

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

CRR No.4880 of 2015 (O&M)
Date of Decision: November 15, 2016

Rajesh Kumar

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Parvesh Sachdeva, Advocate
for respondent No.2.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Rajesh Kumar against respondents State of Punjab and Mithan Lal, challenging the impugned judgment of conviction and order of sentence dated 07.11.2015 passed by learned Addl. Sessions Judge, Fazilka, vide which the appeal filed by the State was allowed and present petitioner along with other accused was convicted under Sections 325, 323 and 148 IPC and sentenced to undergo rigorous imprisonment for a maximum period of two years under Section 325 IPC along with fine and judgment dated 24.04.2014 passed by learned Chief Judicial Magistrate, Fazilka, acquitting the petitioner along

with other accused, was set aside.

Notice of motion was issued and learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

At the time of arguments, learned counsel for the petitioner argued that no notice of the appeal filed by the State against the judgment dated 24.04.2014 passed by learned CJM, Fazilka, vide which the trial Court has acquitted the present petitioner, has been issued by learned lower Appellate Court. Therefore, he argued that without giving due notice to the accused-petitioner, no finding can be given against him and it will amount to giving no opportunity of being heard.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record, especially the zimini orders passed by the Court below.

From the record, I find that notice to the respondents was issued for 24.02.2015 as per the order dated 11.12.2014. On 24.02.2015, following zimini order was passed:-

“The learned Presiding Officer is on leave today. Shri S.S.Mann, Advocate filed Vakalatnama on behalf of respondents No.1 to 3 & 5. Let fresh notice to respondent No.4 be issued again for 15.04.2015 on filing of requisite charges.”

On 15.04.2015, following zimini order was passed:-

“The learned Presiding Officer is on leave today. Notice of respondent No.4 could not been issued for want of copy of appeal. Fresh notice to respondent No.4 be again issued for 09.06.2015 on filing of copy of appeal, to be filed within 5 days.”

Learned Addl. Sessions Judge, Fazilka, on 09.06.2016 passed the following order:-

“Let fresh notice to respondent No.4 is ordered to be issued again for 25.08.2015 on filing of copy of appeal and other charges within a week and file be put up on said date for arguments.”

Then on, 25.08.2015, it was ordered as under:-

“Let fresh notice to respondent No.4 is ordered to be issued again for 04.11.2015 on filing of copy of appeal and other charges within a week and file be put up on said date for arguments.”

On 04.11.2015, learned Addl. Sessions Judge, Fazilka, passed the following zimini order:-

“Arguments not advanced. On request of learned counsel for the appellant, proceedings are adjourned to 07.11.2015 for arguments.”

The order dated 04.11.2015 is silent about the notice to respondent No.4 and on request of learned counsel for the appellant, the proceedings were adjourned to 07.11.2015 and on 07.11.2015, the appeal filed by the State was decided.

The perusal of the zimini orders passed by learned Addl. Sessions Judge, Fazilka, shows that due notice has not been given to the present petitioner, who was respondent No.4 in the appeal before Addl. Sessions Judge. It is also brought to my notice that summons of the present petitioner for 24.02.2015 is on the record showing the report of refusal. Even if it is taken as it is, even then, it is for the Court to see whether the refusal is to be taken as service or not but the Court below has not considered the refusal as due service and issued notice again and so many orders were passed for issuance of notice to respondent No.4 (present petitioner) and these notices were not served upon the present petitioner.

From the above, I find that the appeal has been decided against the present petitioner without giving him due notice of the appeal and without giving opportunity of being heard and the judgment of acquittal passed by learned CJM, Fazilka has been set aside and he was convicted.

In view of the above discussion, I find that judgment of conviction and order of sentence dated 07.11.2015 passed by learned Addl. Sessions Judge, Fazilka, qua the petitioner, is not as per law and the same is set aside qua petitioner only. The matter is remanded back to learned lower Appellate Court qua appeal of Rajesh Kumar and learned lower Appellate Court is directed to give opportunity of being heard to the petitioner and then to decide the appeal as per law.

Therefore, finding merit in the revision petition, the same is allowed accordingly. The parties including the present petitioner are directed to appear before lower Appellate Court on 30.11.2016.

November 15, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No