

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.43492 of 2015
Date of Decision: 19.01.2017

Iqbal Singh

.....Petitioner

Vs

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Bijender Dhankar, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, A.A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 02.09.2015 and 20.10.2015 passed by Additional Sessions Judge, Sonapat and orders dated 02.11.2015 and 18.11.2015 passed by Chief Judicial Magistrate, Sonapat to the extent of observations made *qua* the petitioner.

[2]. Brief facts are that the petitioner was one of the accused in FIR No.279 dated 21.12.2006 registered under Sections 419, 420, 467, 468, 471 and 120-B IPC at Police Station Kundli, Sonapat. He was tried along with other co-accused namely Shyam Sunder and Sandeep.

[3]. Trial Court vide judgment dated 26.02.2013 acquitted the petitioner of the charges while convicting other co-accused. The order of acquittal of the petitioner was never assailed by the complainant or by the State of Haryana. The order of acquittal of the petitioner became final.

[4]. The co-accused of the petitioner were convicted and sentenced to undergo imprisonment for a period of six months and to pay a fine of Rs.500/- each for the offence under Section 120-B IPC, rigorous imprisonment for a period of 3 years and to pay a fine of Rs.1500/- each for the offence under Section 420 IPC, rigorous imprisonment for a period of 3 years and to pay a fine of Rs.1500/- each for the offence under Section 467 IPC, rigorous imprisonment for a period of 3 years and to pay a fine of Rs.1500/- for the offence under Section 468 IPC and rigorous imprisonment for a period of 3 years with fine of Rs.2500/- each for the offence under Section 471 IPC along with respective default mechanism for undergoing simple imprisonment for one month in the event of default in making payment of fine. All the sentences were ordered to be run concurrently.

[5]. Against the acquittal of the petitioner, no appeal was proposed to be filed as the same was considered to be unfit for filing appeal as per the opinion of the Assistant District Attorney, Sonapat. The information was accordingly circulated according

to rule of Haryana State Litigation Policy, 2010.

[6]. The convicted persons filed appeal before the Additional Sessions Judge, Sonapat. The Public Prosecutor projected before the Additional Sessions Judge, Sonapat that the FSL report though relied upon by the trial Court, in fact was not tendered in evidence. Therefore, he prayed for remand of the case with a direction to provide opportunity to the prosecution to prove the FSL report and examine material witnesses for just decision of the case.

[7]. The Additional Sessions Judge, Sonapat observed that since the petitioner was acquitted by the trial Court and, therefore, if remand is ordered for retrial, the petitioner would be affected. The Court observed that opportunity of hearing should be granted to the petitioner and, therefore, notice was issued for his appearance vide order dated 02.09.2015.

[8]. The Additional Sessions Judge, Sonapat vide judgment dated 20.10.2015 set aside the judgment and order of the trial Court and remanded the case to the trial Court to decide the case afresh, after providing liberty to the prosecution to conclude its evidence. The accused were directed to appear before the trial Court.

[9]. Accordingly, notice was served upon the petitioner and

his bailable warrants were issued vide order dated 02.11.2015. Petitioner appeared before the trial Court on 18.11.2015 and thereafter ventured to challenge the impugned orders by way of present petition.

[10]. Learned counsel for the petitioner relied upon **Brathi alias Sukhdev Singh vs. State of Punjab, 1991(1) R.C.R. (Criminal) 565** and contended that once the petitioner was acquitted by the trial Court and no appeal was filed either by the complainant or by the State, then the petitioner cannot be summoned, pursuant to remand by the Appellate Court in an appeal filed by the co-accused.

[11]. I have heard learned counsel for the parties.

[12]. The Hon'ble Apex Court in **Brathi alias Sukhdev Singh's** case (supra) relied upon **Harshadsingh vs. State of Gujarat, AIR 1977 Supreme Court 710** and concluded that, if some out of several accused are acquitted but the participating presence of plurality of assailants is proved, the conjoint culpability of the crime is inescapable. When more persons than one are prosecuted and one of them is convicted and others are acquitted, the order of acquittal cannot be set aside unless an appeal has been duly preferred in that behalf against the said order.

[13]. There is no bar to the appellate court to appreciate the entire evidence in terms of Section 386 Cr.P.C., for the purposes of accepting or rejecting the appeal of the co-accused. Nothing can prevent the appellate court from expressing the view on merit. A wrong and erroneous order of acquittal though irreversible in the absence of an appeal by the complainant or State, but that would not operate as a bar in recording constructive liability of the co-accused. In such an eventuality, the court of appeal has to consider indirectly and incidentally against the evidence adduced on record even in respect of acquitted person by the trial Court.

[14]. The Court can arrive at independent finding that the evidence against the acquitted person was satisfactory would not have been discarded, though the appellate court cannot proceed to disturb the order of acquittal which has become final. However, it can certainly consider the impact of its conclusion on the case of co-accused. Failure to do so would be a travesty of justice, if no conviction can be founded notwithstanding the finding that the acquitted person was in fact one of the participant in the offence. The English rule of repugnancy on the face of record for nullifying the conviction of co-conspirator on the other conspirator being acquitted is not applicable in India. Though the appellate court cannot reverse the acquittal of the

petitioner in the absence of any appeal filed by the State or by the complainant, but the Court cannot refuse to visit the consequences notwithstanding the conclusions reached by the trial Court. Therefore, in nutshell the Court is justified to reassess the merits without disturbing the order of acquittal of the petitioner.

[15]. In view of aforesaid, I am of the view that the impugned orders are totally against the spirit of ratio laid down in **Brathi alias Sukhdev Singh's** case (supra). The petition is accordingly accepted, quashing the impugned orders to the extent of petitioner.

January 19, 2017

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No