

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR No.2068 of 2014 (O&M)
Decided on:-29.09.2017.

Inderjit Singh and another

.....Petitioners.

Versus

State of Punjab.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Inderpal Singh Parmar, Advocate
for the petitioners.

Mr. A.S. Dhaliwal, DAG, Punjab.

HARI PAL VERMA, J.

Petitioners, namely, Inderjit Singh and Jaspal Singh have filed present revision petition against judgment dated 18.04.2014 passed by learned Additional Sessions Judge, Fast Track Court, Ludhiana, whereby their appeal against the judgment of conviction and order of sentence dated 10.09.2012 passed by learned Judicial Magistrate 1st Class, Ludhiana, was dismissed.

Briefly stated, FIR No.200 dated 18.08.2000 under Sections 406 and 420 IPC was registered at Police Station Division No.6, Ludhiana against the petitioners on an application dated 02.05.2000 written by the office of the Executive Engineer (Civil), Punjab Mandi Board, Ludhiana.

As per the FIR, the complainant division used to get bitumen oil from Indian Oil Corporation, Mathura/Panipat through different carriage agencies. On checking of accounts from September, 1996 to November, 1999,

it was found that M/s Akal Carrier, behind Lal Palace, G.T. Road, Jagraon has carried less bitumen viz. a viz. the order placed. Various letters were written to the said firm seeking their clarification. On 04.10.1999, Inderjit Singh, representative of the firm assured that he will clarify the position within 7 days, but of no avail. Thereafter, the record was reconciled by the officials of the division with the Indian Oil Corporation, Mathura and it was found that bitumen oil as per invoice/challans was lifted by M/s Akal Carriers, Jagraon from Mathura Refinery, but the complete bitumen was not delivered to the officials of the complainant office. As per prosecution, Akal Carrier, Jagraon has caused loss of Rs.18,52,008/- to the complainant on account of less delivery of bitumen.

Vide judgment dated 10.09.2012, learned trial Court though acquitted the petitioners-accused of the charge framed under Section 420 IPC, but convicted them for offence under Section 406 IPC. Accordingly, vide separate order dated 10.09.2012, the petitioners-accused were sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/- each for commission of offence under Section 406 IPC.

The judgment of conviction and order of sentence dated 10.09.2012 passed by learned Magistrate was made subject matter of challenge before the appellate Court. Vide judgment dated 18.04.2014, learned Additional Sessions Judge, Fast Track Court, Ludhiana found that the statements of petitioners-accused under Section 313 Cr.PC have not properly been recorded and all the incriminating evidence against the accused was not put to them. Even the documents which were recorded and prepared during

investigation have not been put to the accused at the time when their statements under Section 313 Cr.PC were recorded. Thus, learned appellate Court found that a great prejudice has been caused to the accused as their statements under Section 313 Cr.PC were not recorded properly and all the incriminating evidence against them was not put to them. Accordingly, learned appellate Court has set aside the judgment dated 10.09.2012 passed by learned Magistrate on the ground that the same suffers from illegality and is not sustainable in the eyes of law. However, the case was remanded back to the trial Court to re-record the statements of accused under Section 313 Cr.PC by putting all the incriminating evidence to the accused and then to decide the case afresh.

Through the instant revision petition, the petitioners have challenged the judgments passed by the Courts below.

Learned counsel for the petitioners has argued that once the prosecution has failed to produce any evidence from Mathura Refinery to show that the quantity of bitumen was not supplied as per order placed by Punjab Mandi Board during the period from September, 1996 to November, 1999, the trial Court has committed error in convicting the petitioners on the basis of photocopies of the documents. The trial Court has failed to put entire prosecution evidence to the accused while recording their statements under Section 313 Cr.P.C. The petitioners were not put the evidence of Upkar Singh (PW3), who was deputed to go to Mathura Refinery to check the records. Even the documents Ex.PW4/A and Ex.PW4/B produced in the evidence of ASI Onkar Singh (PW4) were not put to the petitioners-accused in their

statements under Section 313 Cr.P.C. The FIR in question was registered in the year 2000 and as such, the petitioners are facing the prosecution for the last 17 years and now, since learned appellate Court has directed re-trial, the petitioners are bound to face another round of trial. The right of speedy trial is a fundamental right of the petitioners. Even otherwise, the petitioners were entitled to be released on probation under the provisions of Section 360 Cr.PC or under Section 4 of the Probation of Offenders Act, 1958.

Learned counsel for the petitioners has relied upon the judgment of this Court in ***Dila Ram Versus The State of Punjab 2013(1) Law Herald 920*** to contend that once the essential material or evidence which is not put to the accused, the same cannot be used against him for basing conviction resulting in prejudice to him. He has relied upon para Nos.3 and 4 of the said judgment, which read as under:

“3. The petitioner of course has pleaded his false implication. He has also denied all the incriminating circumstances appearing in evidence produced by the prosecution. The appellate Court otherwise did not find much fault but came to conclude that conviction and sentence imposed on the petitioner could not be sustained on the ground that while recording the statement of petitioner under Section 313 Cr.P.C., the trial Court did not put some incriminating evidence to the petitioner and, thus, did not obtain his explanation on those portion of the evidence. The appellate Court found that the trial Court had put limited part of the prosecution evidence. The Court, accordingly, observed that it was essential to put certain material facts allegedly constituting the commission of offence by the petitioner, which appeared in evidence against him. It is

noticed that the trial Court did not even question the petitioner that he was driving the offending vehicle on that particular day or that he was driving the same in a rash and negligent manner. The petitioner was not even questioned if he had overtaken the scooter and that his vehicle hit the scooter driven by the deceased. The appellate Court found that the trial Court had not even put the evidence of occurrence to the petitioner. The petitioner was only confronted with the steps taken by the police during investigation.

4. *Main purpose for recording the statement of the accused is noticed and thereafter the Court found that the conviction of the petitioner, as recorded, cannot be sustained. After allowing the appeal, the appellate Court thought it appropriate to remand the case back to the trial Court with the direction to record the statement of the accused under Section 313 Cr.P.C. in a proper manner and proceed with the case afresh as per law. The petitioner was directed to appear before the trial Court. Against this order, the petitioner has filed this revision petition.”*

He has further argued that once the appellate Court has found that the incriminating evidence was not put to the accused while recording their statements under Section 313 Cr.P.C., the matter was not required to be remanded back, rather, the appeal filed by the petitioners against the judgment of conviction passed by the trial Court, was required to be decided on merits and as per the evidence available on record.

On the other hand, learned State counsel has contended that learned Additional Sessions Judge, Fast Track Court, Ludhiana has rightly

remanded back the case to the trial Court as all the incriminating evidence was not put to the petitioners-accused while recording their statements under Section 313 Cr.P.C. by learned trial Court.

I have heard learned counsel for the parties.

There is no dispute regarding the proposition of law laid down by this Court in ***Dila Ram's case (supra)***. The essential material which is not put to the accused will certainly cause prejudice to the accused and, therefore, such a piece or material cannot be used against the accused for basing his conviction. However, the cited authority is not applicable in the peculiar facts and circumstances of present case as bare perusal of the judgment passed by the trial Court reveals that though 5 witnesses have been examined by the prosecution, but the trial Court has mentioned the evidence of only 4 witnesses i.e. ASI Rajinder Singh (PW1), Surinder Pal Singh, XEN (PW2), Upkar Singh, Senior Assistant (PW3) and ASI Onkar Singh (PW4). The trial Court has not dealt with the evidence produced on record by Kamikkar Singh, J.E. (PW5) in the judgment dated 10.09.2012.

Further, the statements of only three witnesses i.e. Rajinder Singh (PW1), Surinder Pal Singh, XEN (PW2) and Kamikkar Singh (PW5), who has wrongly been mentioned as PW4, were put to the accused in their statements under Section 313 Cr.P.C. Accordingly, the statements of Upkar Singh, Senior Assistant (PW3) and ASI Onkar Singh (PW4) were not put to the accused while recording their statements under Section 313 Cr.P.C. In this manner, the evidence which has not been put to the accused in their

statements under Section 313 Cr.P.C., can neither be relied upon nor can be made basis of their conviction.

When all the incriminating evidence appearing against the accused was not put to them in their statements under Section 313 Cr.P.C., a great prejudice has been caused to the accused. Thus, the appellate Court has rightly set aside the conviction of the petitioners-accused and remanded back the case to the trial Court to re-record the statements of accused under Section 313 Cr.P.C. by putting them all the incriminating evidence available on record.

Therefore, this Court does not find any illegality or perversity in the impugned judgment dated 18.04.2014 passed by learned Additional Sessions Judge, Fast Track Court, Ludhiana. Accordingly, affirming the same, the present revision petition, being devoid of any merit, is dismissed.

September 29, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No