IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-No.460-SBA OF 2005
DATE OF DECISION : 4TH OCTOBER, 2017

State of Punjab

…. Appellant

Versus

Labh Singh

…. Respondent

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

* * * *

Present : Mr. Ramandeep Sandhu, Sr. D.A.G. Punjab
for the appellant.

Mr. H.P.S. Ishar, Advocate for the respondent.

* * * *

A. B. CHAUDHARI, J. (ORAL)

This appeal was filed by the State of Punjab against judgment and order dated 05.05.1999 passed by Judge, Special Court, Bathinda by which the trial Court recorded the order of acquittal of the respondent-accused for the charge framed against him.

Mr. Ramandeep Sandhu, counsel for the State submitted that the prosecution evidence was recorded by the trial Court and even statement under Section 313 Cr.P.C. was also recorded however the trial Court applied the law laid down by Single Bench of this Court in the case of ***Harnek Singh versus State of Punjab passed in CRM-M-5860-1991 decided on 25.09.1998*** and only on that basis recorded the order of acquittal. He submits that the same judgment in the case of Harnek Singh (supra) was overruled by the Supreme Court in the case of ***State of Punjab versus Harnek Singh, 2002 (1) RCR (Criminal) 778*** and law

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laid down by this Court is no more a good law. He therefore prayed for allowing of the appeal and for orders in accordance with law.

Per contra, learned counsel for the respondent-accused opposed the appeal against acquittal and submitted that respondent is now aged about 73 years and number of years have been passed. It is none of the mistake of the respondent and therefore, there is no need to send the matter back to the trial Court.

Heard learned counsel for the rival parties at length. Following are the paragraphs 5 and 6 which show that the entire evidence was recorded and statements under Section 313 Cr.P.C. was also recorded:

> "5. In order to prove its case the prosecution has examined Sukhdev Singh PW-1, Boota Mal PW-2, Pawan Kumar PW-3, Major Singh PW-3-A and DSP Tek Singh PW-4.
>
> 6. On the closure of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. and all the incriminating circumstances appearing in the prosecution evidence were put to the accused. The accused denied those circumstances and stated that he is innocent and was falsely implicated in this case."

However since the counsel for the accused raised the point regarding law laid down in the case ***Harnek Singh (supra)*** and submitted that the learned trial Court righly applied the said judgment and recorded the order of acquittal on the said ground on which Harnek Singh's case was decided.

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Needless to say that the trial was never decided on merits. I have perused the judgment recorded by the Apex Court in ***State of Punjab (supra)*** and I find that the judgment of this Court was reversed by the Apex Court. The net result obviously would be to hold that reliance by the trial Court on the judgment of ***Harnek Singh (Supra)*** made by this Court would not be according to law. However, since the trial was not decided on merits, I pass the following order:

ORDER

(i) CRA-S-No.460-SBA OF 2005 is partly allowed.

(ii) The impugned judgment and order dated 05.05.1999 is set aside. The proceedings of the trial Court in the PC Act File No.4 of 21.03.1991 are sent back to the trial Court for fresh hearing and disposal in accordance with law on the same set of evidence and statement under Section 313 Cr.P.C. already recorded by the trial Court.

(iii) The trial Court shall issue notice to the parties for appearance and shall complete the trial on merits within four months.

4TH OCTOBER, 2017 **(A. B. CHAUDHARI)**
'*raj*' **JUDGE**

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*

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