

CRR-1956 of 2017 (O&M)

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

CRR-1956 of 2017 (O&M)
Date of Decision: 12.12.2017

Dharampal Dhadde M.C.

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Siddharth Gupta, Advocate, for the petitioner.
Ms. Bhavna Gupta, DAG, Punjab.
Mr. Dhawaljeet Dutta, Advocate,
for Mr. A.S. Barnala, Advocate, for the complainant.

RAMENDRA JAIN, J. (ORAL)

Through this revision, judgment dated 30.01.2017 of the First Appellate Court, has been assailed, whereby while setting aside the judgment of conviction and order of sentence dated 03.01.2013 against the petitioner, the case has been remanded back with the direction to the trial Court to record the statement of the accused under Section 313 Cr.P.C., afresh, putting entire incriminating evidence came on record against him.

Learned counsel for the petitioner contends that a valuable right accrued to the petitioner could not have been curtailed by the appellate Court by remanding the case back. The appellate Court has remanded the case back to put the FSL report (Ex.PY) to the accused, which the trial Court had discarded in view of the fact that the same was not legally proved on account of non-examination of its author. The First Appellate Court has illegally curtailed the right of the accused persons to lead further evidence

in their defence after recording of their statements under Section 313

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Cr.P.C. afresh by making a specific observation in this regard. Since the FSL report (Ex.PY) was not legally proved in accordance with the provisions of Section 293 Cr.P.C., therefore, it was a sheer wastage of time by remanding the case back to the trial Court for putting the same to the petitioner/accused in his statement under Section 313 Cr.P.C. Relying upon the judgments of the Hon'ble Supreme Court in ***Manchander v. State of Hyderabad***, 1956 PLR 163, ***Rautu Bodra and another v. State of Bihar***, 1999 SCC (Cri) 1319, ***State of Maharashtra v. Damu S/o Gopinath Shinde and others***, 2000(2) R.C.R.(Criminal) 781 and the judgments of this Court in ***Balkar Singh v. State of Punjab***, 1984(2) R.C.R.(Criminal) 480, ***Subhash Chand v. State of Haryana***, 1987(1) R.C.R.(Criminal) 243, ***Avtar Singh v. State of Punjab***, 1989(2) R.C.R.(Criminal) 676, ***Sadhu Ram v. State of Haryana***, 1992(1) R.C.R.(Criminal) 497 and ***Nirmal v. State of Punjab***, 2001(4) R.C.R.(Criminal) 622, learned counsel submits that statement of the accused cannot be recorded afresh under Section 313 Cr.P.C.

On the other hand, learned State counsel, assisted by learned counsel for the complainant, vehemently opposed the submissions made by learned counsel for the petitioner submitting that in view of Section 386 Cr.P.C., the appellate Court has wide powers to order even for a fresh trial. In the instant case, the appellate Court has remanded the case back only to record the statements of the petitioner/accused under Section 313 Cr.P.C. to the the extent of putting some evidence, which had come on record against them, but was left to be put to them. The said exercise adopted by the First Appellate Court is not going to prejudice the petitioner/accused in any manner, inasmuch as the evidence already available on the record has to be put to them and nothing new, which would take them by surprise.

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I have given anxious consideration to the submissions made by both the sides.

Section 386 Cr.P.C. gives ample powers to the appellate Court to even order for retrial of the case. In the instant case, material questions had left out to be put to the petitioner, which has now been ordered by the First Appellate Court to put to him by remanding the case back. Therefore, there is no illegality in the impugned judgment, if the irregularity committed by the trial Court has been ordered to be cured or to be undone by recording the statements of the petitioner/accused under Section 313 Cr.P.C. afresh.

On a perusal of the record, it transpires that the accused have already closed their defence evidence. The learned First Appellate Court in para No.18 of its judgment has observed that while recording the statement of the petitioner under Section 313 Cr.P.C., his statement Ex.PX/7, order of the Court Ex.PX and the report of the FSL were not put to him. Likewise, no incriminating evidence was put to other accused, namely, Gurjit Singh and Hardeep Singh. In such circumstances, the learned First Appellate Court, in the considered opinion of this Court, has rightly observed that proper opportunity is required to be granted to all the accused to explain the incriminating evidence appearing on record against them. Therefore, the finding of the learned First Appellate Court in remanding the case to the trial Court with the direction to record the statements of the accused under Section 313 Cr.P.C. afresh and then dispose it of without affording them an opportunity to lead further defence evidence, is correct and cannot at all be said to be erroneous, that may warrant interference in exercise of revisional jurisdiction by this Court. That apart, learned counsel for the petitioner has

not been able to prove on record what prejudice is going to be caused to accused persons in case statements under Section 313 Cr.P.C. are recorded

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afresh putting them the entire evidence which had come on record against them afresh. The plea of the learned counsel for the petitioner that without being afforded an opportunity to the accused persons, recording of statement of the accused under Section 313 Cr.P.C., would be a sheer wastage of time, cannot be accepted, keeping in view the fact that putting all incriminating material appearing against them on record is mandatorily required, which would certainly not change the nature of the case. Even otherwise, it was the bounded duty of the trial Court to put all the incriminating evidence appearing against the accused persons in their statements under Section 313 Cr.P.C. even if FSL report, Ex.PY, was not legally proved on account of non-examination of its author. The facts and circumstances of the citations, as referred to above, relied upon by learned counsel for the petitioner are either distinguishable or are not identical to the facts of the present case, therefore, no benefit of the same can be given to the petitioner.

In view of what has been recorded hereinabove, this Court does not find any illegality or perversity in the impugned judgment passed by learned First Appellate Court. Consequently, revision, being without any merit, fails and is dismissed.

December 12, 2017
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No