

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

CRM-M-1803 of 2013(O&M)

Date of Decision: 30.01.2018

Balwinder Kumar

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM:HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Preetinder Singh Ahluwalia,
Advocate for the petitioner.

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

Mr. Ashok Aggarwal, Advocate
for respondents No. 2 and 3.

MAHABIR SINGH SINDHU, J.(Oral)

The present writ petition has been filed under Section 482 of the Code of Criminal Procedure for setting aside the impugned order dated 14.08.2012 vide which the charges were framed against the respondents only under Sections, 323, 341, 148 and 149 of the Indian Penal Code, but they were discharged under Section 326 IPC.

It is contended that this Court vide order dated 31.07.2013 passed the interim order to the effect that proceedings before the trial Court may go on; but the final order shall not be passed. However, despite that learned trial Court had been proceeded with the matter and ultimately passed the final judgment and order dated 04.09.2013 and convicted the private respondents under Section 323 IPC and released them on probation.

In view of the above a strong contention is raised that despite the stay order granted by this Court, the learned trial Court had no business to pass the final judgement.

Learned counsel appearing on behalf of private respondents has submitted that although stay order was granted by this Court on 31.07.2013; but the said order was never communicated to the learned trial Court till 04.09.2013. He has further submitted that in this regard an inquiry was also conducted by learned District and Sessions Judge, Patiala and in which it was found that the interim order dated 31.07.2013 was not reached to the learned Judicial Officer on or prior to 04.09.2013 i.e. the date when final judgement was passed.

Heard both the parties and perused the paper book.

The factum of inquiry in the matter is not disputed by learned counsel for the petitioner; rather that is a matter of record and relevant part of communication dated 09.02.2016 received from learned District and Sessions Judge, Patiala reads as under:

'However, it is stated that at that time, the case was pending in the Court of Ms. Dispit Goyal, JMIC, Patiala, from where the case was transferred to the Court of Ms. Baljinder Kaur, the then JMIC, Patiala. As already mentioned above, the copy of order was sent to the Court of Ms. Dipti Goyal, JMIC, Patiala, as at that time said case was pending in that Court. Since the

case was transferred from the Court of Ms. Dipti Goyal, JMIC, Patiala to the Court of Ms. Baljinder Kaur, the then JMIC, Patiala, it was from the Ahlmad of the Court of Ms. Dipti Goyal, JMIC, Patiala to send the order in question to the transferee court. But he failed to do so. Therefore, disciplinary proceedings against the defaulting official are being initiated separately for negligence on his part and action taken against him will be intimated in due course of time.'

Although, it is very unfortunate that despite the interim stay granted by this Court and that too in the presence of both the parties the learned trial Court has proceeded with the matter; but the fact remains that the said order was not communicated to the Learned Trial Court by either of the parties or otherwise in due course up to 04.09.2013 and this fact is further fortified from the relevant part of report substituted by learned District and Sessions Judge, Patiala reproduced above. Therefore, the judgment passed by learned trial Court cannot be termed as dehors the interim order dated 31.07.2013. Even the judgement dated 04.09.2013 has already been challenged by the convicts by way of criminal revision and which is stated to be pending before the Learned Additional Sessions Judge, Patiala. Learned counsel for the petitioner has stated that judgement and order dated 04.09.2013 has not been challenged by the petitioner.

In view of the factual position discussed hereinabove, no useful purpose will be served to dwell into the matter any more. Therefore, the present petition is dismissed.

Ordered accordingly.

[MAHABIR SINGH SINDHU]
JUDGE

January 30, 2018
rashmi

Whether speaking/reasoned	yes/no
Whether reportable?	yes/no