

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

CRM-M No.30174 of 2011 (O&M)
Date of decision: 22nd February, 2018

Dipika Lal

... Petitioner

Versus

State of Haryana & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Gagandeep S. Virk, Advocate for the petitioner.
Mr. P.K. Jangra, Addl. Advocate General, Haryana
for respondent No.1/State.
Respondent No.2 – in person.

FATEH DEEP SINGH, J.

Brief facts leading to initiation of the present petition under Section 482 Cr.P.C. seeking quashment of the order dated 19.09.2011 of learned Judicial Magistrate 1st Class, Faridabad dismissing application under Section 311 Cr.P.C. in its revision which is sought to be challaneged by the unsuccessful wife complainant Dipika Lal, are to the effect that the petitioner Dipika Lal and respondent No.2 Vipin Kumar Gupta were married and subsequently upon birth of children there arose a matrimonial dispute between them leading to multifarious litigation. The present matter pertains to criminal case got registered by the wife bearing FIR No.28 dated 20.01.2000 under Sections 506/427 IPC pertaining to Police Station Sector 7, Faridabad. It is during the course of trial, as is

there on the records and submissions of the two sides, the prosecution failed to conclude its evidence and ultimately evidence of the prosecution was closed by the trial Magistrate through orders dated 17.01.2011. Against this order, the aggrieved wife filed a revision. The Court of learned Additional Sessions Judge, Faridabad dismissed the criminal revision and it is against the same, challenge is sought to be laid.

Appreciating the submissions of the learned counsel for the petitioner, learned State counsel as well as respondent No.2 in person. Upon presentation of challan on 19.10.2000 under Section 173 Cr.P.C., the Court of learned Additional Chief Judicial Magistrate, Faridabad through orders dated 29.08.2002 framed charges against the accused and upon challenge to that framing of charge, proceedings were stayed by the revisional Court and from 07.12.2006 the matter was listed for prosecution evidence and repeatedly the matter had been adjourned on innumerable occasions and it is thereafter the impugned order dated 17.01.2011 was passed after almost nine years. The only contention that is sought to be raised by learned counsel for the respondent to counter the submissions of learned counsel for the petitioner that there has been miscarriage of justice, is that it is the own volition of the complainant petitioner she failed to examine her witnesses and when both the parties are lawyers and were fully aware of their rights and obligations to the process of dispensation of justice. Needless to say, in spite of there being non-usage of coercive means for summoning of the witnesses by the

Court below, reasonable opportunity appears to have been given for conclusion of the evidence. How a Court, which has already closed the evidence by order, could recall its order by resort to provisions of Section 311 Cr.P.C. In the light of well settled proposition of law, a Magistrate cannot recall or review its own order together with the fact that such a situation does not contemplate eventuality for leading additional evidence and resort to such a means cannot be allowed under the tenets of criminal jurisprudence to undo the orders of the Court which has on one hand closed evidence of the prosecution and how could it allow the same under the aid of Section 311 Cr.P.C., certainly to the mind of this Court does not augur well for the prosecution/petitioner. The courts are supposed to dispense justice and ensure that in the process of the same inordinate delay is not caused and which was there in the present case, certainly necessitates taking of such a harsh step by the Court below. Parties admittedly have a history of innumerable cases against each other and thus, in itself speaks of the bitterness inter-se them whereby every conceivable effort is made to undo the other side. The exercise of inherent powers under Section 482 Cr.P.C. is meant to advance the cause of justice and not to undo it. Since it is the own fault of the prosecution in not completing its evidence, does not confer unbridled right upon the complainant side for further latitude by the Court. The learned Court below has given a well reasoned finding on the same, however, the observation that has come about that the complainant has no *locus-standi*

to file such a revision against an order as prosecution has not challenged the said order, is adequately answered to the contrary by the Hon'ble Supreme Court in '**Amanullah and another v. State of Bihar and others**' 2016(2) RCR (criminal) 957, where their Lordships have made following observations:

“23. The term ‘locus standi’ is a latin term, the general meaning of which is ‘place of standing’. The Concise Oxford English Dictionary, 10th Edn., at page 834, defines the term ‘locus standi’ as the right or capacity to bring an action or to appear in a court. The traditional view of ‘locus standi’ has been that the person who is aggrieved or affected has the standing before the court, i.e., to say he only has a right to move the court for seeking justice. Later, this Court, with justice-oriented approach, relaxed the strict rule with regard to ‘locus standi’, allowing any person from the society not related to the cause of action to approach the court seeking justice for those who could not approach themselves. Now turning our attention towards the criminal trial, which is conducted, largely, by following the procedure laid down in the Cr.P.C. Since, offence is considered to be a wrong committed against the society, the prosecution against the accused person is launched by the State. It is the duty of the State to get the culprit booked for the offence committed by him. The focal point, here, is that if the State fails in this regard and the party having bonafide connection with the cause of action, who is aggrieved by the order of the court cannot be left at the mercy of the State and without any option to approach the appellate court for seeking justice. In this regard, the Constitution Bench of this

Court in the case of P.S.R. Sadhanantham's case (supra) has elaborately dealt with the aforesaid fact situation. The relevant paras 13, 14 and 25 of which read thus:

'13. It is true that the strictest vigilance over abuse of the process of the court, especially at the expensively exalted level of the Supreme Court, should be maintained and ordinarily meddlesome bystanders should not be granted "visa". It is also true that in the criminal jurisdiction this strictness applies a fortiori since an adverse verdict from this Court may result in irretrievable injury to life or liberty.

14. Having said this, we must emphasise that we are living in times when many societal pollutants create new problems of unredressed grievance when the State becomes the sole repository for initiation of criminal action. Sometimes, pachydermic indifference of bureaucratic officials, at other times politicisation of higher functionaries may result in refusal to take a case to this Court under Article 136 even though the justice of the lis may well justify it. While "the criminal law should not be used as a weapon in personal vendettas between private individuals", as Lord Shawcross once wrote, in the absence of an independent prosecution authority easily accessible to every citizen, a wider connotation of the expression "standing" is necessary for Article 136 to further its mission. There are jurisdictions in which private individuals — not the State alone — may institute criminal proceedings. The Law Reforms Commission (Australia) in its Discussion Paper No. 4 on "Access to Courts — I Standing: Public Interest Suits" wrote:

“The general rule, at the present time, is that anyone may commence proceedings and prosecute in the Magistrate court. The argument for retention of that right arises at either end of the spectrum — the great cases and the frequent petty cases. The great cases are those touching Government itself — a Watergate or a Poulson. However independent they may legally be any public official, police or prosecuting authority, must be subject to some government supervision and be dependent on Government funds; its officers will inevitably have personal links with government. They will be part of the ‘establishment’. There may be cases where a decision not to prosecute a case having political ramifications will be seen, rightly or wrongly, as politically motivated. Accepting the possibility of occasional abuse the Commission sees merit in retaining some right of a citizen to ventilate such a matter in the courts.”

Even the English System, as pointed by the Discussion Paper permits a private citizen to file an indictment. In our view the narrow limits set in vintage English Law, into the concept of person aggrieved and “standing” needs liberalisation in our democratic situation. In Dabholkar case this Court imparted such a wider meaning. The American Supreme Court relaxed the restrictive attitude towards “standing” in the famous case of Baker v. Carr. Lord Denning, in the notable case of the Attorney-General of the Gambia v. Pierra Sarr N’jie, spoke thus:

“... the words “person aggrieved” are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him;”

Prof. S.A. de Smith takes the same view:

“All developed legal systems have had to face the problem of adjusting conflicts between two aspects of the public interest — the desirability of encouraging individual citizens to participate actively in the enforcement of the law, and the undesirability of encouraging the professional litigant and the meddlesome interloper to invoke the jurisdiction of the courts in matters that do not concern him.”

Prof. H.W.R. Wade strikes a similar note:

“In other words, certiorari is not confined by a narrow conception of locus standi. It contains an element of the actio popularis. This is because it looks beyond the personal rights of the applicant; it is designed to keep the machinery of justice in proper working order by preventing inferior tribunals and public authorities from abusing their powers.”

In Dabholkar case, one of us wrote in his separate opinion:

“The possible apprehension that widening legal standing with a public connotation may unleash a flood of litigation which may overwhelm the Judges is misplaced because public resort to

court to suppress public mischief is a tribute to the justice system.”

This view is echoed by the Australian Law Reforms Commission.

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25. In India also, the criminal law envisages the State as a prosecutor. Under the Code of Criminal Procedure, the machinery of the State is set in motion on information received by the police or on a complaint filed by a private person before a Magistrate. If the case proceeds to trial and the accused is acquitted, the right to appeal against the acquittal is closely circumscribed. Under the Code of Criminal Procedure, 1898, the State was entitled to appeal to the High Court, and the complainant could do so only if granted special leave to appeal by the High Court. The right of appeal was not given to other interested persons. Under the Code of Criminal Procedure 1973, the right of appeal vested in the States has now been made subject to leave being granted to the State by the High Court. The complainant continues to be subject to the prerequisite condition that he must obtain special leave to appeal. The fetters so imposed on the right to appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. The Law Commission of India gave anxious thought to this matter, and while noting that the Code recognised a few exceptions by way of

permitting a person aggrieved to initiate proceedings in certain cases and permitting the complainant to appeal against an acquittal with special leave of the High Court, expressed itself against the general desirability to encourage appeals against acquittal. It referred to the common law jurisprudence obtaining in England and other countries where a limited right of appeal against acquittal was vested in the State and where the emphasis rested on the need to decide a point of law of general importance in the interests of the general administration and proper development of the criminal law. But simultaneously the Law Commission also noted that if the right to appeal against acquittal was retained and extended to a complainant the law should logically cover also cases not instituted on complaint. It observed:

“Extreme cases of manifest injustice, where the Government fails to act, and the party aggrieved has a strong feeling that the matter requires further consideration, should not, in our view, be left to the mercy of the Government. To inspire and maintain confidence in the administration of justice, the limited right of appeal with leave given to a private party should be retained, and should embrace cases initiated on private complaint or otherwise at the instance of an aggrieved person.”

However, when the Criminal Procedure Code, 1973 was enacted the statute, as we have seen, confined the right to appeal, in the case of private

parties to a complainant. This is, as it were, a material indication of the policy of the law.”

The plea that is sought to be raised by learned counsel for the petitioner who has placed reliance on **‘Balwinder Singh v. State of Punjab & others’ 2010(1) RCR (Criminal) 909; ‘Haribhau & another v. State of Maharashtra & another’ 2006 M.C.R. 1137; Shailendra Kumar v. State of Bihar & others’ 2002 AIR (SC) 270; ‘Sheikh Madinabibi Mustafabhai v. State of Gujarat’ (2005)2 GLR 1339; ‘Jagdish Chander v. State of Haryana’ 1984 (1) RCR (Criminal) 95; ‘Godrej Pacific Tech. Ltd. v. Computer Joint India Ltd.’ 2008(3) RCR (Criminal) 897; ‘Rajendra Prasad v. The Narcotic Cell through its Officer-in-charge, Delhi’ 1999(3) RCR (Criminal) 440**, do not come to the aid of the petitioner on account of factual disparity and even the ratios cited by learned counsel for the respondent i.e. **‘Shiv Kumar v. Hukam Chand & another’ 1999 VII AD (SC) 442; ‘B.Janakiramaiah Chetty v. A.K. Parthasarathi and others’ 2002 CRI.L.J. 4062; ‘Sundeep Kumar Bafna v. State of Maharashtra & another’ 2014(2) JCC 1264; ‘Rajaram Prasad Yadav v. State of Bihar & another’ 2013(3) JCC 2179; ‘Manjit Kaur & others v. State of Punjab’ 2005 CRI.L.J. 1273; ‘Hari Singh v. State of Haryana’ 2002(2) RCR (Criminal) 316; ‘Surinder Singh v. State of Haryana’ 1988(1) RCR (Criminal) 377; and ‘Inderjeet Kaur Kalsi v. NCT of Delhi & another’ 205 (2013) Delhi Law Times 410** are well negated by the

Hon'ble Apex Court view in **Amanullah's case** (ibid) as relied upon by this Court.

In the light of foregoing reasons and discussions detailed and discussed above, the impugned order does not suffer from any perversity or illegality and therefore, there being no merit in the present petition the same stands dismissed. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

February 22, 2018

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No