

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
201**

CRR-1898-2010 (O&M)

Date of decision:31.05.2018

Tarsem Chand

...PETITIONER

Vs.

State of Punjab

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ankush Singla, Advocate,
for Mr. Ashok Singla, Advocate,
for the petitioner.

Mr. Kuldeep Singh, Sr. DAG, Punjab,
for the State.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this revision petition is to the order dated 19.05.2010 passed by the Additional Sessions Judge, Barnala, vide which, the Court, while concluding that the petitioner has not been put all the accusations, evidence and incriminating material to him, instead of acquitting the petitioner, has proceeded to remand the case back to the trial Court by setting aside the judgment of conviction and sentence with a further direction for recording the statement of the petitioner under Section 313 Cr. P.C. in accordance with law.

Counsel for the petitioner contends that the said judgment cannot sustain in the light of the judgment of the Hon'ble Supreme Court in **Radhey Shyam vs. State of Rajasthan**, 2014 (2) SCC (Cr.) 600, wherein it has been held that if the complete incriminating material has not been put

to the accused at the time of recording of the statement under Section 313 Cr. P.C., failure on the part of the prosecution cannot be condoned and the accused shall be acquitted on this ground alone. Reliance has also been placed upon the judgment of the Supreme Court in **Kanhai Mishra @ Kanhaiya Misar vs. State of Bihar**, 2001 (2) RCR (Criminal) 110, which also states that if the circumstances are not put to the accused during his examination under Section 313 Cr.P.C., the same cannot be used against the accused and, therefore, resulted in acquittal of the accused. Reliance has also been placed on the Division Bench judgment of this Court in **Sucha Singh vs. State of Haryana**, 2011 (5) RCR (Criminal) 59, whereby the Division Bench of this Court has held the same. He, therefore, prays that the impugned order passed by the learned Additional Sessions Judge, Barnala dated 19.05.2010 remanding the case back to the trial Court cannot sustain and deserves to be set aside with a further prayer that the petitioner be acquitted of the charges.

Counsel for the State, on the other hand, has tried to justify the order passed by the learned Additional Sessions Judge, Barnala dated 19.05.2010 by asserting that these were merely irregularities and, therefore, the petitioner cannot take the benefit of the lacuna in the prosecution.

Having considered the submissions made by the counsel for the parties and keeping in view the fact that the learned Additional Sessions Judge, Barnala, in its impugned order dated 19.05.2010, has categorically held that the petitioner has not been put all the incriminating material and the circumstances at the time of recording his statement under Section 313 Cr. P.C., the said Court had no option but to acquit the accused of the charges by setting aside the judgment of the trial Court. In the light of the

judgments of the Supreme Court and this Court, referred to above, the impugned order cannot sustain and, therefore, to the extent of remanding the case back to the trial Court is, hereby set aside. Petitioner is acquitted of the charges.

Petition stands allowed.

May 31, 2018

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No