

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-510-SBA OF 2005
DATE OF DECISION : 17th MAY, 2017

State of Punjab

.... appellant

Versus

Raj Kumar

.... Respondent

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

* * * *

Present : Ms. Rajni Gupta, Addl. A.G. Punjab for the appellant.

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A. B. CHAUDHARI, J. (ORAL)

There is no need to issue notice to the respondent-accused as the issue is squarely covered by the judgment of the Apex Court and apart from that this Court intends to make order only of remand which does not prejudice the respondent-accused at all.

Being aggrieved by the judgment and order dated 05.05.1999 passed by learned Judge, Special Court, Bathinda, by which the learned trial Judge followed the judgment in the case of ***Harnek Singh Vs. State of Punjab*** passed in ***CRM-M-5860 of 1991***, reported as ***1999, Crl. L. J. 635***, decided on 25.09.1998, acquitted the appellant for the charge framed against him, the present appeal was filed by the State of Punjab.

Heard learned counsel for the State-appellant.

Learned State counsel contended that the decision in the case of ***Harnek Singh (supra)*** was overruled by the Supreme Court in

the judgment in the case of *State of Punjab versus Harnek Singh*, reported as *AIR 2002 SC 1074* and therefore, the impugned judgment is wrong and illegal.

Upon hearing counsel for the State, I find that the learned trial Judge recorded the following reasons in paras 14 and 15 of the judgment.

“14. When Prevention of Corruption Act, 1947 was in force, notifications dated 9.7.68 and 12.8.1968 were issued under section 5(A) of the old Act empowering Inspectors of the police in Vigilance Bureau to investigate offence under the said act in the whole of the Punjab State so long as they remained posted in the said agency. It can not be disputed that after commencement of the Act of 1988 the Inspector of Police Vigilance Bureau Punjab has not been empowered by general or special order of the State Govt. Authorizing or empowering them to investigate the cases in relation to the offences under the Act of 1988 and that as provided U/S 17 (C) only the Deputy Superintendent of Police or a Police Officer of equivalent rank is empowered to investigate any offence punishable under this Act of 1988 without the order of a magistrate of

the First Class or make any arrest therefore without a warrant. The act of 1988 came into force w.e.f. 9.9.98 repealing the old Act of 1947. The present case was registered after the Act of 1988 came into force. Therefore, the provisions of Section 6 of the General Clauses Act, 1897 would also not come into play in such cases. Provisions of Section 6 of the General Clauses Act, 1897 would come into play only in the cases registered or any Act done in that behalf before the commencement of the Act of 1988 i.e. the 9th September, 1988.

15. In view of the law laid down in the authority *Harnek Singh Vs. State of Punjab (Supra)* all the proceedings and the investigation being without jurisdiction are illegal as the same are hit by the proviso (c) to Section 17 of the Act of 1988. Inspector Balwinder Singh of Vigilance Bureau, Bathinda was not authorized under the law to lay trap and take up the investigation including the steps taken in the investigation and other proceedings.”

The trial Court did not hold the trial at all but proceeded to rely on the judgment of this Court delivered in ***Harnek Singh (supra)***.

However, the judgment in that case was reversed by the Supreme Court

in the case of *State of Punjab versus Harnek Singh (supra)*. I have gone through the judgment rendered by the Supreme Court and I am satisfied that the impugned judgment made by the trial Court will have to be set aside in the light of the judgment of Apex Court.

Consequently the case will have to be sent back for trial on merits. In the result I make the following order:

ORDER

- (i) CRA-S-510-SBA OF 2005 is allowed.
- (ii) The impugned judgment dated 05.05.1999 is set aside and the proceedings of the PC Act File No.56 dated 20.11.1990, RT No.49 of 02.08.1991 decided on 05.05.1999 are sent back to the trial Court for holding a trial according to law.
- (iii) The trial Court shall in the first place issueailable warrant for summoning the accused and thereafter proceed according to law and hold the trial.
- (iv) Since the trial relates to the year 1990, the trial Court to decided the trial within six months from the receipt of the copy of this order.

17th MAY, 2017
‘raj’

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes</i>	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	<i>No</i>