

In the High Court of Punjab and Haryana at Chandigarh

CRR No.2248 of 2011 (O&M)

Date of Decision:- September 21, 2017

Varinder Kumar

.....Petitioner

Versus

State of Punjab

....Respondent

CORAM: Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Amit Dhawan, Advocate,
for the petitioner.

Ms. Ruchika Sabharwal, Assistant Advocate General, Punjab.

Gurvinder Singh Gill, J.

1. Varinder Kumar has filed the present revision petition challenging judgement dated 16.9.2011 passed by learned Additional Sessions Judge, Ludhiana, whereby appeal filed by him against judgement dated 12.7.2008 rendered by JMIC Ludhiana, holding him guilty of having committed offence under Section 63 of Copy Right Act 1957, has been dismissed.
2. Shorn of unnecessary details, the allegations as per the complaint lodged at instance of Jaswant Singh are that he was working as Investigator with Indian Music Industries and that Raj Kumar, Varinder Kumar and Rajesh Kumar were indulging in sale of pirated CDs and audio cassettes representing the

same to be genuine ones. Pursuant to recording of FIR on the basis of aforesaid complaint, a raid was conducted by police party headed by SI Nirmaljit Singh at the premises of the accused who were found in possession of the CDs and audio Cassettes, alleged to be pirated. At the time of conducting raid, the police party had associated an independent witness namely Sai Dass Sharma and was also accompanied by complainant Jaswant Singh and by Rakesh Kumar.

3. Though a common FIR was lodged against all the three accused, but separate challan had been filed against each of the accused and separate trials were conducted. All the three accused were convicted by the learned trial Court vide separate judgments of even date i.e. 12.7.2008. Feeling aggrieved with their conviction, all three accused filed separate appeals. While appeal filed on behalf of Rajesh Kumar was accepted by the Appellate Court on 11.3.2010, the appeals filed by present petitioner Varinder Kumar as well as by Raj Kumar were dismissed vide separate judgments dated 16.9.2011. Aggrieved with dismissal of his appeal, Varinder Kumar has filed the present revision petition.
4. I have heard the learned counsel for the petitioner as well as the counsel representing the State and have also perused record of the case.
5. A perusal of the record shows that though the complainant Jaswant Singh, Investigator of Indian Music Industries stepped into the witness box as PW-1 and his examination-in-chief was recorded but he did not appear again and thus was never cross-examined. PW-1 Jaswant Singh, being Investigator from Indian Music Industries would have been in an authoritative position to

distinguish the genuine CDs/Cassettes from pirated ones. However, the statement of PW-1 Jaswant Singh, shorn of cross-examination has been rendered incomplete and cannot be read in evidence.

6. Though, Rakesh Kumar, another witness has been examined by the prosecution as PW-3 who stated that he was working as 'Identifier' with Indian Music Industries but it is pertinent to notice that PW-3 Rakesh Kumar nowhere produced any authorization in his favour on behalf of Indian Music Industries. It may here be added that such an authorisation had been produced by PW-1 in his favour as Ex.P-1 when he stepped into the witness box though his statement otherwise remained incomplete.
7. PW-2 Inspector Nirmaljit Singh has not disclosed anywhere as to on what basis the recovered CDs/Cassettes could be said to be pirated CDs/Cassettes. The recovered CDs/Cassettes were never subjected to any scientific examination to ascertain genuineness of the same.
8. Further, a perusal of the record shows that Sai Dass Sharma, the independent witness was not examined by the prosecution.
9. Thus, the net result is that the person in whose favour that authorization was i.e. complainant Jaswant Singh(PW-1) did not appear for his cross-examination and consequently, his statement cannot be relied upon. The other witness i.e. PW-3 Rakesh Kumar who claims to be working as Identifier with Indian Music Industries has not produced any authorization from the company so as to substantiate his claim of being associated as an Identifier and an expert so as to opine as regards the authenticity/piracy of CDs/Cassettes. PW-

- 2 Inspector Nirmaljit Singh can not said to be an expert to comment about piracy of CDs/Cassettes especially in the absence of any scientific or expert's opinion. Further, even the independent witness Sai Dass Sharma has not been examined by the prosecution.
10. Consequently, the impugned judgment cannot sustain and deserves to be set aside. The revision petition on behalf of Varinder Kumar merits acceptance and is hereby accepted. The impugned judgment is hereby set aside and the petitioner is acquitted of all the charges framed against him.

(Gurvinder Singh Gill)
Judge

September 21, 2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No