

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

CRR No. 3279 of 2015

DATE OF DECISION :- November 27, 2017

Madan Pal and another

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAN

Present:- Mr. Keshav Partap Singh, Advocate for the petitioners.

Mr. Neeraj Poswal, Assistant Advocate General, Haryana.

Mr. R.S. Mamli, Advocate for respondent no.2.

Briefly stated facts of the case are that complainant Ram Karan had brought a private complaint under Sections 406/420/467/463/471/120-B of the Indian Penal Code against accused Madan Pal, Sushma and D.R. Batra. In that complaint filed on 4.8.2010, after recording preliminary evidence accused Madan Pal and Sushma were summoned to face trial but it was not so as regards accused no. 3 D.R. Batra. After securing presence of accused Madan Pal and Sushma, the complainant was asked to lead pre charge evidence, which he did. Thereafter, charge for offence under Section 406, 420 read with Section 34 of the Indian Penal Code was framed against both the accused. No further evidence was led by the complainant in after charge evidence though availing opportunities for that purpose and the same was closed by Court order dated 8.12.2014. Statements of accused were

recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against the accused were put to them but they denied the same and pleaded innocence. During their evidence, accused examined three witnesses and placed on record several documents. After hearing arguments both the accused were convicted and sentenced vide judgment dated 5.1.2015 passed by Judicial Magistrate Ist Class, Panchkula.

Feeling dissatisfied with the said judgment, both the accused-convicts preferred separate appeals. The complainant also preferred an appeal for enhancement of sentence which were heard and disposed of by Sessions Judge, Panchkula vide judgment dated 10.8.2015.

Both the appeals filed by the accused were allowed partly. Inasmuch as the impugned judgment was set aside being against procedural requirements resulting into miscarriage of justice and prejudice to both the parties, the matter was remitted back to the trial Court to proceed further from the stage as provided under Section 246 sub-section (4) Cr.P.C. onwards after giving option to the appellant-accused as per this provision and then to proceed further and to pass a fresh judgment without being influenced by earlier findings. Whereas appeal filed by the complainant was dismissed being infructuous. The factor which weighed on the mind of Appellate Court was that no opportunity had been granted to appellant-accused to further cross examine the witnesses already brought in pre charge evidence which was found to be a procedural lapse on the part of the trial Court leading to remanding of the case.

The accused have approached this Court by way of filing the Revision Petition. They are aggrieved by the judgment passed by the trial

Magistrate convicting and sentencing them contending that it could not be so done since they had not been afforded opportunity to cross examine the witnesses already examined by the complainant in pre charge evidence, after charge sheeting them. It should be taken as case of no evidence, therefore, they deserve to be acquitted and further more learned Sessions Judge fell in error in remanding the case back to the trial Magistrate taking such lapse to be procedural irregularity only. In that way the said judgment be also set aside resulting in giving clean chit to the revision petitioners.

Notice of the Revision Petition was given to the respondent-complainant, who put in appearance through the counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the Revision Petition. As far as the judgment of conviction and sentence passed by the trial Magistrate, Panchkula is concerned since it has been set aside by learned Sessions Judge, Panchkula while disposing off the appeals filed by the accused-convicts that judgment is no longer in existence and there is no occasion to set it aside. While disposing off this Revision Petition as regards the judgment passed by the learned Sessions Judge remitting the case back, I do not find any illegality or infirmity therewith. Learned Sessions Judge, Panchkula rightly observed that since there was procedural irregularity committed by the trial Magistrate which needed to be cured as such after setting aside the judgment of conviction and sentence passed against accused he has remitted the case to the trial Magistrate to proceed further from the stage of Section 246(4) Cr.P.C. onwards.

Learned counsel for the revision petitioner has referred to

citation *Sunil Mehta and another Versus State of Gujarat and another 2013(3) R.C.R. (Criminal) 238* by the Hon'ble Apex Court, wherein it was observed that a Magistrate cannot frame charge against accused on basis of evidence recorded at stage of issuing summoning order. He had further referred to authority *State of Haryana Versus Ramesh Kumar 2003(4) R.C.R. (Criminal) 410* by a coordinate Bench of this Court, wherein it was observed that when a prosecution witness had been examined and charge framed against the accused, however, that witness was not examined after framing of charge then the pre charge statement cannot be taken into account. There is no dispute with the propositions of law laid down in these authorities but in view of the factual position detailed above, since the impugned judgment passed by the trial Magistrate has been set aside the grouse of accused in that regard is to be taken as having become redundant.

Thus finding no merit in the Revision Petition, the same stands dismissed.

(H.S. MADAAN)
JUDGE

November 27, 2017

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No