

CRR-4167 of 2017 (O&M)

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

CRR-4167 of 2017 (O&M)
Date of Decision: 05.12.2017

Jatinder Singh

...Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. H.S. Dhandi, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through this revision petition, judgment dated 27.10.2017 of the First Appellate Court has been assailed.

Put pithily, on 26.08.2015 some quarrel took place between the petitioner and the complainant. Consequently, petitioner got lodged an FIR against complainant Manjit Singh and others, who also by DDR No.14 dated 27.08.2015 got recorded cross-version against the petitioner that on the aforesaid date i.e. 26.08.2015 around 6:30 p.m. when he along with Diwan Singh son of Jarnail Singh reached near the farm of Ajaib Singh on their tractor, the son of said Ajaib Singh, namely, Ajit Singh carrying a spade rushed towards them and gave a spade blow on the head of complainant Manjit Singh. Thereafter, mother of Ajit Singh, namely, Charanjit Kaur gave a pipe blow on the left hand of the complainant. Petitioner being son of Ajit Singh also gave a *lathi* blow on his body. On hearing hue and cry, Gurdev Singh, uncle of the complainant, came to the spot, to whom also the petitioner, his mother Charanjit Kaur and his sister-

in-law gave beatings. Since the petitioner was a juvenile on the date of incident, therefore, a separate challan was filed against him before the

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Principal Magistrate, Juvenile Justice Board, S.A.S. Nagar (Punjab). After due trial, petitioner was held guilty under Sections 323, 325, 341, 201 and 34 IPC vide judgment of conviction dated 25.05.2017, but was released on probation on furnishing personal probation bonds in the sum of ₹ 10,000/- for a period of six months vide order of sentence of even date.

Being aggrieved, petitioner preferred an appeal. The appellate Court, after hearing both the sides, set aside the judgment of conviction and order releasing the petitioner on probation by Principal Magistrate, Juvenile Justice Board, vide judgment dated 27.10.2017 and remanded the case back to the Juvenile Justice Board for fresh decision in view of the observations given in para Nos.12 to 14, which are reproduced hereunder: -

“12. In the judgment, the learned Principal Magistrate, Juvenile Justice Board has recorded that during enquiry, juvenile Jatinder Singh made a confessional statement and he admitted his guilt. The Board further held that since the prosecution has successfully proved the charges against the juvenile by examining the complainant supported by confession, therefore, juvenile is held guilty under Section 323/325/341/201/34 of IPC. It means the Board has held the juvenile guilty firstly on the ground that he had made a confessional statement before the Board and second that the prosecution has proved its case by leading required evidence for conviction of the juvenile.

13. But perusal of the file shows that there is no confessional statement available on the file. The fact of recording of confessional statement is neither reflecting on the record nor in zimni order as no reference of confession has been recorded in any zimni order passed by the Board. The Board has also failed to mention as to whether any statement under Section 313 Cr.P.C. was recorded or not, but the same is available on the file. The statement of juvenile under Section 313 Cr.P.C. was recorded on 25.5.2017 and judgment was also pronounced on the same day under Section 313 Cr.P.C. The juvenile has clearly

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denied his involvement in the case in statement under Section 313 Cr.P.C. and specifically pleaded that he is innocent and has been falsely implicated in the case. It means, till the pronouncement of the judgment no confession of the juvenile was ever recorded. Since the judgment is based on the alleged confession which was never recorded in the case due to inadvertence or for any other misunderstanding, so, the judgment passed on the basis thereof cannot be sustained in the eyes of law.

14. Even on merits, the learned Board has held that the prosecution has proved its case beyond shadow of reasonable doubt but neither Gurdev Singh has been examined nor any doctor has been examined to prove the injuries. Nothing is there on the file to show as to how injuries have been held to be suffered with sharp or blunt weapon and how injury was held to be grievous. The judgment on this basis is also not sustainable as neither medical record nor oral evidence of the doctor has been recorded in this case, besides this the testimony of one eye witness/injured. It appears there remained some confusion at the time of passing of judgment by the learned Principal Magistrate, Juvenile Justice Board which is liable to be delivered fresh in the interest of justice after providing an opportunity to the prosecution to lead remaining evidence and confession if any.”

Learned counsel for the petitioner relying upon the judgments of the Hon'ble Supreme Court in **Ajay Kumar Ghoshal etc. v. State of Bihar and another**, 2017(1) R.C.R.(Criminal) 1061, **Satyajit Benerjee v. State of West Bengal**, 2005(1) R.C.R.(Criminal) 723, **Rambhau v. State of Maharashtra**, 2001(2) R.C.R.(Criminal) 721, **Mary Pappa Jebamani v. Ganesan and others**, 2014(1) R.C.R.(Criminal) 367, judgment of Chhattisgarh High Court in **Harishankar Prasad Sahu and others v. State of Chhattisgarh**, 2014(6) R.C.R.(Criminal) 545 and judgment of Rajasthan High Court in **Vinod v. State of Rajasthan**, 2016(2) Cri.L.R. 839 contends that the appellate Court had no power to remand the case for fresh decision

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to the Principal Magistrate, Juvenile Justice Board, rather should have decided the appeal of the petitioner on merits on the basis of evidence already available on the record.

I have given anxious consideration to the submissions made by learned counsel for the petitioner.

The crux of all the judgments relied upon by learned counsel for the petitioner is that under Section 386(b) Cr.P.C. the appellate Court, hearing a criminal appeal against the judgment of conviction, has the power to order retrial of an accused. However, the power conferred by Section 386 (b) Cr.P.C. should not be exercised mechanically without any application of mind in a routine and casual manner. It must be exercised in the facts and circumstances of each particular case. A de novo trial or retrial is not a second trial rather it is in continuation of the same trial and prosecution. While exercising power under Section 386(b) Cr.P.C., the appellate Court must keep in mind the basic principles of fair trial to an accused. It must also safeguard the interests of people, who seek its protection.

Considering the above dictum laid down by the Hon'ble Supreme Court and other High Courts, if the facts of the instant case are looked into, it can safely be held that there is a flagrant miscarriage of justice, inasmuch as at one point of time, the Principal Magistrate, Juvenile Justice Board observed that the petitioner has made confessional statement, but same was not found on the trial Court record and mentioned in any of the zimni orders. Principal Magistrate also did not refer to the statement of the petitioner under Section 313 Cr.P.C., but the same was found available. According to the Principal Magistrate, Juvenile Justice Board, if the

petitioner has confessed his guilt, in that eventuality there was no necessity to record the statement of the petitioner under Section 313 Cr.P.C., but the

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same was recorded on 25.05.2017, on which date the judgment was pronounced by him holding the petitioner guilty.

Finding of the First Appellate Court that “it appears there remained some confusion at the time of passing of judgment by the learned Principal Magistrate, Juvenile Justice Board which is liable to be delivered fresh in the interest of justice after providing an opportunity to the prosecution to lead remaining evidence and confession if any” is very much correct and, thus, does not require any interference.

In view of discussion above, this revision fails and the same is dismissed.

December 05, 2017
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No