

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

201

**CRR-2055 of 2011 (O&M)
Date of Decision:- 31.07.2018**

Sukhwant Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. S.S.Rangi, Advocate for the petitioner.

Mr. Nikhil K.Chopra, Addl. A.G. Punjab.

P.B. BAJANTHRI, J.(ORAL)

In the instant petition, petitioner has challenged order dated 25.07.2011 (Annexure P-2) passed by Sessions Judge, Fatehgarh Sahib. The respondent has filed FIR against the petitioner under Section 420 IPC read with Section 7 of Essential Commodities Act. Trial court acquitted the petitioner. Consequently, respondent filed an appeal before the appellate court and it was allowed while remanding the matter to the trial court to decide the matter afresh after taking into account all the evidence led by prosecution. Hence the present petition.

2. Learned counsel for the petitioner submitted that the respondent have not approached the appellate court with clean hands and have concealed the material facts as is evident from para 1 of the appeal to the

extent that appeal was presented within the limitation period. Whereas there is delay of 27 days in presenting the appeal. It was further contended that Section 378 of Cr.P.C. for necessary approval of the District Magistrate is required to be obtained. Whereas while presenting the appeal there is non-compliance to Section 378 of Cr.P.C. It was further submitted that trial court acquitted the petitioner's on merit as it was a case of no evidence. It was also submitted that appellate court while deciding the appeal has not complied Section 464 of Cr.P.C.

3. Per contra, learned counsel for the respondent submitted that appeal is by the State of Punjab. Even though while preparing the draft of appeal it was in time. Only while presenting the appeal there is delay. The same was not noticed. It was a bona fide mistake. Petitioner's counsel had an opportunity to raise such preliminary objection before the appellate court and it has not been raised so appellate court has not taken note of the delay. It was not intentional to suppress the delay of 27 days in presenting the appeal. It was further submitted that no doubt on merit trial court has proceeded to acquit the petitioner. At the same time, there is jurisdictional lacuna read with the framing of charges by the Special Judge and framing of additional charges by Judicial Magistrate. The same has been appreciated by the appellate court and allowed the appeal. Therefore, there is no infirmity in the order of the appellate court. Appellant has failed to appreciate any lacuna in the decision of the appellate court.

4. Heard the learned counsel for the parties.

5. Before considering the contentions of the petitioner it is appropriate to furnish the dates and events before the trial court which are as follows:-

07.09.2001	Challan presented before Special judge (Sessions Judge) but returned back with a direction to present the same before Illaqa Magistrate.
10/09/2001	Challan presented before Chief Judicial Magistrate. Matter remained pending.
26.02.2005	Charges had not been framed so far. Addl. Chief Judicial Magistrate sent the matter to Special Judge, on the ground that the matter is triable by Special Judge (Sessions Judge) only, in view of instructions of Hon'ble High Court issue vide letter No. 18943 Gaz.II dated 1.6.02
26.05.2005	Charges framed by special Judge (Sessions Judge) on 26.05.2005. Thereafter, 3 PWs were examined by Special judge.
16.10.2005	Special Judge (Sessions Judge) again sent the case to Addl. Chief Judicial Magistrate, while relying upon a judgment dated 21.08.2006 passed by Hon'ble High Court in Criminal Misc. No. 37773-M of 2005 titled Baldev Kishen and others Vs. State of Punjab. Thereafter 9 Pws examined by Addl. Chief Judicial Magistrate without amending charge. Thereafter, the statement of accused u/s 313 Cr.P.C. was also recorded on 5.6.2009.
05/10/2009	Charge amended by the court of Addl. Chief Judicial Magistrate.
19.11.2009	One PW examined and Addl. P.P. closed evidence of prosecution.
22.12.2009	Statement of accused u/s 313 Cr.P.C. again recorded.
11/02/2010	Decided.

6. The preliminary objection raised by the petitioner that there is delay in presenting the appeal by the State-respondent to the extent of 27 days and concealment of material facts is concerned it is to be noted that petitioner had an opportunity before the appellate court so as to raise that issue. For the first time such an issue has been raised in the present petition as is evident from the dates and events in respect of disposal and the acquittal and receipt of certified copy read with presentation of the appeal by the State. No doubt there is delay of 27 days in presenting the appeal. At the same time, one has to take note of that the State-respondent while preparing draft appeal certain lack of communication would be there insofar as presenting and taking approval due to which the respondent in para 1 might have stated that appeal is within the time limit. Had the petitioner raised such objection before the appellate court then the state could have rectified by making necessary application for condonation of delay of 27 days. Therefore, the aforesaid preliminary objection is hereby rejected. Non-compliance of Section 378 Cr.P.C. in presenting the appeal is concerned having regard to the language employed in Section 378 there is no provision for the State to obtain approval from the District Magistrate for presenting any appeal. Consequently, the aforesaid contention of the petitioner is dismissed. In respect of consideration of merit of the matter is concerned it is to be noted that even though trial court has decided the FIR on merit and acquitted the petitioner one cannot loose sight that statutory provision has been violated by the trial court in respect of proceeding with reference to the framing of charge by the Special court when the Special court has no jurisdiction and from the defective stage, the trial court should have proceeded. Therefore, it is a legal issue. Consequently, there is no infirmity

in the appellate court's order dated 25.07.2011 (Annexure P-2) except to the extent of remanding from the stage of examination of witnesses is concerned. Once the charges have been framed by the Special Judge without authority of law in that event Chief Judicial Magistrate is required to commence the proceedings by framing charges. From that stage, trial court is directed to proceed with the matter. Accordingly, in view of these facts and circumstances, petitioner has not made out a case.

- 7. With the above observation petition stands dismissed.
- 8. Parties are directed to appear before the trial court on 27.08.2018.

31.07.2018

pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons	Yes/No
Whether Reportable:	Yes/No