

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

CRR No.94 of 2017 (O&M)
Date of Decision: January 17, 2017

Suresh Chand and others

...Petitioners

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Raghav Sharma, Advocate
for the petitioners.

INDERJIT SINGH, J.

The present revision has been filed by Suresh Chand and other petitioners against respondent State of Haryana, challenging the impugned judgment dated 07.12.2016 passed by learned Addl. Sessions Judge, Narnaul, whereby the appeal filed by the petitioners was allowed to the extent that impugned judgment of conviction dated 20.08.2015 and order of sentence dated 21.08.2015 passed by learned Judicial Magistrate Ist Class, Mohindergarh are set aside and the case is remanded back to the trial Court with the direction to proceed afresh with the trial of the case by framing a common charge against all the accused.

From the record, I find that earlier the challan was presented against Suresh Chand, Binu and Krishna in case FIR No.75 dated 22.02.2011 under Sections 323, 325 and 34 IPC and accused Vikash was

summoned to face trial under Section 319 Cr.P.C. The brief facts of the

case as noted down in the judgment passed by learned JMIC, Mohindergarh, are as under:-

“2. On 30.01.2011, a rukka alongwith MLR No.VT/51/11 Dated 30.01.2011 about Rohit was received at police chowki, at which HC Ashwani alongwith constable Duli Chand No.380 was sent to GH Mohindergarh, where they recorded the statement of injured Rohit. Statement of Rohit was recorded on 30.1.2011 at about 5.30 PM in pursuance of which DDR No.9 dated 21.01.2011 was entered. As per the statement of Rohit son of Hukan Chand on 30.01.2011 at about 6.30 P.M. he was alone at his home and was doing sweeping work by opening the gate. In the meantime his friend Vijender also came there and they got busy in some talk and while talking they came outside. Then, Suresh Chand son of Bhale Ram who is a teacher came there and started beating him with stones and bricks. He was joined by Vikash son of Suresh as well as his wife Krishna. Vikash, Binu and Krishna gave him fists as well as slaps. When he raised alarm, they fled away from the scene. In the meantime his parents and brother came there and rescued him. His father Hukam Chand admitted him to government hospital, Mahendergarh. In pursuance of DDR No. 9 dated 31.1.2011 present FIR was registered on 22.2.2011. After this investigation was swung into action. The accused was arrested. Site plan of the place of the occurrence was prepared and put up in the court for trial of the accused.”

Learned JMIC, Mohindergarh, convicted the accused under Sections 323, 325 read with Section 34 IPC. An appeal was filed by the petitioners and the same was allowed to the extent that impugned judgment of conviction dated 20.08.2015 and order of sentence dated 21.08.2015 passed by learned Judicial Magistrate Ist Class, Mohindergarh are set aside and the case is remanded back to the trial Court with the direction to proceed afresh with the trial of the case by framing a common charge against all the accused and thereafter, to summon PW-1 to PW-4 for their examination with opportunity of cross-examination by additional accused namely Vikash.

The perusal of the impugned judgment dated 07.12.2016 passed

by the Sessions court shows that learned Magistrate after summoning the additional accused Vikash to face trial along with accused already challaned under Section 319 Cr.P.C., has not framed the joint charge against all the accused. Secondly, before summoning of accused Vikash, four PWs have already been examined i.e. PW-1 to PW-4 and after framing the charge against Vikash separately, those PWs have not been called for examination by the trial Court, which is an illegality committed by the learned trial Court. Therefore, learned lower Appellate Court has set aside the judgment of conviction and order of sentence and remanded back the matter to the trial Court with the direction to frame the charge jointly against all the accused and to summon PW-1 to PW-4 again and then to decide the case.

The only argument of learned counsel for the petitioner is that when the accused-petitioners have already been acquitted by learned Sessions Court in appeal, then the matter should not have been remanded back to the trial Court for fresh trial.

As regarding this argument, I find that learned Sessions Court in the impugned judgment has not discussed and appreciated the evidence for the purpose of conviction and acquittal. The Court has given the finding only on this ground and remanded the matter back. Even if in the last line of the judgment, it is written that accused are hereby acquitted, it does not mean that the Court has acquitted the accused on merit. The judgment passed by learned Addl. Sessions Judge, Narnaul, is to be read as a whole and benefit from one line cannot be taken. This line of acquittal means that their conviction has been set aside and matter was remanded back. As already discussed, learned Sessions Court has not appreciated the evidence

finding that prosecution has failed to prove the guilt of the accused nor the Court has anywhere discussed that any reasonable doubt exists. The Court has nowhere discussed that official witnesses are not reliable or believable. Though this line regarding acquittal of the accused was not necessary but even if it is taken as it is, then it only amounts to setting aside of judgment of conviction and order of sentence for the purpose of remanding the matter back. No illegality has been committed by learned Addl. Sessions Judge, Narnaul, while passing the impugned judgment dated 07.12.2016.

Therefore, finding no merit in the present revision petition, the same is dismissed.

January 17, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No