

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-785-2016 (O&M)

Date of decision: July 21, 2016.

Raj Kumar

... **Petitioner**

v.

Central Bureau of Investigation

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Mrs. Baljit Mann, Advocate for the petitioner.
Shri S.S. Sandhu, Advocate for respondent-CBI.

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

A.B. Chaudhari, J. (Oral):

CRM-6520-2016

For reasons mentioned in the application, same is allowed and delay of 56 days in filing the accompanying revision petition is condoned.

CRR-785-2016

Heard criminal revision finally in view of the restricted challenge to the impugned judgment and order.

Learned Counsel for the petitioner submits that the appeal preferred by the petitioner against his conviction recorded by the learned Special Judicial Magistrate, CBI, Haryana at Panchkula on October 3, 2013 was disposed of on the basis of statement made by counsel for the appellant and the conviction as such was confirmed by lower appellate court.

According to the learned counsel, the petitioner is a public servant and had

never himself instructed his counsel to give a concession to maintain conviction only because the sentence was to be reduced to the period already undergone by the petitioner. The counsel then submitted that the Advocate for the petitioner was not specifically authorized to make any concession on his behalf without obtaining any such consent in writing from the petitioner. It is then contended that there were large number of cases against the farmers which were decided by the learned trial Judge of the type as in question and many accused persons were convicted. They had then filed appeals. One of such accused was the real brother of the petitioner and both the brothers had filed an appeal before the lower appellate court together. The other brother of the petitioner is a farmer. Since the sentence of other farmers was also proposed to be reduced to the period already undergone by each of them, perhaps the counsel for the petitioner acted on the instructions of accused No.2, the other brother of the petitioner. The petitioner is a government servant and is governed by Civil Service Rules. The consequence of giving a concession in a criminal appeal were not gauged and clearly out of inadvertence the same appears to have been made. The net result that after the appeal was decided on October 03, 2013, the petitioner was dismissed from service on 29.11.2013 due to the conviction. In all fairness, the learned counsel for the petitioner, therefore, submitted that she would restrict her prayer for hearing of the appeal of the petitioner on merits rather than its disposal on concession.

Per contra, learned counsel for CBI submits that the consent is not alleged to have been obtained by counsel for the petitioner under any

influence or pressure and therefore, the same appears to be a free consent. The trial court cannot be faltered for acting on the consent given by counsel for the petitioner and therefore, there is no need to interfere with the impugned judgment and order. He, therefore, prayed for dismissal of the revision petition.

I have given my conscious consideration to the entire matter. I have perused the impugned judgment and the order recorded by the learned appellate court. It would be appropriate to quote paragraph 10 from the appellate judgment, which is as under:-

“10. I am also of the opinion that the present matter is languishing going from a decade the accused-appellant have faced agony of trial and in case the accused are granted leniency it may give an opportunity to the accused to join mainstream of the society. The accused had faced imprisonment for about 2 months as the amount has already been paid by the accused much before the trial commences, ... Therefore, in these circumstances, the ends of justice would be made while maintaining conviction, the sentence awarded by the learned court of Judicial Magistrate, CBI, Panchkula is reduced to period already undergone. The sentence of fine is upheld. Consequently, the appeal is partly allowed. The judgment of learned trial court is upheld and the sentence awarded by learned trial court is reduced to period already undergone.”

It is clear from the above that the Judge found that the accused were entitled to lenient view about the sentence. The court acted on the concession recorded in para 7 which I quote hereunder:-

“7. Arguments were heard in appeal. During course of arguments learned counsel for the appellants fairly conceded that the appellants do not want to challenge the judgment of learned trial court on merit. The accused-appellants has already paid the loan amount and the same has been adjusted, therefore, nothing is due towards the accused-appellants. The loss caused to the Bank has been made good and therefore lenient view

may be taken while awarding sentence.”

As regards the concession, at the outset, I find that there is nothing on record to show that the petitioner has given his consent to his Advocate either in writing for accepting the conviction and for reducing the sentence to the one already undergone. Secondly, the authority was given to the Advocate for preferring the appeal against the order of conviction and the sentence and it is difficult to believe that the authority was given to the counsel to give a concession to the court for accepting the conviction in the appeal. The ramifications arising out of giving up such concession in a criminal case must be understood particularly when the petitioner was a government servant. Therefore, unless there was a clear authority in writing or unless the petitioner had appeared before the appellate court and consciously and categorically given the concession, the learned appellate court ought not to have accepted the concessional statement made by his counsel. Fact remains that the stigma is cast due to conviction which adversely affected the employment of the person, and in this case the petitioner. There is a reason to believe that the Advocate for the petitioner gave the concession since in the connected appeals by farmers including the brother of the petitioner, the order of conviction did not matter as the brother of the petitioner is also a farmer. But then, the impugned judgment and order has severely affected the petitioner whose appeal was not heard on merits.

In view of the above discussion, I think the petitioner being government servant, should have his appeal decided on merits rather than

getting the same disposed of on concession. This order would not prejudice the complainant CBI since the appeal is to be heard on merits and decided on merits, one way or the other. In that view of the matter, in exercise of the powers under Section 401 Cr.P.C. read with inherent powers of this Court under Section 482 Cr.P.C., in the interest of justice, I think the following order should sub-serve the interest of justice:-

ORDER

- (i) The revision petition is allowed.
- (ii) The impugned judgment and order made by the Additional Sessions Judge-cum-Special Judge, CBI, Panchkula is set aside qua petitioner Raj Kumar only.
- (iii) The proceedings of appeal No.23 of 2013 are remanded to the lower appellate court for hearing the appeal qua petitioner Raj Kumar only on merits. The appeal shall be decided within four months from 10.8.2016 on which date the petitioner will appear before the appellate court.
- (iv) Any observations made in the above order shall not influence the learned lower appellate court while deciding the appeal on its own merits.

July 21, 2016.
kadyan

[**A.B. Chaudhari**]
Judge