307 IPC is made out and accordingly, he remitted the case to learned Magistrate and directed him to commit the case under Section 209 Cr.P.C. for trial by learned Sessions Judge.

2. While assailing the impugned orders, it has been vehemently argued by learned counsel for the petitioners that order dated August 06, 2014 passed by learned Additional Sessions Judge, Bhiwani is absolutely against the settled cannons of law and principles of natural justice. Petitioners have not been afforded any opportunity of being heard on the point whether an offence under Section 307 IPC is made out or not, while remitting the case to the Court of learned Magistrate with a direction to commit the same. Moreover, no appeal has been preferred either by the complainant or by the State either for enhancement of sentence or enhancement of any offence or that an offence under Section 307 IPC is made out or not against the petitioners. So, in such circumstances the setting aside of judgment passed by learned Magistrate and directing the Magistrate to commit the case is unwarranted by law.

3. On the other hand, learned State counsel assisted by learned counsel for the complainant has argued that there is no infirmity or illegality in the impugned order and the same is absolutely in consonance with the settled proposition of law. Section 423 Cr.P.C. duly empowers the Appellate Court to reverse the finding and sentence, acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial; or after the finding, maintaining the sentence, or with or without altering the finding reduce the sentence; or with or without such reduction and with or without altering the finding alter the nature of the sentence but, subject to the provisions of section 106, sub-section (3), not so as to enhance the same.

4. Moreover, no such application or appeal is also required and Appellate Court has ample power to pass any such order *Suo Mottu*. Thus, instant petition being devoid of merits is liable to be dismissed.

5. This Court has given an anxious thought to the submissions made by learned counsel for the parties and have perused the record.

6. No doubt, Section 423 (1)(b) clearly postulates that Appellate Court has the power to dismiss the appeal, to acquit or discharge the accused or order him to be retried or committed for trial. Thus, the Section does empower the Appellate Court to order commitment for trial to the Court of Session. But in the instant case, this Court is of the considered view that a prejudice is caused to the petitioners by way of dismissal of appeal and remitting the case for commitment proceedings. Especially, in the circumstances that no opportunity of being heard appears to have been provided to the petitioners by Appellate Court while passing the impugned order, which is violative of doctrine of “*Audi alteram partem*.”

7. Accordingly, impugned order dated August 06, 2014 passed by learned Additional Sessions Judge, Bhiwani is set aside and the case is remitted to the Appellate Court, Bhiwani to decide the appeal a fresh after affording ample opportunity of being heard to the parties to express their view and then to decide a fresh.

MAY 03, 2016
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(JASPAL SINGH)
JUDGE