

CRR No.617 of 2015 (O&M)

[1]

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

Sr. No. 226

CRR No.617 of 2015 (O&M)

Date of decision: September 01, 2016

Gurmeet Singh

.... Petitioner

Versus

State of Punjab & Ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Vivek Aggarwal, Advocate,
for the petitioner.

JASPAL SINGH, J.

CRM No.5936 of 20152016

In view of the reasons mentioned in the application, the application is allowed and delay of 37 days in filing the present revision petition is condoned.

CRR No.617 of 2015

The instant criminal revision has been preferred by the petitioner-complainant under Section 397 read with Section 401 of Cr.P.C. for setting aside order dated September 16, 2014, passed by Sessions Judge,

CRR No.617 of 2015 (O&M)

[2]

Barnala as well as order dated July 16, 2013, passed by Additional Chief Judicial Magistrate, Barnala, whereby the accused in FIR No.142, dated October 16, 2010, under Sections 380 & 411 IPC, registered at Police Station Dhanaula, District Barnala have been acquitted by the courts below.

2. As per the prosecution story, complainant Gurmeet Singh along with his father Mulakh Raj was engaged in the business of purchasing rubber tyres of old discarded vehicles. After purchasing the old tyres, they used to load the same in their tractor trolley in order to store them at their godown situated at Sangrur road Dhanaula near Deepak Dhaba. Accused and respondent Nos.2 & 3 namely Gurtej Singh and Beerbal Singh @ Babbi were the employees of complainant who used to cut the tyres in small pieces and sent them to rubber factory at Moga City. They used to reside in godown during the night. The tractor trolley was also parked in the godown. On October 16, 2010, Gurmeet Singh and his father Mulakh Raj came to know that the discarded old tyres were less in number and their servants were also missing from the premises. Accordingly, aforesaid FIR was got registered at the instance of Gurmeet Singh-complainant. Accused were arrested. They were charge-sheeted and put on trial. However, the accused were acquitted of the charges framed against them vide judgment dated July 16, 2013. Aggrieved against their acquittal, State preferred an appeal, which was also dismissed by the lower appellate court vide judgment dated September 16, 2014. Through an instant revision petition, the aforesaid judgment(s) of the courts below have been challenged by the petitioner-complainant.

3. Learned counsel for the petitioner has contended that the courts

CRR No.617 of 2015 (O&M)

[3]

below have misread and mis-construed the evidence on record, thereby resulting in miscarriage of justice. The accused persons had committed theft of 65 old tyres from the premises of the petitioner but the courts below have acquitted them on the ground that eye-witness and the complainant were not examined by the prosecution. In fact, evidence of the prosecution was closed by the order of court on July 05, 2013 simply on the ground that the summons sent to the witnesses were not received back, whereas, it was the duty of the court to re-issue the summons to the witnesses and secure their presence. Moreover, the court(s) below have overlooked the fact that the stolen property had been recovered from the accused persons.

4. This court has given an anxious thought to the aforesaid submissions made by learned counsel for the petitioner and gone through the record available on file.

5. The case of the petitioner-complainant is that accused persons were working in his godown, who stole the old tyres in his tractor trolley. The FIR was recorded on the basis of statement of complainant. During trial, the evidence of prosecution was closed by order of the court on July 05, 2013 on the ground that prosecution could not complete its evidence in spite of last opportunity granted by the trial court. The trial court while closing the prosecution evidence specifically recorded, that present case relates to the year 2010. Since then, prosecution had already availed sufficient number of opportunities for the purpose of concluding its evidence, but to no avail. It was also mentioned by the trial court that indifferent and callous attitude of the prosecution has resulted into an inordinate delay of trial of the case. It was also mentioned by the trial court

CRR No.617 of 2015 (O&M)

[4]

that as it was the last opportunity to the prosecution to conclude its evidence and prosecution has taken almost two years to adduce its evidence. Thus, there was no justification to allow the request of the prosecution for granting further opportunity. Moreover, the complainant and his father Mulakh Raj did not appear before the court to prove the fact that recovery of old tyres was effected from the accused which belonged to them in any way. As there is no such document of ownership on record produced by the prosecution in this regard. Prosecution examined PW-1 HC Bhim Sain who deposed that he along with other police officials was present at bus stand, where he received a secret information that accused had committed theft of old/discarded tyres along with tractor trolley and further that they were going to sell the same towards Dhanaula Road. They reached Dhanaula Road and stopped the tractor trolley. Accused disclosed their name as Gurtej Singh s/o Darshan Singh and Beerbal Singh @ Babbi s/o Jodh Singh. The aforesaid tractor trolley was taken into possession. PW-2 Jaswinder Singh corroborated the evidence of PW-1. PW-3 Pawan Kumar, Clerk DTO office proved the ownership of the tractor trolley. As the prosecution could not conclude its evidence, despite last opportunity, the trial court closed its evidence by order dated July 05, 2013. Therefore, it could not be established that the old tyres recovered from the accused belonged to the complainant, as no such document of ownership was proved on record by the prosecution. Otherwise also, prosecution did not challenge the order dated July 05, 2013 by way of revision etc. vide which its evidence was closed. In this view of the matter, the courts below have rightly held that there is no evidence on record in order to establish that

CRR No.617 of 2015 (O&M)

[5]

recovery of old tyres which was allegedly effected from the accused in either way belonging to complainant or that accused had committed the theft of old tyres from the premises of complainant.

6. In the light of what has been discussed above, this court does not find any illegality or impropriety in the judgment(s) passed by the courts below and the accused persons have been rightly acquitted.

7. Accordingly, the instant petition stands dismissed and the judgment(s) passed by the courts below are upheld.

September 01, 2016

Avin/Ankur

**(JASPAL SINGH)
JUDGE**

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No